

Fill in this information to identify the case:

Debtor Premier Kings, Inc.

United States Bankruptcy Court for the: Northern District of Alabama
(State)

Case number 23-02871

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>ARC CAFEUSA001, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? ARC CAFEUSA001, LLC c/o Kutak Rock LLP Attn: Lisa M. Peters, Esq. 1650 Farnam Street Omaha, Nebraska 68102-2104 Contact phone <u>4023466000</u> Contact email <u>lisa.peters@kutakrock.com</u>	Where should payments to the creditor be sent? (if different) ARC CAFEUSA001, LLC c/o Realty Income Corporation Attn: Legal Department 2325 East Camelback Road, 9th Floor Phoenix, Arizona 85016 Contact phone <u>602.778.6000</u> Contact email _____
	Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: __ __ __ __
7. How much is the claim?	\$ <u>166163.77</u> Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Rejection of non-residential real property lease</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature or property: <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ <u>22528.24</u>
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check all that apply:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 12/29/2023
MM / DD / YYYY

/s/Lisa M. Peters
Signature

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

Name Lisa M. Peters
First name Middle name Last name

Title Counsel to Claimant

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

Address _____

Contact phone _____ Email _____



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 927-7089 | International (310) 751-2656

Debtor: 23-02871 - Premier Kings, Inc. District: Northern District of Alabama, Birmingham Division		
Creditor: ARC CAFEUSA001, LLC c/o Kutak Rock LLP Attn: Lisa M. Peters, Esq. 1650 Farnam Street Omaha, Nebraska, 68102-2104 Phone: 4023466000 Phone 2: Fax: Email: lisa.peters@kutakrock.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Disbursement/Notice Parties: ARC CAFEUSA001, LLC c/o Realty Income Corporation Attn: Legal Department 2325 East Camelback Road, 9th Floor Phoenix, Arizona, 85016 Phone: 602.778.6000 Phone 2: Fax: E-mail: DISBURSEMENT ADDRESS		
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Rejection of non-residential real property lease	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 166163.77	Includes Interest or Charges: Yes	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: Yes, 22528.24 Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Lisa M. Peters on 29-Dec-2023 11:23:49 a.m. Eastern Time Title: Counsel to Claimant Company: Kutak Rock LLP		

EXHIBIT A

The Claim set forth herein is for lease amounts under that certain Lease dated as of August 18, 2006 CPCG Gold I, LLC (“CPCG”), as indirect predecessor-in-interest by assignment to ARC CAFEUSA001, LLC (“Landlord” or “Claimant”), as landlord, and GoldCo, Inc. (“GoldCo”), as indirect predecessor-in-interest by assignment to Premier Kings, Inc. (“Debtor”), as tenant, as amended by that certain Master First Lease Amendment dated November 14, 2013 to be effective November 15, 2013 between Landlord, as landlord, and GoldCo, as tenant (as amended and assigned and collectively with all other amendments, assignments, addenda, attachments and exhibits thereto, the “Lease”). CPCG assigned to GE Capital Franchise Finance Corporation (“GECFFC”) all of CPCG’s right, title, and interest in and to, *inter alia*, the Lease pursuant to that certain Assignment and Assumption of Lease dated as of May 31, 2007 by and between CPCG, as assignor, and GECFFC as assignee. GECFFC subsequently assigned to Landlord all of GECFFC’s right, title, and interest in and to, *inter alia*, the Lease pursuant to that certain Master Assignment and Assumption of Lease Documents effective as of July 31, 2013 between GECFFC, as assignor, and Landlord, as assignee. GoldCo assigned to Burger Gulf Coast, LLC (“BGC”) all of GoldCo’s right, title, and interest in and to the Lease pursuant to that certain Assignment, Assumption and Consent Agreement effective as of June 30, 2014 by and among Landlord, as landlord, GoldCo, as tenant, and BGC, as assignee. BGC subsequently assigned to Debtor all of BGC’s right, title, and interest in and to the Lease pursuant to that certain Assignment, Assumption, and Consent Agreement effective as of October 26, 2016 by and among Landlord, as lessor, BGC, as lessee, and Debtor, as assignee.

The Lease relates to the real property and improvements located at 1165 Ross Clark Circle, Dothan, Alabama 36301 (the “Property”), as is more particularly described therein. A true and correct copy of the Lease is attached hereto as **Exhibit B** and is incorporated herein by this reference. Upon information and belief, Debtor identifies the premises formerly occupied by the Debtor at the Property as Store No. 11279.

The Lease was rejected effective as of October 25, 2023, pursuant to that certain *First Omnibus Motion of the Debtors and Debtors-in-Possession for Entry of an Order (I) Authorizing Rejection of Unexpired Leases, and (II) Setting a Deadline for the Filing of Rejection Claims* filed on October 26, 2023 at Docket No. 44, as approved by that certain *Order (I) Authorizing Rejection of Certain Unexpired Leases and (II) Setting a Deadline for the Filing of Rejection Claims* entered on November 27, 2023 at Docket N. 250.

The Claim set forth herein is calculated pursuant to, and limited by, 11 U.S.C. § 502(b)(6).

Claim Amount Calculation

I. 502(b)(6)(B) Calculation

A.	Outstanding Base Rent for the Period Ending October 24, 2023	\$	22,528.24
B.	Estimated Costs to Remove and Dispose of Abandoned Personal Property	\$	<u>3,000.00</u>
	Total 502(b)(6)(B) Claim	\$	25,528.24

II. 502(b)(6)(A) Calculation

A. Remaining Rent (*See* 11 U.S.C. § 502(b)(6)(A))

Total Base Rent Remaining for October 25, 2023 – August 31, 2028 \$ 673,594.38¹

Total Property Taxes Remaining for October 25, 2023 – August 31, 2028 \$ 27,330.90²

Total Remaining Rent \$ 700,925.28

B. One Year Rent (*See* 11 U.S.C. § 502(b)(6)(A)) \$ 140,635.53³

C. Three Years Rent (*See* 11 U.S.C. § 502(b)(6)(A)) \$ 423,596.48⁴

D. 15% of Remaining Rent (*See* 11 U.S.C. § 502(b)(6)(A)) \$ 102,066.72⁵

III. Section 502(b)(6) Claim

A. Total 502(b)(6)(B) Claim \$ 25,528.24

B. Total 502(b)(6)(A) Claim \$ 140,635.53

Total Section 502(b)(6) Claim \$ 166,163.77

Reservation of Rights

Claimant reserves the right to amend this Proof of Claim at any time and in any manner, including without limitation, to update the actual costs to remove abandoned personal property from the Property, once the same become known.

In the event the Debtor or anyone on the Debtor's behalf asserts a claim against Claimant in these proceedings, this claim may be secured by a right of setoff pursuant to sections 506(a) and 553 of the Bankruptcy Code.

Claimant further reserves all rights, remedies and claims with respect to the personal property abandoned at the Property, including without limitation, any claims, liens, or encumbrances thereon claimed or asserted by non-Debtor third parties and any disputes with respect to the storage or removal of such encumbered personal property at or from the Property, and nothing herein shall prejudice or be deemed to waive such rights, remedies, or claims.

¹ $(\$135,169.35 \times (10 / 12)) + (\$135,169.35 \times 2) + (\$145,307.15 \times 2) = \$673,594.38$. This is the remaining base rent for the period October 25, 2023 through August 31, 2028.

² $(\$5,466.18 \times 5) = \$27,330.90$. This is the remaining property taxes for the period October 25, 2023 through August 31, 2028, based on the actual 2023 property taxes with respect to the Property.

³ $\$135,169.35 + \$5,466.18 = \$140,635.53$. This is one year of base rent and property taxes (based on the actual 2023 property taxes with respect to the Property).

⁴ $((\$135,169.35 \times (10 / 12)) + (\$135,169.35 \times 2) + (\$145,307.15 \times (2 / 12))) + (\$5,466.18 \times 3) = \$423,596.48$. This is three years of base rent and property taxes (based on the actual 2023 property taxes with respect to the Property).

⁵ $(\$135,169.35 \times (264.90 / 365)) + (\$5,466.18 \times (155.25 / 365)) = \$102,066.72$. This is 15% of remaining base rent and property taxes (based on the actual 2023 property taxes with respect to the Property), based on 15% of the remaining term of the Lease. The remaining term of October 25, 2023 through August 31, 2028 is 1,766.00 days and 15% thereof is 264.90 days.

EXHIBIT B

LEASE

[SEE ATTACHED]

LEASE

Between

CPCG GOLD I, LLC,

as Landlord,

and

GOLDCO, INC.,

as Tenant.

Dothan, Alabama

BK Unit #12279

1165 Ross Clark Circle
Dothan, AL 36301

80020973

Contract 20400-ED

MICA

THIS LEASE (this "Lease") is made as of August 18, 2006 (the "Commencement Date"), by and between CPCG GOLD I, LLC, a Delaware limited liability company ("Landlord"), and GOLDCO, INC., an Alabama corporation ("Tenant").

In consideration of the mutual obligations in this Lease, Landlord and Tenant agree as follows:

1. **Certain Defined Terms.** The following terms shall have the following meanings for all purposes of this Lease:

"ADA" means the Americans with Disabilities Act of 1990, as such act may be amended from time to time.

"Additional Rental" has the meaning set forth in Section 5.C.

"Adjustment Date" means the first day of the month following the month in which the fifth anniversary of the Commencement Date occurs; and every fifth anniversary thereafter during the Lease Term (including the extension periods if Tenant exercises its option pursuant to Section 28).

"Affiliate" means any Person which directly or indirectly controls, is under common control with, or is controlled by any other Person. For purposes of this definition, "controls", "under common control with" and "controlled by" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or otherwise.

"Anti-Money Laundering Laws" means all applicable laws, regulations and government guidance on the prevention and detection of money laundering, including 18 U.S.C. § § 1956 and 1957, and the BSA.

"Applicable Regulations" means all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders and approvals of each Governmental Authority having jurisdiction over the Premises, including, without limitation, all health, building, fire, safety and other codes, ordinances and requirements, all applicable standards of the National Board of Fire Underwriters and the ADA and all policies or rules of common law, in each case, as amended, and any judicial or administrative interpretation thereof, including any judicial order, consent, decree or judgment applicable to Tenant.

"Base Annual Rental" is defined on Schedule I attached hereto.

"Base Monthly Rental" means an amount equal to 1/12 of the applicable Base Annual Rental.

"BSA" means the Bank Secrecy Act (31 U.S.C. § § 5311 et. seq.), and its implementing regulations, Title 31 Part 103 of the U.S. Code of Federal Regulations.

"Business Day" means any day on which Landlord is open for business other than a Saturday, Sunday or other day on which commercial banks are authorized to close under

Applicable Regulations, or are in fact closed in the State of California, ending at 5:00 P.M. Los Angeles, California time.

"Change of Control" means a change in control of Tenant, including, without limitation, a change in control resulting from direct or indirect transfers of voting stock or partnership, membership or other ownership interests, whether in one or a series of transactions. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of Tenant's management and policies, and a Change of Control will occur if any Person acquires the securities of Tenant representing 50% or more of the combined voting power of Tenant's then outstanding securities.

"Code" means Title 11 of the United States Code, 11 U.S.C. Sec. 101 et seq., as amended.

"CPI" means the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100.

"Default Rate" means the lesser of the highest rate for which the undersigned may legally contract or the rate of 14% per annum.

"Commencement Date" has the meaning set forth in the Preamble.

"Environmental Condition" means any condition with respect to soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air and any environmental medium comprising or surrounding the Premises, whether or not yet discovered, which would or does result in any material damage, loss, cost, expense, claim, demand, order or liability to or against Tenant, Landlord or Lender by any third party (including, without limitation, any Governmental Authority), including, without limitation, any such condition resulting from the operation of business at the Premises and/or the operation of the business of any other property owner or operator in the vicinity of the Premises and/or any activity or operation formerly conducted by any person or entity on or off the Premises.

"Environmental Laws" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, orders, injunctions and decrees of Governmental Authorities and common law, relating to Hazardous Materials and/or the protection of the environment by reason of a Release or a Threatened Release of Hazardous Materials or relating to liability for or costs of Remediation or prevention of Releases. "Environmental Laws" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations, rulings, orders or decrees promulgated pursuant thereto: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks), 42 U.S.C. §§ 6901 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 7401 et seq.; the Occupational Safety and Health Act, 29

U.S.C. § 651 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Endangered Species Act, 16 U.S.C. §§ 1531 et seq. and the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. "Environmental Laws" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations, orders, injunctions and decrees of Governmental Authorities and common law: conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the property; requiring notification or disclosure of Releases or other environmental condition of the Premises to any Governmental Authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements relating to Hazardous Materials in connection with permits or other authorizations required by Governmental Authorities; relating to the handling and disposal of Hazardous Materials; relating to nuisance, trespass or other causes of action related to Hazardous Materials; and relating to wrongful death, personal injury, or property or other damage in connection with the physical condition or use of the Premises by reason of the presence of Hazardous Materials in, on, under or above the Premises.

"Environmental Liens" means any and all liens and other encumbrances imposed on the Premises pursuant to any Environmental Law.

"Environmental Report" is defined on Schedule I attached hereto.

"Event of Default" has the meaning set forth in Section 24.

"Extended Term" has the meaning set forth in Section 4.

"Franchise Agreements" means, collectively, the franchise, license and/or area development agreements (and any addenda thereto) with Franchisor for the conduct of business at the Premises as a Permitted Concept, together with all amendments, modifications and supplements thereto.

"Franchisor" means Burger King Corporation, a Florida corporation and its successors.

"GAAP" means United States generally accepted accounting principles consistently applied.

"Governmental Authority" means any governmental authority, agency, department, commission, bureau, board, instrumentality, court or quasi-governmental authority having jurisdiction or supervisory or regulatory authority over the Premises or Tenant.

"Hazardous Materials" means (a) any toxic substance or hazardous waste, substance or solid waste, or any pollutant or contaminant; (b) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment containing dielectric fluid having levels of polychlorinated biphenyls in excess of applicable standards established by any Governmental Authority, any petroleum product or petroleum additive, any petroleum-based substances, or any Toxic Mold; (c) any substance, gas, material or chemical which is now or hereafter defined as or included in the definition of "hazardous substances," "toxic substances," "hazardous materials," "hazardous wastes" or "regulated substances" under any Environmental Laws; and (d) any other chemical, material, gas or

substance the exposure to or release of which is prohibited, limited or regulated by any Governmental Authority because of its hazardous or dangerous characteristics.

"Indemnified Parties" means Landlord (including any predecessor-in-interest to Landlord), Lender (including, but not limited to, investors in any Securitization, Participation or Transfer), and their respective directors, officers, shareholders, trustees, beneficial owners, partners and members, employees, agents, attorneys, contractors, affiliates, subsidiaries, participants, successors and assigns.

"Lease Term" shall have the meaning described in Section 4 below.

"Lender" means any lender in connection with any loan secured by Landlord's interest in the Premises, and any servicer of any loan secured by Landlord's interest in the Premises.

"Loan Documents" means, collectively, all documents, instruments and agreements executed in connection with any Mortgages, all as amended, modified and supplemented and any and all replacements or substitutions thereof.

"Losses" means any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, reasonable attorneys' fees, court costs and other costs of defense to the extent incurred directly by Landlord and all other attorneys' fees, court costs and other costs of defense which are an obligation of Landlord).

"Material Adverse Effect" means a material adverse effect on (i) the Premises, including, without limitation, the operation of the Premises as a Permitted Concept, or (ii) Tenant's performance of its obligations under this Lease.

"Memorandum" means the memorandum of lease dated as of the Commencement Date between Landlord and Tenant with respect to the Premises.

"Mortgages" means, collectively, the mortgages, deeds of trust or deeds to secure debt, assignments of rents and leases, security agreements and fixture filings executed by Landlord for the benefit of Lender with respect to the Premises, as such instruments may be amended, modified, restated and/or supplemented from time to time and any and all replacements or substitutions thereof.

"Net Proceeds" has the meaning set forth in Section 21 D(1).

"OFAC Laws and Regulations" means Executive Order 13224 issued by the President of the United States of America, the Terrorism Sanctions Regulations (Title 31 Part 595 of the U.S. Code of Federal Regulations), the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the U.S. Code of Federal Regulations), and the Cuban Assets Control Regulations (Title 31 Part 515 of the U.S. Code of Federal Regulations), and all other present and future federal, state and local laws, ordinances, regulations, policies, lists (including,

without limitation, the Specially Designated Nationals and Blocked Persons List) and any other requirements of any Governmental Authority (including, without limitation, the United States Department of the Treasury Office of Foreign Assets Control) addressing, relating to, or attempting to eliminate, terrorist acts and acts of war, each as hereafter supplemented, amended or modified from time to time, and the present and future rules, regulations and guidance documents promulgated under any of the foregoing, or under similar laws, ordinances, regulations, policies or requirements of other states or localities.

"Participation" means one or more grants by Lender or any Affiliate of Lender to a third party of a participating interest in notes evidencing obligations to repay secured or unsecured loans owned by Lender or any Affiliate of Lender or any or all servicing rights with respect thereto.

"Permitted Amounts" means, with respect to any given level of Hazardous Materials, that level or quantity of Hazardous Materials in any form or combination of forms the presence, use, storage, release or handling of which does not constitute a violation of any Environmental Laws and is customarily employed in the ordinary course of, or associated with, similar businesses located in the state in which the Premises is located.

"Permitted Concept" means any Burger King and any other restaurant concept or other use approved by Landlord in writing and in advance in Landlord's reasonable discretion.

"Person" means any individual, corporation, partnership, limited liability company, trust, unincorporated organization, Governmental Authority or any other form of entity.

"Personal Property" means all tangible personal property now or at any time hereafter located on or at the Premises or used in connection therewith, including, without limitation, all furniture, trade fixtures, building lettering, signs, sign posts, sign standards, food and customer service equipment (whether unattached or attached to the improvements by bolts and screws and/or by utility connections including, without limitation, walk-in refrigerators and freezers, remote refrigeration systems and exhaust systems and hoods and water heaters), equipment and other items of personal property now or hereafter owned, acquired, held or used by Tenant in operation of the Permitted Concept at the Premises and all additions to, substitutions for and replacements of the foregoing, provided, however, the term "Personal Property" shall not include all lighting, electrical, heating, air cooling and air conditioning apparatus, gas, electric and utility equipment, pipes, pumps, tanks, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, and communications apparatus, drapes, attached floor coverings, including carpeting, storm doors and windows, toilets and sinks, ducts and compressors, and machinery and equipment specifically related to the foregoing, including but not limited to compressors, regardless of whether any of the foregoing are affixed or attached, all of which items are intended to be fixtures as such term is used within the definition of "Premises".

"Premises" means the parcel or parcels of real estate legally described in Exhibit A attached hereto, all rights, privileges and appurtenances associated therewith, and all buildings, fixtures and other improvements now or hereafter located on such real estate (whether or not affixed to such real estate), but specifically excluding any Personal Property.

"Primary Term" has the meaning set forth in Section 4.

"Related Leases" means the other Leases dated as of the Commencement Date between Landlord and Tenant.

"Release" means any presence, release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping or disposing of Hazardous Materials.

"Remediation" means any response, remedial, removal, or corrective action, any activity to clean up, detoxify, decontaminate, contain or otherwise remediate any Hazardous Materials to the extent required by any Environmental Law or any Governmental Authority, any actions to prevent, cure or mitigate any Release to the extent required by any Environmental Laws or by any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or any evaluation relating to any Hazardous Materials to the extent required by Environmental Laws, including, without limitation, all acts necessary to clean and disinfect any portions of the Premises affected by Toxic Mold and to eliminate the sources of Toxic Mold in or on the Premises, including, without limitation, providing any necessary moisture and control systems at the Premises.

"Restoration Cost" has the meaning set forth in Section 21 D(1).

"Securitization" means one or more sales, dispositions, transfers or assignments by Lender or any Affiliate of Lender to a special purpose corporation, trust or other entity identified by Lender or any Affiliate of Lender of notes evidencing obligations to repay secured or unsecured loans owned by Lender or any Affiliate of Lender (and, to the extent applicable, the subsequent sale, transfer or assignment of such notes to another special purpose corporation, trust or other entity identified by Lender or any Affiliate of Lender), and the issuance of bonds, certificates, notes or other instruments evidencing interests in pools of such loans, whether in connection with a permanent asset securitization or a sale of loans in anticipation of a permanent asset securitization. Each Securitization shall be undertaken in accordance with all requirements which may be imposed by the investors or the rating agencies involved in each such sale, disposition, transfer or assignment or which may be imposed by applicable securities, tax or other laws or regulations.

"Threatened Release" means a substantial likelihood of a Release which requires action to prevent or mitigate damage to the soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air or any other environmental medium comprising or surrounding the Premises which may result from such Release.

"Toxic Mold" means any mold or fungus of a type which could reasonably be expected to pose a risk to human health or the environment or would negatively impact the value of the Premises.

"Transfer" means one or more sales, transfers or assignments by Lender or any Affiliate of Lender to a third party of notes evidencing obligations to repay secured or unsecured loans owned by Lender or any Affiliate of Lender or any or all servicing rights with respect thereto.

"U.S. Publicly-Traded Entity" is an entity whose securities are listed on a national securities exchange or quoted on an automated quotation system in the U.S. or a wholly-owned subsidiary of such an entity.

2. **Demise of Premises.** In consideration of the rentals and other sums to be paid by Tenant and of the other terms, covenants and conditions on Tenant's part to be kept and performed, Landlord hereby leases to Tenant, and Tenant hereby takes and hires, the Premises. Except as otherwise specifically provided in Section 20 below, the Premises is leased to Tenant "AS IS" and "WHERE IS" without representation or warranty by Landlord and subject to the rights of parties in possession, to the existing state of title, any state of facts which an accurate survey or physical inspection might reveal, and all Applicable Regulations now or hereafter in effect. Tenant has examined the Premises and title to the Premises and has found all of the same satisfactory for all of Tenant's purposes.

3. **Lease Characterization.** A. Landlord and Tenant intend that:

(i) this Lease is a "true lease" and not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of this Lease are those of a true lease; and

(ii) the business relationship created by this Lease and any related documents is solely that of a long-term commercial lease between landlord and tenant and has been entered into by both parties in reliance upon the economic and legal bargains contained herein.

B. Landlord and Tenant acknowledge and agree that the Lease Term, including any term extensions provided for in this Lease, is less than the remaining economic life of the Premises.

C. Tenant waives any claim or defense based upon the characterization of this Lease as anything other than a true lease and irrevocably waives any claim or defense which asserts that this Lease is anything other than a true lease. Tenant shall not challenge the validity, enforceability or characterization of the lease of the Premises as a true lease. Nothing contained in this Lease creates or is intended to create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like. Tenant shall support the intent of the parties that the lease of the Premises pursuant to this Lease is a true lease and does not create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like, if, and to the extent that, any challenge occurs.

D. Tenant agrees that (i) the Base Annual Rental is the fair market value for the use of the Premises and was agreed to by Landlord and Tenant on that basis, and (ii) the execution, delivery and performance by Tenant of this Lease does not constitute a transfer of all or any part of the Premises.

E. The expressions of intent, the waivers, the covenants, the agreements and the stipulations set forth in this Section are a material inducement to Landlord entering into this Lease.

4. **Lease Term.** The Lease Term for the Premises shall commence as of the Commencement Date and shall expire on August 31, 2026, unless terminated sooner as provided in this Lease (the "Primary Term") and as may be extended for four periods of five years each as set forth in Section 28 below (each such five year term, an "Extended Term"). The time period during which this Lease shall actually be in effect is referred to herein as the "Lease Term."

5. **Rental and Other Payments.** A. Tenant shall pay to Landlord (or to Lender, if directed by Landlord), as minimum rent for the Premises during the Lease Term, Base Monthly Rent, commencing on the Commencement Date and continuing on the first day of the second full calendar month of the Lease Term and the first day of each calendar month thereafter during the Lease Term, in advance, in funds which at the time of such payment shall be legal tender for the payment of public or private debts in the United States of America. If the Commencement Date is a date other than the first day of the month, Tenant shall pay Landlord on the Commencement Date the Base Monthly Rental for such partial calendar month prorated on the basis of the ratio that the number of days from the Commencement Date through the last day in the month containing the Commencement Date bears to the number of days in such month, together with the Base Monthly Rental for the first full calendar month of the Lease Term.

B. Commencing on the first Adjustment Date and on each Adjustment Date thereafter, the Base Annual Rental shall increase by an amount equal to the product of the then-current Base Annual Rental multiplied by 7.5%. The increased Base Annual Rental shall constitute the Base Annual Rental due and payable until the next Adjustment Date.

C. All sums of money required to be paid by Tenant under this Lease which are not specifically referred to as rent ("Additional Rental") shall be considered rent although not specifically designated as such. Landlord shall have the same remedies for nonpayment of Additional Rental as those provided herein for the nonpayment of Base Annual Rental.

6. **Representations and Warranties of Tenant.** The representations and warranties of Tenant contained in this Section are being made to induce Landlord to enter into this Lease and Landlord has relied, and will continue to rely, upon such representations and warranties. Tenant represents and warrants to Landlord as of the Commencement Date as follows:

A. **Organization, Authority and Status.** (i) Tenant is duly organized or formed, validly existing and in good standing under the laws of the State of Alabama and is qualified to do business in the state where the Premises is located. All necessary action has been taken to authorize the execution, delivery and performance by Tenant of this Lease and of the other documents, instruments and agreements provided for herein. Tenant is not a "foreign corporation", "foreign partnership", "foreign trust", "foreign limited liability company" or "foreign estate", as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder. Tenant's U.S. Federal Tax Identification number, Organization Identification number and principal place of business are correctly set forth on the attached Schedule I. The person(s) who have executed this Lease on behalf of Tenant are duly authorized

to do so. No individual or entity owning directly or indirectly any interest in Tenant is an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations or is otherwise in violation of any of the OFAC Laws and Regulations; provided, however, the representation contained in this sentence shall not apply to any Person to the extent such Person's interest is in or through a U.S. Publicly-Traded Entity.

B. *Enforceability.* Upon execution by Tenant, this Lease shall constitute the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and general principles of equity.

C. *Litigation.* There are no suits, actions, proceedings or investigations ongoing, or, to the best of its knowledge, threatened against or involving Tenant or the Premises before any arbitrator or Governmental Authority, except for such suits, actions, proceedings or investigations which, individually or in the aggregate, have not had, and would not reasonably be expected to result in, a Material Adverse Effect.

D. *Absence of Breaches or Defaults.* Tenant is not, and the authorization, execution, delivery and performance of this Lease and the documents, instruments and agreements provided for herein will not result in, any breach or default under any document, instrument or agreement to which Tenant is a party or by which Tenant, the Premises or any of the property of Tenant is subject or bound, except for such breaches or defaults which, individually or in the aggregate, have not had, and would not reasonably be expected to result in, a Material Adverse Effect. The authorization, execution, delivery and performance of this Lease and the documents, instruments and agreements provided for herein will not violate any applicable law, statute, regulation, rule, ordinance, code or order, except for such violations which individually or in the aggregate have not had and would not reasonably be expected to result in, a Material Adverse Effect. The Premises is not subject to any right of first refusal, right of first offer or option to purchase or lease granted to a third-party. Tenant has not assigned, transferred, mortgaged, hypothecated or otherwise encumbered this Lease or any rights hereunder or interest herein.

E. *Franchisor Provisions.* Tenant has delivered to Landlord a true, correct and complete copy of each Franchise Agreement. The Franchise Agreements are the only agreements in effect with Franchisor with respect to the Premises. The Franchise Agreements are in full force and effect and constitute the legal, valid and binding obligations of the parties to the Franchise Agreements, enforceable in accordance with their terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, liquidation, reorganization and other laws affecting the rights of creditors generally and general principles of equity. Tenant has not assigned, transferred, mortgaged, hypothecated or otherwise encumbered any of the Franchise Agreements or any rights thereunder or any interest therein, and Tenant has not received any notice that the Franchisor has made any assignment, pledge or hypothecation of all or any part of its rights or interests in the Franchise Agreements. No notice of default from Franchisor has been received under any of the Franchise Agreements which has not been cured and no notice of default to Franchisor has been given under any of the Franchise Agreements which has not been cured. No event has occurred and no condition exists which, with the giving of notice or the lapse of time or both would constitute a default under any of the Franchise

Agreements, except for any such default which has not resulted, and would not reasonably be expected to result, in a termination of any such Franchise Agreement.

F. *Licenses and Permits; Access.* All required licenses and permits, both governmental and private, to use and operate the Premises as a Permitted Concept are in full force and effect, except for such licenses and permits the failure of which to obtain has not had, and would not reasonably be expected to result in, a Material Adverse Effect. Adequate rights of access to public roads and ways are available to the Premises for unrestricted ingress and egress and otherwise to permit utilization of the Premises for its intended purposes.

G. *Financial Information.* Tenant has delivered to Landlord certain financial statements and other information concerning Tenant in connection with this Lease (collectively, the "Financial Information"). The Financial Information is true, correct and complete in all material respects; there have been no amendments to the Financial Information since the date such Financial Information was prepared or delivered to Landlord. Tenant understands that Landlord is relying upon the Financial Information and Tenant represents that such reliance is reasonable. All financial statements included in the Financial Information were prepared in accordance with GAAP and fairly present as of the date of such financial statements the financial condition of each entity to which they pertain in all material respects. No change has occurred with respect to the financial condition of Tenant and/or the Premises as reflected in the Financial Information which has not been disclosed in writing to Landlord which has had, or could reasonably be expected to result in, a Material Adverse Effect.

H. *Money Laundering.* (1) Tenant has taken all reasonable measures, in accordance with all applicable Anti-Money Laundering Laws, with respect to each holder of a direct or indirect interest in Tenant, to assure that funds invested by such holders in Tenant are derived from legal sources; provided, however, none of the foregoing shall apply to any Person to the extent that such Person's interest is in or through a U.S. Publicly-Traded Entity.

(2) To Tenant's knowledge after making due inquiry, neither Tenant nor any holder of a direct or indirect interest in Tenant (a) is under investigation by any Governmental Authority for, or has been charged with, or convicted of, any violation of any Anti-Money Laundering Laws, or drug trafficking, terrorist-related activities or other money laundering predicated crimes or a violation of the BSA, (b) has been assessed civil penalties under these or related laws, or (c) has had any of its funds seized or forfeited in an action under these or related laws; provided, however, none of the foregoing shall apply to any Person to the extent that such Person's interest is in or through a U.S. Publicly-Traded Entity.

(3) Tenant has taken reasonable steps, consistent with industry practice for comparable organizations and in any event as required by law, to ensure that Tenant is and shall be in compliance with all (i) Anti-Money Laundering Laws and (ii) OFAC Laws and Regulations.

I. *Utilities.* The Premises is served by ample public utilities to permit full utilization of the Premises for its intended purpose as a Permitted Concept and all utility connection fees will have been paid in full, except for such nonpayment which individually or in the aggregate has not had, and would not reasonably be expected to result in, a Material Adverse Effect.

J. *Area Development; Wetlands.* No condemnation or eminent domain proceedings affecting the Premises have been commenced or to the best of Tenant's knowledge are contemplated; the area where the Premises is located has not been declared blighted by any Governmental Authority; and the Premises and/or the real property bordering the Premises are not designated by any Governmental Authority as wetlands.

K. *Condition of Premises.* The Premises, including the equipment and other Personal Property located thereon, is in each case in all reasonable and material respects of good workmanship and materials, fully equipped and operational, in good condition and repair, free from structural defects, clean, orderly and sanitary, safe, well lit, landscaped, decorated, attractive and well maintained.

L. *No Mechanics' Liens.* There are no outstanding accounts payable, mechanics' liens, or rights to claim a mechanics' lien in favor of any materialman, laborer, or any other person or entity in connection with labor or materials furnished to or performed on any portion of the Premises other than for labor and materials performed and furnished in the ordinary course or at the request of Franchisor and for which payment is not delinquent; no work has been performed or is in progress nor have materials been supplied to the Premises or agreements entered into for work to be performed or materials to be supplied to the Premises prior to the Commencement Date, which will not have been fully paid for on or before the Commencement Date or which might provide the basis for the filing of such liens against the Premises or any portion thereof other than for labor and materials performed and furnished in the ordinary course and for which payment is not delinquent; Tenant shall be responsible for any and all claims for mechanics' liens and accounts payable that have arisen or may subsequently arise due to agreements entered into for work performed on, or materials supplied to, the Premises prior to the Commencement Date; and Tenant shall defend, indemnify and forever hold the Indemnified Parties harmless from and against any and all such mechanics' lien claims, accounts payable or other commitments relating to the Premises.

M. *No Reliance.* Tenant acknowledges that Landlord did not prepare or assist in the preparation of any of the projected financial information used by Tenant in analyzing the economic viability and feasibility of the transaction contemplated by this Lease, and that Tenant has not relied on any report or statement by Landlord in entering into this Lease.

N. *Solvency.* Both before and immediately after the consummation of the transactions contemplated by this Lease, on the Commencement Date and after giving effect to such transactions, (i) the fair value of the assets of Tenant will exceed the debts and liabilities, subordinated, contingent or otherwise, of Tenant; (ii) the present fair saleable value of the assets of Tenant will be greater than the amount that will be required to pay the probable liability of Tenant on its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) Tenant will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) Tenant's property will not constitute "an unreasonably small capital" within the meaning of Section 548(a)(1)(B)(ii)(II) of the Code given the business in which Tenant is engaged as such business is now conducted and as proposed to be conducted after the Commencement Date. Tenant does not intend to, and does not believe that it will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and

amounts of cash to be received by it and the timing of and the amounts of cash to be payable on or in respect of its debts and other liabilities, subordinated, contingent, or otherwise.

7. ***Transfer, Participation and Securitization.*** So long as this Lease is in effect: (i) Tenant agrees to cooperate in good faith with Landlord and Lender in connection with any Transfer, Participation and/or Securitization of any of the Mortgages and/or any of the Loan Documents, or any or all servicing rights with respect thereto, including, without limitation, providing such documents, financial and other data, and other information and materials (the "Disclosures") which would typically be required with respect to the Tenant by a purchaser, transferee, assignee, servicer, participant, investor or rating agency involved with respect to such Transfer, Participation and/or Securitization, as applicable; provided, however, Tenant shall not be required to make Disclosures of any confidential information or any information which has not previously been made public unless required by applicable federal or state securities laws.

(ii) Tenant consents to Landlord and Lender providing the Disclosures, as well as any other information which Landlord and Lender may now have or hereafter acquire with respect to the Premises or the financial condition of Tenant to each purchaser, transferee, assignee, servicer, participant, investor or rating agency involved with respect to such Transfer, Participation and/or Securitization, as applicable.

8. ***Rentals to Be Net to Landlord.*** This Lease is a net lease and, notwithstanding any present or future law to the contrary, shall not terminate except as otherwise expressly provided herein, nor shall Tenant be entitled to any abatement, reduction, diminution, set-off, counterclaim, defense or deduction with respect to any Base Annual Rental, Additional Rental, or other sums payable hereunder, nor shall the obligations of Tenant hereunder be affected, by reason of: any damage to or destruction of the Premises or any portion thereof; any defect in the condition, design, operation or fitness for use of the Premises or any portion thereof; any taking of the Premises or any part thereof by condemnation or otherwise; any prohibition, limitation, interruption, cessation, restriction or prevention of Tenant's use, occupancy or enjoyment of the Premises, or any interference with such use, occupancy or enjoyment by any person; any eviction by paramount title or otherwise; any default by Landlord hereunder or under any other agreement; the impossibility or illegality of performance by Landlord, Tenant or both; any action of any Governmental Authority; construction on or renovation of the Premises; or any failure in the Premises to comply with Applicable Regulations, or any other cause whether similar or dissimilar to the foregoing. All costs, expenses and obligations of every kind and nature whatsoever relating to the Premises and the appurtenances thereto and the use and occupancy thereof which may arise or become due and payable with respect to the period which ends on the expiration or earlier termination of the Lease Term in accordance with the provisions hereof (whether or not the same shall become payable during the Lease Term or thereafter) shall be paid by Tenant except as otherwise expressly provided herein. It is the purpose and intention of the parties to this Lease that the Base Annual Rental and the Additional Rental due hereunder shall be absolutely net to Landlord and that this Lease shall yield, net to Landlord, the Base Annual Rental and the Additional Rental provided in this Lease. The parties intend that the obligations of Tenant hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated pursuant to an express provision of this Lease. Tenant shall not take any action to terminate, rescind or avoid this Lease, notwithstanding any bankruptcy, insolvency, reorganization, liquidation,

dissolution or other proceeding affecting Landlord or any action with respect to this Lease which may be taken by any trustee, receiver or liquidator or by any court. Except as otherwise expressly provided herein, Tenant waives all rights to terminate or surrender this Lease, or to any abatement or deferment of Base Annual Rental, Additional Rental or other sums payable hereunder.

9. *Taxes and Assessments.* Subject to Tenant's right to contest taxes and assessments as set forth in this Section 9, Tenant shall pay, prior to the earlier of the due date or the accrual of interest on the unpaid balance, all taxes and assessments of every type or nature assessed against, imposed upon or arising with respect to Landlord, the Premises, this Lease, the rental or other payments due under this Lease or Tenant prior to or during the Lease Term which affect in any manner the net return realized by Landlord under this Lease, including, without limitation, the following:

A. All taxes and assessments upon the Premises or any part thereof and upon any Personal Property, whether belonging to Landlord or Tenant, or any tax or charge levied in lieu of such taxes and assessments;

B. All taxes, charges, license fees and or similar fees imposed by reason of the use of the Premises by Tenant; and

C. All excise, transaction, privilege, license, sales, use and other taxes upon the rental or other payments due under this Lease, the leasehold estate of either party or the activities of either party pursuant to this Lease.

Notwithstanding the foregoing, but without limiting the preceding obligation of Tenant to pay all taxes which are imposed on the rental or other payments due under this Lease, in no event will Tenant be required to pay any net income taxes (i.e., taxes which are determined taking into account deductions for depreciation, interest, taxes and ordinary and necessary business expenses) or franchise taxes (unless imposed in lieu of other taxes that would otherwise be the obligation of Tenant under this Lease) of Landlord, any transfer taxes of Landlord, or any tax imposed with respect to the sale, exchange or other disposition by Landlord, in whole or in part, of the Premises or Landlord's interest in this Lease (other than transfer or recordation taxes imposed in connection with the transfer of the Premises to Tenant or the termination of this Lease pursuant to the provisions of this Lease).

All taxing authorities shall be instructed to send all tax and assessment invoices to Tenant and Tenant shall promptly provide Landlord and Lender with copies of all tax and assessment invoices received by Tenant. Upon request, Tenant shall also provide Landlord and Lender with evidence that such invoices were paid in a timely fashion. Notwithstanding any provision to the contrary in this Lease, Tenant may, at its own expense, contest or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any item specified in this Section, the lien therefor, or any mechanic's lien or other lien imposed on Tenant's leasehold interest in this Lease, provided that: (i) Tenant shall provide written notice to Landlord of any contest involving more than \$10,000, (ii) such proceeding shall suspend the collection thereof from the Premises or any interest therein, (iii) neither the Premises nor any interest therein would be in any danger of

being sold, forfeited or lost by reason of such proceedings, (iv) no Event of Default has occurred and is continuing, and (v) in the case of any item exceeding \$10,000, Tenant shall have either (A) paid the item under protest or (B) provided Landlord with a bond to insure payment in an amount reasonably acceptable to Landlord and issued by such surety and otherwise in form and substance reasonably acceptable to Landlord.

10. **Utilities.** Tenant shall contract, in its own name, for and pay when due all charges for the connection and use of water, gas, electricity, telephone, garbage collection, sewer use and other utility services supplied to the Premises during the Lease Term. Unless resulting from Landlord's gross negligence or willful misconduct, under no circumstances shall Landlord be responsible for any interruption of any utility service.

11. **Insurance.** Throughout the Lease Term Tenant shall maintain with respect to the Premises, at its sole expense, the following types and amounts of insurance (which may be included under a blanket insurance policy if all the other terms hereof are satisfied), in addition to such other insurance as Landlord may reasonably require from time to time:

A. Insurance against loss, damage or destruction by fire, windstorm and other casualty, including theft, vandalism and malicious mischief, flood (if the improvements on the Premises are located in an area designated by the Federal Emergency Management Administration as a Special Flood Hazard Area), earthquake (if the Premises is in an area subject to destructive earthquakes within recorded history), boiler explosion (if there is any boiler upon the Premises), plate glass breakage, sprinkler damage (if the Premises has a sprinkler system), all matters covered by a standard extended coverage endorsement, all matters covered by a special coverage endorsement commonly known as an "all risk" endorsement, and such other risks as Landlord may reasonably require, insuring the Premises for not less than 100% of their full insurable replacement cost.

B. Commercial general liability insurance, including a products liability clause, covering Landlord and Tenant against bodily injury liability, property damage liability and automobile bodily injury and property damage liability, including without limitation any liability arising out of the ownership, maintenance, repair, condition or operation of the Premises or adjoining ways, streets or sidewalks and, if applicable, insurance covering Landlord and Tenant against liability arising from the sale of liquor, beer or wine on the Premises. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Tenant's obligations under Section 19 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of Tenant or Landlord because of the negligence or other acts of the other, shall be in amounts of not less than \$3 million in the aggregate with respect to any insured liability, whether for personal injury or property damage, or such higher limits as Landlord may reasonably require from time to time, and shall be of form and substance satisfactory to Landlord.

C. Business income insurance equal to 100% of the Base Annual Rental for a period of not less than twelve months.

D. State Worker's compensation insurance in the statutorily mandated limits, employer's liability insurance with limits not less than \$500,000 or such greater amount as Landlord may from time to time reasonably require and such other insurance as may be necessary to comply with applicable laws.

All insurance policies shall:

(i) With the exception of the worker's compensation insurance coverage, provide for a waiver of subrogation by the insurer as to claims against Landlord, Lender and their respective employees and agents and provide that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Tenant, its officers, directors, employees or agents;

(ii) Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by Landlord or Lender and that the insurance policy shall not be brought into contribution with insurance maintained by Landlord or Lender;

(iii) Contain a standard without contribution mortgage clause endorsement in favor of Lender and its successors and assigns as their interests may appear;

(iv) Provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least thirty (30) days' prior written notice to Landlord and Lender;

(v) Provide that the insurer shall not have the option to restore the applicable Premises if Landlord or Tenant elects to terminate this Lease in accordance with the terms hereof;

(vi) Be issued by insurance companies licensed to do business in the state in which the Premises is located and which have a claims paying ability rating by Standard & Poors of "A" or better or are otherwise approved by Landlord and Lender; and

(vii) Provide that the insurer shall not deny a claim because of the negligence of Tenant, anyone acting for Tenant or any tenant or other occupant of the Premises.

The foregoing minimum limits of insurance coverage shall not limit the liability of Tenant for its acts or omissions as provided in this Lease. All insurance policies (with the exception of worker's compensation insurance to the extent not available under statutory law) shall designate Landlord, Lender and any other parties designated by Landlord and their respective successors and assigns as additional insureds as their interests may appear and shall be payable as set forth in Section 21 hereof. All such policies shall be written as primary policies, with deductibles not to exceed \$50,000. Any other policies, including any policy now or hereafter carried by Landlord or Lender, shall serve as excess coverage. Tenant shall procure policies for all insurance for periods of not less than one year (except that Tenant's general liability, worker's compensation and auto insurance policies in effect as of the Commencement Date have a remaining term of less than one year, provided that all replacement policies for such coverage shall have effective periods of not less than one year) and shall provide to Landlord and Lender certificates of insurance or, upon the request of Landlord or Lender, duplicate originals of

insurance policies evidencing that insurance satisfying the requirements of this Lease is in effect at all times. In the event of any transfer by Landlord of Landlord's interest in the Premises or any financing or refinancing of Landlord's interest in the Premises, Tenant shall, upon not less than ten (10) days' prior written notice, deliver to Landlord or any Lender providing such financing or refinancing, as the case may be, certificates of all insurance required to be maintained by Tenant hereunder naming such transferee or such Lender, as the case may be, as an additional named insured to the extent required herein effective as of the date of such transfer, financing or refinancing.

12. ***Tax and Insurance Bond.*** If, during any twelve consecutive month period, an Event of Default shall have occurred because of Tenant's failure on two or more occasions to make any payment of Base Monthly Rental or Additional Rental required under this Lease, Landlord may require Tenant to provide Landlord with a bond to insure payment of up to the next one year of taxes, assessments and/or insurance premiums for the Premises in an amount reasonably acceptable to Landlord and issued by such surety and otherwise in form and substance reasonably acceptable to Landlord (the "Tax and Insurance Bond"), provided that, without limiting Tenant's obligation to provide the Tax and Insurance Bond, Tenant shall not be required to provide collateral for the Tax and Insurance Bond. Upon such requirement, Landlord will notify Tenant of Landlord's reasonable estimate of the amounts needed for such purposes and Tenant will provide Landlord with the Tax and Insurance Bond within 15 days after delivery of such notice. Should additional funds be required at any time, Tenant shall cause the Tax and Insurance Bond to be supplemented, or an additional Tax and Insurance Bond delivered, to cover such additional funds within 15 days after notice from Landlord to Tenant. Tenant shall advise Landlord of all taxes and insurance bills which are due and shall cooperate fully with Landlord in assuring that the same are paid. Upon the occurrence and during the continuance of an Event of Default, Landlord shall be authorized to apply the proceeds of the Tax and Insurance Bond against any taxes, assessments and/or insurance premiums for the Premises which are due and payable or to reimburse Landlord for taxes, assessments and/or insurance premiums paid by Landlord which Tenant failed to pay in accordance with the terms and conditions of this Lease. Landlord shall give to Tenant an annual accounting showing all taxes, assessments and/or insurance premiums paid or reimbursements made to Landlord with respect to such payments from the proceeds of the Tax and Insurance Bond.

13. ***Payment of Rental and Other Sums.*** All rental and other sums which Tenant is required to pay hereunder shall be the unconditional obligation of Tenant and shall be payable in full when due without any setoff, abatement, deferment, deduction or counterclaim whatsoever. Upon execution of this Lease, Tenant shall establish arrangements whereby payments of the Base Monthly Rental and impound payments, if any, are transferred by Automated Clearing House Debit initiated by Tenant (or at Landlord's election, Landlord) or its designee directly from an account at a U.S. bank in the name of Tenant to such account as Landlord may designate or as Landlord may otherwise designate; provided, however, upon notice from Landlord to Tenant, Tenant shall deliver all payments of Base Monthly Rental by check or by wire transfer in immediately available Federal funds whichever is specified in such notice. Any payment not made on or before the due date shall, in addition to any other remedy of Landlord, incur a late charge of 5% (which late charge is intended to compensate Landlord for the cost of handling and processing such delinquent payment and should not be considered interest) and bear interest at the Default Rate, such interest to be computed from and including the date such payment was

due through and including the date of the payment; provided, however, in no event shall Tenant be obligated to pay a sum of late charge and interest higher than the maximum legal rate then in effect.

14. *Use.* Except as set forth below, the Premises shall be used solely for the operation of a Permitted Concept in accordance with the Franchise Agreements. Tenant shall occupy the Premises commencing on the Commencement Date and, except as set forth below and except during periods when the Premises is untenable by reason of fire or other casualty or condemnation or temporary closures due to force majeure as contemplated by Section 34 below or for repairs (provided, however, during all such periods while the Premises is untenable or while the Premises is subject to any such temporary closures, Tenant shall strictly comply with the terms and conditions of Section 21 of this Lease), Tenant shall at all times during the Lease Term occupy the Premises and diligently operate its business on the Premises. If permitted by the Franchise Agreements then in effect, Tenant may cease diligent operation of business at the Premises for a period not to exceed 180 days (i) for remodeling of the Premises, provided that Tenant may do so only once with respect to the Premises within any five-year period during the Lease Term, or (ii) if Tenant provides evidence reasonably satisfactory to Landlord that the Premises is not operating at a reasonable profit, in which case Tenant shall be obligated to use its best efforts to sublease the Premises to another Permitted Concept in accordance with the terms of this Lease. If Tenant does discontinue operation as permitted by this Section, Tenant shall (i) give written notice to Landlord within 10 days after Tenant elects to cease operation, (ii) provide adequate protection and maintenance of the Premises during any period of vacancy, (iii) comply with all Applicable Regulations and otherwise comply with the terms and conditions of this Lease other than the continuous use covenant set forth in this Section, and (iv) pay all costs necessary to restore the Premises to their condition on the day operation of the business ceased at such time as the Premises is reopened for Tenant's business operations or other substituted use approved by Landlord as contemplated below. Notwithstanding anything herein to the contrary, Tenant shall pay the Base Monthly Rental on the first day of each month during any period in which Tenant discontinues operation.

Without limiting the provisions of Section 27 of this Lease, Tenant shall not, by itself or through any assignment, sublease or other type of transfer, convert the Premises to an alternative use except another Permitted Concept, without Landlord's consent, which consent shall not be unreasonably withheld or delayed. Landlord may consider any or all of the following in determining whether to grant its consent, without being deemed to be unreasonable: (i) whether the rental paid to Landlord would be equal to or greater than the anticipated rental assuming continued existing use, (ii) whether the proposed rental to be paid to Landlord is reasonable considering the converted use of the Premises and the customary rental prevailing in the community for such use, (iii) whether the converted use will be consistent with the highest and best use of the Premises, and (iv) whether the converted use will increase Landlord's risks or decrease the value of the Premises.

15. *Fixed Charge Coverage Ratio.* A. At all times during the Lease Term, Tenant shall maintain a Fixed Charge Coverage Ratio (as defined below) of at least 1.2:1.

B. The following terms shall have the following meanings:

"Fixed Charge Coverage Ratio" shall mean with respect to the previous fiscal year and the previous fiscal quarter, the ratio calculated for such period of time, each as determined in accordance with GAAP, of (a) the sum of Pretax Income, Depreciation and Amortization, Interest Expense and Operating Lease Expense to (b) the sum of the Operating Lease Expense and Debt Service Payments.

"Capital Lease" shall mean any lease of any property (whether real, personal or mixed) which lease would, in conformity with GAAP, be required to be accounted for as a capital lease.

"Debt" shall mean for the period of determination (i) indebtedness for borrowed money, (ii) obligations evidenced by bonds, indentures, notes or similar instruments, (iii) obligations to pay the deferred purchase price of property or services, (iv) obligations under leases which should be, in accordance with GAAP, accounted for as Capital Leases, and (v) obligations under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clauses (i) through (iv) above.

"Debt Service Payments" shall mean for any period of determination, the sum of all interest and principal accrued or which should be accrued by Tenant in respect of all Debt during such period (including minimum lease payments attributable to Capital Leases), as determined in accordance with GAAP.

"Depreciation and Amortization" shall mean the depreciation and amortization accruing to Tenant during any period of determination as determined in accordance with GAAP.

"Interest Expense" shall mean for any period of determination, the sum of all interest accrued or which should be accrued by Tenant in respect of all Debt (including interest attributable to Capital Leases), as determined in accordance with GAAP.

"Operating Lease Expense" shall mean the sum of all payments and expenses incurred by Tenant under any operating leases during the period of determination, including, without limitation, this Lease and all Related Leases, as determined in accordance with GAAP.

"Pretax Income" shall mean with respect to the period of determination, Tenant's net income or net loss less income taxes, as determined in accordance with GAAP.

16. ***Compliance with Laws, Restrictions, Covenants and Encumbrances.*** A. Tenant's use and occupation of the Premises, and the condition thereof, shall, at Tenant's sole cost and expense, comply with all Applicable Regulations now or hereafter in effect and all restrictions, covenants and encumbrances of record with respect to the Premises except for such non-compliance which individually or in the aggregate would not reasonably be expected to result in a Material Adverse Effect; provided, however, the preceding Material Adverse Effect limitation shall not apply to Tenant's obligation to comply in all respects with Environmental Laws as contemplated by Sections 16.D, F and G below, the OFAC Laws and Regulations and

Anti-Money Laundering Laws. Without limiting the generality of the other provisions of this Section, Tenant shall comply in all material respects with the ADA, and all regulations promulgated thereunder, as it affects the Premises.

B. Tenant will not permit any act or condition to exist on or about the Premises which will materially increase any insurance rate thereon, except when such acts are required in the normal course of its business and Tenant shall pay for such increase.

C. Tenant represents and warrants to Landlord, except as expressly set forth in the Environmental Report, as follows: (i) neither the Premises nor Tenant are in violation of, or subject to, any ongoing or, to Tenant's actual knowledge, threatened investigation or inquiry by any Governmental Authority or to any remedial obligations in each case under any Environmental Laws; (ii) all permits, licenses or similar authorizations required to occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Premises by reason of any Environmental Laws have been obtained; (iii) no Hazardous Materials have been used, handled, manufactured, generated, produced, stored, treated, processed, transferred, disposed of or otherwise Released in, on, under, from or about the Premises, except in Permitted Amounts; (iv) the Premises does not contain Hazardous Materials, except in Permitted Amounts; (v) there is no Release migrating to the Premises in excess of Permitted Amounts; (vi) there is no non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Premises; (vii) Tenant has not received any written or oral notice from any person or entity (including but not limited to a Governmental Authority) relating to Hazardous Materials or Remediation thereof in excess of Permitted Amounts, of possible liability of any person or entity pursuant to any Environmental Law, other Environmental Conditions in connection with the Premises, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; (viii) all documentation contained in the files of Tenant relating to any Environmental Condition, Releases of Hazardous Materials in, on, under or from the Premises, other than in Permitted Amounts, has been provided to Landlord, including, without limitation, documentation relating to all prior Remediation; and (ix) the Premises is free and clear of all Environmental Liens; and Tenant has not allowed any tenant or customer, subtenant or invitee of the Premises to do any act with respect to the Premises that (1) materially increased the dangers to human health or the environment, (2) posed an unreasonable risk of harm to any person or entity (whether on or off the Premises), (3) impaired the value of the Premises in any material respect, (4) is contrary to any requirement of any insurance covering the Premises, (5) constituted a public or private nuisance, (6) constituted waste, or (7) violated any covenant, condition, agreement or easement applicable to the Premises.

D. Tenant covenants to Landlord from and after the execution and delivery of this Lease and until all of the obligations evidenced by this Lease are satisfied in full, as follows: (i) the Premises, Tenant and any other operator or customer, subtenant or invitee of the Premises shall not be in violation of or subject to any Remediation obligations under any Environmental Laws with respect to the Premises; (ii) all uses and operations on or of the Premises, whether by Tenant or any other person or entity, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (iii) there shall be no Releases or Hazardous Materials in, on, under or from the Premises, except in Permitted Amounts; (iv) Tenant shall keep the Premises,

or cause the Premises to be kept, free and clear of all Environmental Liens; and (v) Tenant shall not do or allow any tenant or other customer, subtenant or invitee of the Premises to do any act with respect to the Premises that (1) materially increases the dangers to human health or the environment, (2) impairs or is reasonably likely to impair the value of the Premises, (3) is contrary to any requirement of any insurance covering the Premises, (4) constitutes a public or private nuisance or constitutes waste, or (5) violates any covenant, condition, agreement or easement applicable to the Premises.

E. Tenant shall promptly notify Landlord in writing upon Tenant obtaining actual knowledge of the following matters, unless such matter is cured or corrected within 30 days of Tenant obtaining knowledge of such matter: (i) any presence of Releases or Threatened Releases in, on, under, from or migrating towards the Premises, in excess of Permitted Amounts, including, without limitation, the presence on or under the Premises, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials in excess of Permitted Amounts; (ii) any non-compliance with any Environmental Laws related in any way to the Premises; (iii) any Environmental Lien on the Premises or any act or omission which would reasonably be expected to result in the imposition of an Environmental Lien on the Premises; (iv) any required or proposed Remediation of Environmental Conditions relating to the Premises; (v) any written or oral notice of which Tenant becomes aware from any source whatsoever (including but not limited to a Governmental Authority) relating in any way to Hazardous Materials or Remediation thereof, possible liability of any person or entity pursuant to any Environmental Law, other Environmental Conditions, in each case in connection with the Premises, or any actual administrative or judicial proceedings in connection with anything referred to in this Section 16; or (vi) any investigation or inquiry initiated by any Governmental Authority relating to the Environmental Condition of the Premises.

F. In the event that Landlord has a reasonable basis to conclude that Tenant has breached its obligations under this Section 16 in any material respect, Tenant shall, at the reasonable request of Landlord and at Tenant's sole cost and expense: (i) perform any environmental site assessment or other investigation of Environmental Conditions in connection with the Premises as may be reasonably requested by Landlord (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Landlord the reports and other results thereof, and Landlord and the other Indemnified Parties shall be entitled to rely on such reports and other results thereof; and (ii) have the Premises inspected to the extent required by any Environmental Laws for seepage, spillage and other environmental concerns. Tenant shall provide Landlord with true, correct and complete results of all such inspections performed on the Premises. All costs and expenses associated with the inspection, preparation and certification of results, as well as those associated with any corrective action, shall be paid by Tenant. All inspections and tests performed on the Premises shall be conducted in compliance with all Environmental Laws.

G. (i) Tenant shall, at its sole cost and expense, and without limiting the rights of Landlord under any other provision of this Lease, comply with all reasonable written requests of Landlord to: (1) reasonably effectuate Remediation of any condition (including but not limited to a Release) in, on, under or from the Premises; (2) comply with any Environmental Law with

respect to the Premises; and (3) comply with any lawful directive from any Governmental Authority with respect to the Premises.

(ii) Upon any Release on, above or under the Premises, Tenant shall immediately comply with all Environmental Laws and promptly undertake Remediation of such situation in accordance with all Environmental Laws and any request of Landlord and diligently prosecute such Remediation to completion. Should Tenant fail to remedy or cause the remedy of such situation to the extent required by Environmental Laws, Landlord shall be permitted to undertake Remediation of such situation and all reasonable costs and expenses incurred in connection therewith will be paid by Tenant.

H. Landlord and any other person or entity designated by Landlord, including but not limited to any receiver, any representative of a Governmental Authority, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Premises during normal business hours and upon reasonable notice to Tenant or at any time in the event of an emergency (including, without limitation, in connection with a proposed sale or conveyance of the Premises, a proposed financing or refinancing secured by the Premises, any Securitization, Participation or Transfer of any mortgage loan documents encumbering the Premises or the exercise of any remedies set forth in this Lease or any mortgage loan documents encumbering the Premises) to assess any and all aspects of the Environmental Condition of the Premises and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Landlord's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Landlord shall not be required to execute and deliver to Tenant any license, access or indemnification agreement or any other document or agreement in connection with undertaking such sampling and testing. Landlord shall not unreasonably interfere with Tenant's operations at the Premises while undertaking such assessments. Tenant shall cooperate with and provide reasonable access to Landlord and any such person or entity designated by Landlord. Any such assessment and investigation shall be at Tenant's sole cost and expense if, at the time Landlord undertakes such assessment or investigation, Landlord has a reasonable basis for believing that a Release has occurred at the Premises in excess of Permitted Amounts or if an Event of Default has occurred and is continuing. Otherwise, any such assessment and investigation and the cost of restoring or repairing any physical damage caused to the Premises as a direct result of such assessment and investigation (but without any obligation or responsibility to Tenant for damages incurred by Tenant as a result of the identification of any Environmental Condition on the Premises as a result of such assessment or investigation) shall be at Landlord's sole cost and expense.

I. Tenant fully and completely releases, waives and covenants not to assert any claims, liabilities, actions, defenses, challenges, contests or other opposition against Landlord, however characterized, known or unknown, foreseen or unforeseen, now existing or arising in the future, relating to this Section and any Hazardous Materials, Releases and/or Remediation on, at or affecting the Premises, except to the extent the foregoing relate to or arise from the gross negligence or willful misconduct of Landlord.

J. Tenant shall maintain in full force and effect all licenses and permits, both governmental and private, required to use and operate the Premises as a Permitted Concept. Tenant will not permit any act or condition to exist on or about the Premises which will increase

any insurance rate thereon, except when such acts are required in the normal course of its business and Tenant shall pay for such increase.

17. **Condition of Premises; Maintenance.** A. Tenant shall (i) maintain the Premises in good condition and repair, subject to reasonable and ordinary wear and tear and the condemnation and casualty provisions of this Lease, free from actual or constructive waste, (ii) operate, remodel, update and modernize the Premises in accordance with the Franchise Agreements then in effect, and (iii) pay all operating costs of the Premises in the ordinary course of business. Tenant waives any right to (i) require Landlord to maintain, repair or rebuild all or any part of the Premises or (ii) make repairs at the expense of Landlord, pursuant to any Applicable Regulations at any time in effect.

B. In the event that any improvements on the Premises shall violate any Applicable Regulations or any requirements of the insurance companies issuing the policies required by Section 11 or shall encroach upon the property of another and as a result of such violation or encroachment, enforcement action (including civil or criminal action by a public or private party) is threatened or commenced against Tenant or Landlord or Lender or with respect to the Premises, then Tenant, at the request of Landlord, shall either (i) obtain valid and effective waivers or settlements of all claims, liabilities and damages resulting from each such violation or encroachment, whether the same shall affect Landlord, Lender, Tenant or all of them, or (ii) take such action as shall be necessary to remove such violation or encroachment, including, if necessary, any alteration. Any such repair or alteration shall be made in conformity with the provisions of Section 18.

C. If Tenant shall be in default under any of the provisions of Section 16 or this Section 17, Landlord may after thirty business days written notice given to Tenant and failure of Tenant to commence to cure during said period, but without notice in the event of an emergency, do whatever is necessary to cure such default as may be appropriate under the circumstances for the account of and at the expense of Tenant. In the event of an emergency Landlord shall notify Tenant of the situation by phone or other available communication. All reasonable sums so paid by Landlord and all reasonable costs and expenses (including, without limitation, attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment or incurring the expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

18. **Alterations and Improvements.** A. Tenant shall not alter the exterior or structural elements of the Premises or any material component of any plumbing or electrical elements of the Premises, including, without limitation, the HVAC and fire and safety systems, in any manner without the consent of Landlord, which consent shall not be unreasonably withheld or conditioned; provided, however, Tenant may undertake (i) nonstructural alterations to the Premises costing less than \$35,000 (as adjusted by the percentage change between the CPI as last reported before the Commencement Date and the CPI as last reported before January 1st of the calendar year in which the alteration work is commenced) in the aggregate in any calendar year without Landlord's consent; or (ii) alterations to the extent required by Franchisor pursuant to the Franchise Agreements provided that such alterations (whether structural or non-structural) shall not materially reduce the fair market value of the Premises, as reasonably determined by Landlord at the time of such alterations.

B. For purposes of this Lease, alterations to the exterior or structural elements of the Premises shall mean: (i) alterations which affect the foundation or "footprint" of the improvements at the Premises; or (ii) alterations which involve the structural elements of the improvements at the Premises, such as a load-bearing wall, structural beams, columns, supports or roof.

C. If Landlord's consent is required hereunder and Landlord consents to the making of any such alterations, the same shall be made by Tenant at Tenant's sole expense by a licensed contractor and according to plans and specifications approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and subject to such other conditions as Landlord may reasonably require.

D. If Landlord gives its prior written consent to any alterations, or if such consent is not required, Tenant agrees that in connection with any work on the Premises: (i) the fair market value of the Premises shall not be lessened in any material respect after the completion of such work, or its structural integrity impaired; (ii) the work shall not in the aggregate reduce the gross floor area of the improvements on the Premises; (iii) all such work shall be performed in a good and workmanlike manner, and shall be expeditiously completed in compliance with all Applicable Regulations and all insurance requirements; (iv) Tenant shall promptly pay all costs and expenses of such work, and shall discharge all liens filed against any of the Premises arising out of the same; (v) Tenant shall procure and pay for all permits and licenses required in connection with any such work; (vi) in the case of any alterations the estimated cost of which in any one instance exceeds \$300,000 (as adjusted by the percentage change between the CPI as last reported before the Commencement Date and the CPI as last reported before January 1st of the calendar year in which the alteration work is to be commenced), such alterations shall be completed in accordance with plans prepared by an architect or engineer and Tenant shall deliver, or cause the general contractor to deliver, to Landlord, payment and performance bonds issued by a company rated "A" or better by Standard & Poor's (and in a form reasonably acceptable to Landlord) covering such alterations (vii) upon completion of any alterations, Tenant shall promptly provide Landlord with (1) evidence of full payment to all laborers and materialmen contributing to the alterations, (2) if the alterations required Landlord's consent, a certificate executed by Tenant or its contractor certifying the alterations to have been completed in conformity with the plans and specifications, (3) a certificate of occupancy (if the alterations are of such a nature as would require the issuance of a certificate of occupancy), and (4) any other documents or information reasonably requested by Landlord; (viii) any addition to or alteration of the Premises (excluding any Personal Property) shall automatically be deemed a part of the Premises and belong to Landlord, and Tenant shall execute and deliver to Landlord such instruments as Landlord may require to evidence the ownership by Landlord of such addition or alteration; and (ix) before commencement of any work, Tenant shall execute and file or record, as appropriate, a "Notice of Non-Responsibility," or any equivalent notice permitted under applicable law in the state where the Premises is located.

19. **Indemnification.** A. Tenant shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless each of the Indemnified Parties for, from and against any and all Losses (excluding Losses suffered by an Indemnified Party arising out of the gross negligence or willful misconduct of such Indemnified Party or any Affiliate of such Indemnified Party; provided, however, that the term "gross negligence" shall not include gross negligence

imputed as a matter of law to any of the Indemnified Parties solely by reason of the Landlord's interest in the Premises or Landlord's failure to act in respect of matters which are or were the obligation of Tenant under this Lease) caused by, incurred or resulting from Tenant's operations of or relating in any manner to the Premises, whether relating to their original design or construction, latent defects, alteration, maintenance, use by Tenant or any person thereon, supervision or otherwise, or from any breach of, default under, or failure to perform, any term or provision of this Lease by Tenant, its officers, employees, agents or other persons, or to which any Indemnified Party is subject because of Landlord's interest in the Premises, including, without limitation, Losses arising from (1) any accident, injury to or death of any person or loss of or damage to property occurring in, on or about the Premises or portion thereof or on the adjoining sidewalks, curbs, parking areas, streets or ways, (2) any use, non-use or condition in, on or about, or possession, alteration, repair, operation, maintenance or management of, the Premises or any portion thereof or on the adjoining sidewalks, curbs, parking areas, streets or ways, (3) any representation or warranty made herein by Tenant, in any certificate delivered in connection herewith or in any other agreement to which Tenant is a party or pursuant thereto being false or misleading in any material respect as of the date of such representation or warranty was made, (4) performance of any labor or services or the furnishing of any materials or other property in respect to the Premises or any portion thereof, (5) any taxes, assessments or other charges which Tenant is required to pay under Section 9, (6) any lien, encumbrance or claim arising on or against the Premises or any portion thereof under any Applicable Regulation or otherwise which Tenant is obligated hereunder to remove and discharge, or the failure to comply with any Applicable Regulation, (7) the claims of any invitees, patrons, licensees or subtenants of all or any portion of the Premises or any Person acting through or under Tenant or otherwise acting under or as a consequence of this Lease or any sublease, (8) any act or omission of Tenant or its agents, contractors, licensees, subtenants or invitees, (9) any contest referred to in Section 9, and (10) the sale of liquor, beer or wine on the Premises.

B. Tenant shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless each of the Indemnified Parties for, from and against any and all Losses (excluding Losses suffered by an Indemnified Party to the extent arising out of the gross negligence or willful misconduct of such Indemnified Party or any Affiliate of such Indemnified Party; provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Landlord's interest in the Premises or Landlord's failure to act in respect of matters which are or were the obligation of Tenant under this Lease), including such Losses consisting of costs of Remediation (whether or not performed voluntarily), engineers' fees, environmental consultants' fees, and costs of investigation (including but not limited to sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following:

- (1) any presence of any Hazardous Materials in, on, above, or under the Premises;
- (2) any past or present Release or any Threatened Release in, on, above, under or from the Premises;

(3) any activity by Tenant, any person or entity affiliated with Tenant or any tenant or other user of the Premises in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Premises of any Hazardous Materials at any time located in, under, on or above the Premises;

(4) any activity by Tenant, any person or entity affiliated with Tenant or any tenant or other user of the Premises in connection with any actual or proposed Remediation of any Hazardous Materials at any time located in, under, on or above the Premises, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action;

(5) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Premises or operations thereon, including but not limited to any failure by Tenant, any person or entity affiliated with Tenant or any tenant or other user of the Premises to comply with any order of any Governmental Authority in connection with any Environmental Laws;

(6) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Premises;

(7) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in Section 16 of this Lease;

(8) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Premises, including but not limited to costs to investigate and assess such injury, destruction or loss;

(9) any acts of Tenant, any person or entity affiliated with Tenant or any tenant or other user of the Premises in arranging for disposal from the Premises or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Materials owned or possessed by Tenant, any person or entity affiliated with Tenant or any tenant or other user, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Materials;

(10) any acts of Tenant, any person or entity affiliated with Tenant or any tenant or other user of the Premises, in accepting any Hazardous Materials from the Premises for transport to disposal or treatment facilities, incineration vessels or sites selected by Tenant, any person or entity affiliated with Tenant or any tenant or other user of the Premises, from which there is a Release, or a Threatened Release of any Hazardous Materials which causes the incurrence of costs for Remediation;

(11) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, arising from any activity on the Premises; or

(12) any misrepresentation or inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to this Lease.

C. It is expressly understood and agreed that Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason.

20. **Quiet Enjoyment.** So long as Tenant shall pay the rental and other sums herein provided and shall keep and perform all of the terms, covenants and conditions on its part herein contained, Tenant shall have, subject and subordinate to Landlord's rights herein, the right to the peaceful and quiet occupancy of the Premises without hindrance or interference by Landlord or others claiming by, through or under Landlord.

21. **Condemnation or Destruction.** A. In the event of a taking of all or any part of the Premises for any public or quasi-public purpose by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement between Landlord, Tenant and those authorized to exercise such right ("Taking") or the commencement of any proceedings or negotiations which might result in a Taking or any material damage to or destruction of the Premises or any part thereof ("Casualty"), Tenant will promptly give written notice thereof to Landlord, generally describing the nature and extent of such Taking, proceedings, negotiations or Casualty and including copies of any documents or notices received in connection therewith. Thereafter, Tenant shall promptly send Landlord copies of all correspondence and pleadings relating to any such Taking, proceedings, negotiations or Casualty. During all periods of time following a Casualty, Tenant shall ensure that the Premises is secure and does not pose any risk of harm to adjoining property owners or occupants or third-parties.

B. In the event of a Taking of the whole of the Premises, other than for temporary use ("Total Taking"), this Lease shall terminate as of the date of the Total Taking except for those provisions in this Lease which expressly survive any such termination. If the date of such Total Taking is other than the first day of a month, the Base Annual Rental payable for the month in which such Total Taking occurs shall be apportioned based on the date of the Total Taking. Tenant's obligations to Landlord under Section 19 of this Lease and Tenant's obligation to pay all other sums of money under this Lease (whether payable to Landlord or to a third-party) which accrue prior to the date of such Total Taking shall survive the termination of this Lease. A Total Taking shall include a Taking, other than for a temporary use, of such a substantial part of the Premises as shall result in the portion of the Premises remaining after such Taking being unsuitable for use as a Permitted Concept, as determined by Tenant in the exercise of good faith business judgment. Landlord shall be entitled to receive the entire award or payment in connection with a Total Taking without deduction for any estate vested in Tenant by this Lease. Except as specifically provided herein, Tenant hereby expressly assigns to Landlord all of its right, title and interest in and to every such award or payment and agrees that Tenant shall not be entitled to any award or payment for the value of Tenant's leasehold interest in this Lease. Tenant shall be entitled to claim and receive any award or payment from the condemning authority expressly granted for the taking of Personal Property, the interruption of its business and moving expenses, but only if such claim or award does not materially and adversely affect or interfere with the prosecution of Landlord's claim for the Total Taking or otherwise reduce the amount recoverable by Landlord for the Total Taking.

C. In the event of a Taking of all or any part of the Premises for a temporary use ("Temporary Taking"), this Lease shall remain in full force and effect without any reduction of Base Annual Rental, Additional Rental or any other sum payable hereunder. Except as provided

below and subject to the terms and provisions of the Mortgages, Tenant shall be entitled to the Net Proceeds for a Temporary Taking, whether paid by damages, rent or otherwise, unless the period of occupation and use by the condemning authorities shall extend beyond the date of expiration of this Lease, in which case the award made for such Taking shall be apportioned between Landlord and Tenant as of the date of such expiration. At the termination of any such Temporary Taking, Tenant will, at its own cost and expense and pursuant to the terms of Section 18 above, promptly commence and complete the restoration of the Premises affected by such Temporary Taking.

D. In the event of a Taking which is not a Total Taking and not a Temporary Taking ("Partial Taking") or of a Casualty, all awards, compensation or damages shall be paid to Landlord, and Landlord shall have the option to (i) subject to the right of Tenant to elect otherwise as set forth in the following sentence, terminate this Lease by notifying Tenant within 60 days after Tenant gives Landlord notice of such Casualty or that title has vested in the taking authority or (ii) continue this Lease in effect, which election may be evidenced by either a notice from Landlord to Tenant or Landlord's failure to notify Tenant that Landlord has elected to terminate this Lease within such 60-day period. Tenant shall have a period of 60 days after Landlord's notice that it has elected to terminate this Lease during which to elect to continue this Lease on the terms herein provided. If Landlord elects to terminate this Lease and Tenant does not elect to continue this Lease or shall fail during such 60-day period to notify Landlord of Tenant's intent to continue this Lease, then this Lease shall terminate as of the last day of the month during which such period expired at which time: (i) Tenant shall pay all Base Annual Rental, Additional Rental and all other sums (whether payable to Landlord or a third party) accruing under this Lease prior to the date of termination (ii) Tenant shall pay Landlord an amount equal to the insurance deductible applicable to such Casualty if this Lease is terminated as a result of a Casualty (iii) Tenant shall immediately vacate and surrender the Premises and (iv) all obligations of either party hereunder shall cease (provided, however, Tenant's obligations to Landlord under any indemnification provisions of this Lease (including, without limitation, Section 19) and Tenant's obligations to make the payments required by this sentence shall survive such termination). If Landlord elects not to terminate this Lease, or if Landlord elects to terminate this Lease but Tenant elects to continue this Lease, then this Lease shall continue in full force and effect on the following terms: (i) all Base Annual Rental, Additional Rental and other sums and obligations due under this Lease shall continue unabated, and (ii) Tenant shall promptly commence and diligently prosecute restoration of the Premises to the same condition, as nearly as practicable, as prior to such Partial Taking or Casualty as approved by Landlord. Such Restoration shall be completed as follows:

(1) Prior to such restoration, Tenant shall deliver its reasonable estimate of the cost thereof, which shall be subject to the approval of Landlord and Lender, which approval shall not be unreasonably withheld (the cost approved by Landlord and Lender is referred to as the "Restoration Cost"). The proceeds of any award for a Taking and the insurance proceeds for a Casualty shall first be applied to pay all of Landlord's and Lender's reasonable out-of-pocket costs, attorney's fees and expenses incident to the collection thereof; the balance of such condemnation or insurance proceeds after deduction for such costs ("Net Proceeds") shall be held by Landlord (or if required by the Loan Documents, Lender) and disbursed in accordance with this Section 21. D.

(2) The Restoration Cost shall be paid first out of Tenant's own funds to the extent that the Restoration Cost exceeds the Net Proceeds. Any Net Proceeds remaining after final payment has been made for such work and after Tenant has been reimbursed for any portions it contributed to the Restoration Cost shall be paid to (or retained by) Landlord, or if required by the Loan Documents, to Lender. If an Event of Default has occurred and is continuing, Lender may apply any Net Proceeds towards payment of a Mortgage, which payment shall not relieve Tenant of any of its obligations hereunder. If the actual cost of any rebuilding, replacement or repair required to be made by Tenant pursuant to this Section 21. D shall exceed the amount of such Net Proceeds, the deficiency shall be paid by Tenant. Tenant shall not be entitled to disbursements of the Net Proceeds if an Event of Default has occurred and is continuing.

(3) The Net Proceeds shall be paid out from time to time to Tenant as the work progresses (less any cost to Lender or Landlord of recovering and paying out such proceeds, including, without limitation, reasonable attorneys', trustees' or escrow fees relating thereto and costs allocable to inspecting the work and the plans and specifications therefor), subject to each of the following conditions:

(a) At the time of any disbursement, no Event of Default shall exist and no mechanics' or materialmen's liens shall have been filed and remain undischarged or unbonded.

(b) Disbursements shall be made from time to time in an amount not exceeding the hard and soft cost of the work and costs incurred since the last disbursement upon receipt of reasonable evidence of cost and payment so that Landlord can verify that the amounts disbursed from time to time are represented by work that is completed in place or delivered to the site and free and clear of mechanic's lien claims.

(c) Each request for disbursement shall be accompanied by a certificate of Tenant describing the work, materials or other costs or expenses, for which payment is requested, stating the cost incurred in connection therewith and stating that Tenant has not previously received payment for such work or expense and the certificate to be delivered by Tenant upon completion of the work shall, in addition, state that the work has been substantially completed and complies with the applicable requirements of this Lease.

(d) No disbursement made prior to final completion of any item of work shall cause the aggregate amount disbursed with respect to such item of work to exceed 90% of the value of the portion of such item of work which has been completed.

(e) Net Proceeds held by Landlord or Lender in accordance with this Section shall be held in a separate federally insured interest bearing account. Any interest earned on the Net Proceeds shall be a part of the Net Proceeds, and shall be disbursed in accordance with this Lease.

E. Any loss under any property damage insurance required to be maintained by Tenant with respect to the Premises shall be adjusted by Landlord and Tenant. Subject to the terms and provisions of the Mortgages, any award relating to a Total Taking or a Partial Taking shall be adjusted by Landlord or, at Landlord's election, Tenant. Notwithstanding the foregoing

or any other provisions of this Section to the contrary but subject to the terms and provisions of the Mortgages, if at the time of any Taking or any Casualty or at any time thereafter an Event of Default shall have occurred and be continuing under this Lease, Landlord is hereby authorized and empowered but shall not be obligated, in the name and on behalf of Tenant and otherwise, to file and prosecute Tenant's claim, if any, for an award on account of such Taking or for insurance proceeds on account of such Casualty and to collect such award or proceeds and apply the same, after deducting all costs, fees and expenses incident to the collection thereof, to the curing of such default and any other then existing default under this Lease and/or to the payment of any amounts owed by Tenant to Landlord under this Lease, in such order, priority and proportions as Landlord in its discretion shall deem proper.

F. Notwithstanding the foregoing, nothing in this Section 21 shall be construed as limiting or otherwise adversely affecting the representations, warranties, covenants and characterizations set forth in this Lease, including, without limitation, those provisions set forth in Section 3 of this Lease.

G. Notwithstanding the foregoing, if there is a Partial Taking during the last two years of the fourth Extended Term and the Restoration Cost exceeds the Net Proceeds and Tenant believes in good faith that its payment of the excess Restoration Cost cannot be recovered from its anticipated profits during the remaining Term of the Lease, then Tenant may elect to terminate the Lease by giving notice of such election to Landlord within 15 days of the date on which Tenant first determines the amount of the Restoration Cost and the Net Proceeds. Landlord may elect to continue this Lease in effect by notifying Tenant (within ten days of receipt of Tenant's notice) that Landlord will pay the excess Restoration Cost in which case this Lease shall continue in full force and effect and Tenant shall restore the Premises in accordance with this Section 21 but Landlord shall pay Tenant the amount by which the Restoration Cost exceeds the Net Proceeds. If Landlord fails to timely notify Tenant of Landlord's intent to continue this Lease, then this Lease shall terminate as of the last day of the month during which such ten day period expired at which time: (i) Tenant shall pay all Base Annual Rental, Additional Rental and all other sums (whether payable to Landlord or a third party) accruing under this Lease prior to the date of termination (ii) Tenant shall immediately vacate and surrender the Premises and (iii) all obligations of either party hereunder shall cease (provided, however, Tenant's obligations to Landlord under any indemnification provisions of this Lease (including, without limitation, Section 19) and Tenant's obligations to make the payments required by this sentence shall survive such termination).

22. *Inspection.* Landlord and its authorized representatives shall have the right during normal business hours upon prior written notice (or at any time in the event of an emergency) to enter the Premises or any part thereof at reasonable times in order to inspect the same and make photographic or other evidence concerning Tenant's compliance with the terms of this Lease or in order to show the Premises to prospective purchasers and lenders. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises and any other loss occasioned by such entry so long as Landlord shall have used reasonable efforts not to unreasonably interrupt Tenant's normal business operations. Tenant shall keep and maintain at Tenant's corporate headquarters full, complete and appropriate books of account and records of Tenant's business relating to the Premises in accordance with GAAP. Tenant's books and

records shall during normal business hours be available to Landlord, Lender and their respective auditors or other authorized representatives. All inspections and audits pursuant to this Section shall be at Landlord's expense.

23. **Franchise Agreements.** Tenant shall maintain the Franchise Agreements in full force and effect in accordance with their terms. No event shall occur nor shall any condition exist which, with the giving of notice or the lapse of time or both, would constitute a material breach or default under any of the Franchise Agreements. Tenant shall give prompt notice to Landlord of any claim of default by or to Tenant under any of the Franchise Agreements and shall provide Landlord with a copy of any default notice given or received by Tenant under any of the Franchise Agreements and any information submitted or referenced in support of such claim of default. Tenant shall also give prompt notice to Landlord of any extensions or renewals of any of the Franchise Agreements and the expiration or termination of any of the Franchise Agreements.

24. **Default, Remedies and Measure of Damages.** A. Each of the following shall be an event of default under this Lease (each, an "Event of Default"):

(i) Subject to the limitations of Section 24.A(vii) below, if any representation or warranty of Tenant set forth in this Lease, other than the representations and warranties set forth in Section 16.C above, is false in any respect, or if Tenant renders any statement or account which is false in any material respect;

(ii) (a) if Base Monthly Rent is not paid when due or (b) if any Additional Rent or other monetary sum due under this Lease is not paid within five days after the date when due and Landlord shall have given Tenant notice thereof and a period of five days from the delivery of such notice shall have elapsed without such Additional Rent or other monetary sum being paid;

(iii) Subject to the provisions of Section 9, if Tenant fails to pay prior to the due date, any taxes, assessments or other charges the failure of which to pay will result in the imposition of a lien against any of the Premises pursuant to Applicable Regulations;

(iv) If Tenant becomes insolvent within the meaning of the Code, files or notifies Landlord that it intends to file a petition under the Code, initiates a proceeding under any similar law or statute relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts (collectively, an "Action"), becomes the subject of either a petition under the Code or an Action which is not dissolved within 60 days after filing, or is not generally paying its debts as the same become due;

(v) Subject to the provisions of Section 14 above, if Tenant vacates or abandons the Premises;

(vi) If Tenant shall fail to maintain insurance in accordance with the requirements of Section 11 of this Lease;

(vii) If Tenant shall fail to comply in all respects with Environmental Laws as contemplated by Sections 16.D, F or G of this Lease, or if Tenant shall be in breach of any representation or warranty set forth in Section 16.C of this Lease; provided, however, such

failure or breach shall not constitute an Event of Default if Tenant, within 30 days after Tenant obtains actual knowledge of the existence of any such failure or breach, promptly undertakes efforts to (1) with respect to any failure to comply with Environmental Laws, attain compliance with such Environmental Laws, and diligently prosecutes such undertaking to completion in accordance with all Environmental Laws, and (2) with respect to any breach of any representation or warranty set forth in Section 16.C of this Lease, promptly correct the act, event, notice, deficiency or omission which is the basis for such breach and diligently prosecutes such undertaking to completion in accordance with all Environmental Laws;

(viii) If Tenant fails to observe or perform any of the other covenants, conditions, or obligations of this Lease; provided, however, if any such failure does not place any rights or property of Landlord in immediate jeopardy, as determined by Landlord in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Landlord shall have given Tenant notice thereof and a period of 30 days shall have elapsed, during which period Tenant may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Landlord in its reasonable discretion, and Tenant is diligently pursuing a cure of such failure, then Tenant shall have a reasonable period to cure such failure beyond such 30-day period, which shall in no event exceed 120 days after receiving notice of such failure from Landlord. If Tenant shall fail to correct or cure such failure within such 120-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required;

(ix) If an "Event of Default" occurs under any Related Lease;

(x) If there is a material breach or default, after the passage of all applicable notice and cure or grace periods, under any of the Franchise Agreements, or if any of the Franchise Agreements terminates or expires prior to the end of the Lease Term and a successor agreement for the terminated or expired agreement is not entered into with Franchisor prior to such expiration or termination, which successor agreement shall be in form and substance reasonably satisfactory to Landlord; or

(xi) If a final, nonappealable judgment is rendered by a court against Tenant which has a Material Adverse Effect, and is not discharged or provision made for such discharge within 60 days from the date of entry of such judgment.

B. Upon the occurrence and during the continuance of an Event of Default, with or without notice or demand, except the notice prior to default required under certain circumstances by subsection A. above or such other notice as may be required by statute and cannot be waived by Tenant (all other notices being hereby waived), Landlord shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation, any one or more of the following:

(i) To terminate this Lease without any right of Tenant to reinstate Tenant's rights by payment of any rentals due hereunder, including Base Annual Rental and Additional Rental, or other performance of the terms and conditions hereof, whereupon Tenant's right to possession of

the Premises shall cease (and Tenant shall immediately surrender possession of the Premises to Landlord) and this Lease, except as to Tenant's liability, shall be terminated. Tenant hereby expressly waives any and all rights of redemption granted by or under present or future law in the event this Lease is terminated or Tenant is evicted or dispossessed by reason of any breach by Tenant of any provisions of this Lease.

(ii) To reenter and take possession of the Premises and, to the extent permissible, all franchises, licenses, area development agreements, permits and other rights or privileges of Tenant pertaining to the use and operation of the Premises and to expel Tenant and those claiming under or through Tenant, without being deemed guilty in any manner of trespass or becoming liable for any loss or damage resulting therefrom, without resort to legal or judicial process, procedure or action. No notice from Landlord hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Landlord to terminate this Lease unless such notice specifically so states. If Tenant shall, after default, voluntarily give up possession of the Premises to Landlord, deliver to Landlord or its agents the keys to the Premises, or both, such actions shall be deemed to be in compliance with Landlord's rights and the acceptance thereof by Landlord or its agents shall not be deemed to constitute a termination of this Lease. Landlord reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Tenant written notice thereof, in which event this Lease will terminate as specified in said notice.

(iii) To bring an action against Tenant for any damages sustained by Landlord or any equitable relief available to Landlord.

(iv) To relet the Premises or any part thereof for such term or terms (including a term which extends beyond the original Lease Term), at such rentals and upon such other terms as Landlord, in its sole discretion, may determine, with all proceeds received from such reletting being applied to the rental and other sums due from Tenant in such order as Landlord may, in its sole discretion, determine, which other sums include, without limitation, all repossession costs, brokerage commissions, reasonable attorneys' fees and expenses, employee expenses, alteration, remodeling and repair costs and expenses of preparing for such reletting. Except to the extent required by applicable law, Landlord shall have no obligation to relet the Premises or any part thereof and shall in no event be liable for refusal or failure to relet the Premises or any part thereof, or, in the event of any such reletting, for refusal or failure to collect any rent due upon such reletting, and no such refusal or failure shall operate to relieve Tenant of any liability under this Lease or otherwise to affect any such liability. Landlord reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Tenant written notice thereof, in which event this Lease will terminate as specified in said notice.

(v) (x) To recover from Tenant all rent and other monetary sums then due and owing under this Lease and (y) to accelerate and recover from Tenant the present value (discounted at 6 % per annum) of all rent and other monetary sums scheduled to become due and owing under this Lease after the date of such breach for the entire original scheduled Lease Term (or an extension term which has been exercised, as applicable), in excess of the amount that Tenant proves could reasonably be avoided.

(vi) To recover from Tenant all reasonable costs and expenses, including attorneys' fees, court costs, expert witness fees, costs of tests and analyses, travel and accommodation expenses, deposition and trial transcripts, copies and other similar costs and fees, paid or incurred by Landlord as a result of such breach, regardless of whether or not legal proceedings are actually commenced.

(vii) To immediately or at any time thereafter, and with or without notice, at Landlord's sole option but without any obligation to do so, correct such breach or default and charge Tenant all costs and expenses incurred by Landlord therein. Any sum or sums so paid by Landlord, together with interest at the Default Rate, shall be deemed to be Additional Rental hereunder and shall be immediately due from Tenant to Landlord. Any such acts by Landlord in correcting Tenant's breaches or defaults hereunder shall not be deemed to cure said breaches or defaults or constitute any waiver of Landlord's right to exercise any or all remedies set forth herein.

(viii) To immediately or at any time thereafter, and with or without notice, except as required herein, set off any money of Tenant held by Landlord under this Lease against any sum owing by Tenant hereunder.

(ix) To seek any equitable relief available to Landlord, including, without limitation, the right of specific performance.

(x) To enforce, and Tenant does hereby consent to such enforcement, all of Landlord's self-help remedies available at law or in equity without Landlord resorting to any legal or judicial process, procedure or action.

Tenant expressly waives any right of defense which Tenant may have based on any purported merger of any cause of action, and neither the commencement of any action or proceeding nor the settlement thereof or entering of judgment therein shall bar Landlord from bringing subsequent actions or proceedings from time to time. Any law, usage or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce all terms, conditions and covenants hereof in strict accordance herewith, notwithstanding any conduct or custom on the part of Landlord in refraining from so doing at any time or times. Further, the failure of Landlord at any time or times to enforce its rights hereunder strictly in accordance with the same shall not be construed as having created a custom in any way or manner contrary to any specific term, condition or covenant hereof, or as having in any way or manner modified the same. All powers and remedies given by this Section to Landlord, subject to applicable law, shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to Landlord under this Lease, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of Tenant contained in this Lease, and no delay or omission of Landlord to exercise any right or power accruing upon the occurrence and during the continuance of any Event of Default shall impair any other or subsequent Event of Default or impair any rights or remedies consequent thereto. Every power and remedy given by this Section or by law to Landlord may be exercised from time to time, and as often as may be deemed expedient, by Landlord, subject at all times to Landlord's right in its sole judgment to discontinue any work commenced by Landlord or change any course of action undertaken by Landlord.

If Tenant shall fail to observe or perform any of its obligations under this Lease or in the event of an emergency, then, without waiving any Event of Default which may result from such failure or emergency, Landlord may, but without any obligation to do so, take all actions, including, without limitation, entry upon the Premises to perform Tenant's obligations, immediately and without notice in the case of an emergency and upon five days written notice to Tenant in all other cases. All expenses incurred by Landlord in connection with performing such obligations, including, without limitation, reasonable attorneys' fees and expenses, together with interest at the Default Rate from the date any such expenses were incurred by Landlord until the date of payment by Tenant, shall constitute Additional Rental and shall be paid by Tenant to Landlord upon demand.

25. ***Mortgage, Subordination, Nondisturbance and Attornment.*** Landlord's interest in this Lease and/or the Premises shall not be subordinate to any encumbrances placed upon the Premises by or resulting from any act of Tenant, and nothing herein contained shall be construed to require such subordination by Landlord. Tenant shall keep the Premises free from any liens for work performed, materials furnished or obligations incurred by Tenant. TENANT IS NOT AUTHORIZED TO PLACE OR ALLOW TO BE PLACED ANY LIEN, MORTGAGE, DEED OF TRUST OR ENCUMBRANCE OF ANY KIND UPON ALL OR ANY PART OF THE PREMISES OR TENANT'S LEASEHOLD INTEREST THEREIN, AND ANY SUCH PURPORTED TRANSACTION SHALL BE VOID. FURTHERMORE, ANY SUCH PURPORTED TRANSACTION SHALL BE DEEMED A TORTIOUS INTERFERENCE WITH LANDLORD'S RELATIONSHIP WITH TENANT AND LANDLORD'S FEE OWNERSHIP OF THE PREMISES.

This Lease at all times shall automatically be subordinate to the lien of any and all ground leases, mortgages and trust deeds now or hereafter placed upon the Premises by Landlord, and Tenant covenants and agrees to execute and deliver, upon demand, such further instruments subordinating this Lease to the lien of any or all such ground leases, mortgages or trust deeds as shall be reasonably requested by Landlord, or any present or proposed mortgagees or trustees under trust deeds, upon the condition that Tenant shall have the right and such instrument shall provide that Tenant has the right to remain in possession of the Premises under the terms of this Lease and Tenant's use and enjoyment of the Premises shall not be disturbed, notwithstanding any default in any or all such mortgages or trust deeds, or after foreclosure thereof, so long as no Event of Default shall have occurred and be continuing after the expiration of the notice and cure provided to Tenant.

If any landlord, mortgagee, trustee, receiver or other secured party elects to have this Lease and the interest of Tenant hereunder be superior to any such interest or right and evidences such election by notice given to Tenant, then this Lease and the interest of Tenant hereunder shall be deemed superior to any such mortgage or trust deed, whether this Lease was executed before or after such mortgage or trust deed and in that event such mortgagee, trustee, receiver or other secured party shall have the same rights with respect to this Lease as if it had been executed and delivered prior to the execution and delivery of the mortgage or trust deed and has been assigned to such mortgagee or trustee.

Although the foregoing provisions shall be self-operative and no future instrument of subordination shall be required, upon request by Landlord, Tenant shall execute and deliver

whatever instruments may be reasonably required for such purposes in a form reasonably acceptable to Landlord and Tenant.

In the event any purchaser or assignee of any Lender at a judicial or nonjudicial foreclosure sale acquires title to the Premises, or in the event any Lender or any purchaser or assignee otherwise succeeds to the rights of Landlord as landlord under this Lease, Tenant shall attorn to such Lender or such purchaser or assignee, as the case may be (a "Successor Landlord"), and recognize the Successor Landlord as Landlord under this Lease, and, subject to the provisions of this Section, this Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant, provided that the Successor Landlord shall only be liable for any obligations of the Landlord under this Lease which accrue after the date that such Successor Landlord acquires title. The foregoing provision shall be self operative and effective without the execution of any further instruments.

Tenant shall give written notice to any Lender having a recorded lien upon any of the Premises or any part thereof of which Tenant has been notified of any breach or default by Landlord of any of its obligations under this Lease simultaneously with the giving of such notice to Landlord, and Tenant shall give such Lender at least 60 days beyond any notice period to which Landlord might be entitled to cure such default before Tenant may exercise any remedy with respect thereto. Upon request by Landlord, Tenant shall also provide Tenant's most recent audited financial statements to Landlord or any such Lender and certify the continuing accuracy of such financial statements in such manner as Landlord or such Lender may request.

26. **Estoppel Certificate.** Within ten days following any written request which Landlord, Lender (on behalf of Landlord) or Tenant (the "Requesting Party") may make from time to time, to the other party to this Lease (the "Responding Party"), the Responding Party shall execute and deliver to the Requesting Party a statement certifying: (i) the date of commencement of this Lease; (ii) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, and stating the date and nature of such modifications); (iii) the date to which the rental and other sums payable under this Lease have been paid; (iv) that there are no current defaults under this Lease by the Responding Party or, to the Responding Party's knowledge, the Requesting Party, except as specified therein; (v) such other matters reasonably requested by such Requesting Party; and (vi) when Tenant is the Responding Party, such other matters set forth on Exhibit B attached hereto. When Tenant is the Responding Party, the estoppel certificate shall be in the form attached as Exhibit B. Landlord and Tenant intend that any statement delivered pursuant to this Section 26 may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Premises or any interest therein. Responding Party's failure to deliver such statement within such time shall be conclusive upon Responding Party that: (i) that this Lease is in full force and effect, without modification except as may be represented by the Requesting Party; (ii) that there are no uncured defaults in the Requesting Party's performance; and (iii) that not more than one month's rental has been paid in advance.

27. **Assignment.** A. Landlord shall have the right to sell or convey the Premises or to assign its right, title and interest as Landlord under this Lease in whole or in part. In the event of any such sale or assignment other than a security assignment, Tenant shall attorn to such purchaser or assignee and Landlord shall be relieved, from and after the date of such transfer or

conveyance, of liability for the performance of any obligation of Landlord contained herein, except for obligations or liabilities accrued prior to such assignment or sale.

B. Tenant acknowledges that Landlord has relied both on the business experience and creditworthiness of Tenant and upon the particular purposes for which Tenant intends to use the Premises in entering into this Lease. Without the prior written consent of Landlord: (i) Tenant shall not assign, transfer, convey, pledge or mortgage this Lease or any interest therein, whether by operation of law or otherwise; (ii) no Change of Control shall occur; (iii) no interest in Tenant shall be pledged, encumbered, hypothecated or assigned as collateral, and (iv) Tenant shall not sublet all or any part of the Premises (each of items (i) through (iv) are hereinafter referred to as a "Prohibited Transaction"). Landlord's consent to a Prohibited Transaction shall be subject to the satisfaction of such conditions as Landlord shall reasonably determine, including, without limitation, (i) if required by the Loan Documents, Landlord having obtained the consent of Lender to the Prohibited Transaction, (ii) Tenant having executed and delivered such modifications to the terms of this Lease as Landlord shall request, (iii) the proposed transferee, as applicable, having assumed this Lease (as modified pursuant to clause (ii) above), (iv) payment to Landlord of one-half of any rentals owing under a sublease which are in excess of any rentals owing under this Lease, (v) the proposed transferee having satisfactory creditworthiness and satisfactory experience operating a Permitted Concept and (vi) such assignment or sublease would not cause any part of the Premises to become "tax exempt use property" within the meaning of Section 168(h) of the Internal Revenue Code of 1986, as amended. In addition, any such consent shall be conditioned upon the payment by Tenant to Landlord of all out-of-pocket costs and expenses incurred by Landlord in connection with such consent, including, without limitation, reasonable attorneys' fees. The provisions of this Section shall apply to every Prohibited Transaction regardless of whether voluntary or not, or whether or not Landlord has consented to any previous Prohibited Transaction. No assignment of this Lease or subletting of the Premises shall relieve Tenant of its obligations under this Lease, and all such obligations shall continue in full force and effect as obligations of a principal and not as obligations of a guarantor, as if no assignment or sublease had been made. Any Prohibited Transaction in violation of this Section shall be voidable at the sole option of Landlord.

C. In addition, no interest in Tenant, or in any individual or person owning directly or indirectly any interest in Tenant, shall be transferred, assigned or conveyed to any individual or person whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations and/or who is in violation of any of the OFAC Laws and Regulations, and any such transfer, assignment or conveyance shall not be effective until the transferee has provided written certification to Tenant and Landlord that (1) the transferee or any person who owns directly or indirectly any interest in transferee, is not an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations or is otherwise in violation of the OFAC Laws and Regulations, and (2) the transferee has taken reasonable measures to assure that any individual or entity who owns directly or indirectly any interest in transferee, is not an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations or is otherwise in violation of the OFAC Laws and Regulations; provided, however, the covenant contained in this sentence shall not apply to any Person to the extent that such Person's interest is in or through a U.S. Publicly-Traded Entity.

D. Notwithstanding the foregoing, and upon prior written notice to Landlord and provided no Event of Default has occurred and is continuing under this Lease (nor would an Event of Default occur contemporaneously with, and as a direct result of, the consummation of any of the following):

(1) Tenant may sublet, assign, or otherwise transfer its interest in this Lease and the Premises to the following entities without Landlord's consent:

(i) an Affiliate of Tenant provided that Tenant shall not be released from its obligations under this Lease; or

(ii) any entity with which Tenant may merge or consolidate or to which Tenant may sell all or a substantial portion of its assets or capital stock, provided that (aa) such entity that is merging, consolidating or purchasing the assets or stock of Tenant shall have a financial condition after such merger, consolidation or acquisition that is substantially the same or stronger than Tenant at the time of such merger, consolidation, or sale; (bb) the Premises shall be used only as a Permitted Concept; (cc) except in connection with the sale of capital stock, such entity shall execute and deliver to Landlord an assignment and assumption agreement in form and content reasonably acceptable to Landlord, in which the assignee or transferee acknowledges that it is assuming all of the future obligations of Tenant, financial and otherwise, under this Lease; and (dd) if the party merging, consolidating or purchasing the assets or stock of Tenant concurrently assigns or transfers its interests in this Lease to an operating subsidiary (unless such subsidiary is Tenant), such acquirer shall execute and deliver to Landlord a full unconditional guaranty of the obligations of Tenant in form and substance reasonably satisfactory to Landlord.

(2) Tenant shall have the full and free right to transfer, pledge, encumber, hypothecate or assign any interest in Tenant without Landlord's consent to any entity with which Tenant may merge or consolidate, to which Tenant may sell all or a substantial portion of its assets or to which all or a substantial portion of Tenant's capital stock shall be conveyed, provided that such entity that is merging, consolidating or purchasing the assets or stock of Tenant shall have a financial condition after such merger, consolidation or acquisition that is substantially the same or stronger than Tenant at the time of such merger, consolidation, or sale.

(3) No assignment, sublease, merger, consolidation or other transaction permitted by this subsection D (each, a "Permitted Transaction") shall operate to release Tenant from its obligations under this Lease, and all such obligations shall continue in full force and effect as obligations of a principal and not as obligations of a guarantor, as if no assignment or sublease had been made. In connection with and prior to any Permitted Transaction pursuant to this subsection D, Tenant shall give Landlord written notice of such Permitted Transaction together with the following, as applicable: (a) a copy of the assignment or subletting documents, and the name, address and telephone number of the assignee or sublet tenant, (b) in the case of an assignment of the Lease, a written assignment executed by the assignee in which the assignee assumes and agrees to

perform all of the provisions of this Lease on the part of the Tenant to be performed from and after the date of such assignment; (c) complete detailed financial information on any entity merging with or acquiring the assets or capital stock of Tenant; (d) copies of all relevant merger or purchase and sale agreements relating to such a transaction; (e) such evidence as Landlord may reasonably require with respect to the existence and good standing of the applicable entities and their authority to consummate the corresponding transaction, including, without limitation, the applicable organizational documents; and (f) a new insurance policy and binder naming the assignee or sublet tenant operator and occupant of the Premises; and Tenant shall have reimbursed Landlord and Lender for all reasonable out-of-pocket costs and expenses incurred by Landlord or Lender in connection with such transactions, including reasonable attorneys' fees and costs, and Tenant shall have provided Landlord and Lender with such documents and other items as Landlord or Lender shall reasonably require to confirm Tenant's compliance with the conditions to consummating such transaction.

28. **Option To Extend.** Provided an Event of Default shall not have occurred and be continuing at the time of exercise or at the expiration of the Primary Term or, if applicable, the expiration of the current Extended Term, Tenant shall have the option to continue this Lease in effect for up to four additional successive periods of five years each in accordance with the terms and provisions of this Lease then in effect. Each extension shall be self-exercising unless Tenant shall decline to exercise such extension option by giving notice to Landlord of Tenant's election to decline the extension not less than twelve months prior to the expiration of the Primary Term or the then applicable Extended Term.

29. **Notices.** All notices, consents, approvals or other instruments required or permitted to be given by either party pursuant to this Lease shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service or (iv) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) transmission, if delivered by facsimile, (c) the next Business Day, if delivered by express overnight delivery service, or (d) the third Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Tenant:

Goldco, Inc.
2330 Montgomery Highway
Dothan, Alabama 36303
Attention: Bryan M. Applefield
Telephone: (334) 793-0997
Fax: (334) 677-6240

with a copy to:

R. Eugene Clenney, Jr., Esq.
Johnston, Hinesley, Flowers & Clenney, P.C.
291 North Oates Street
Dothan, Alabama 36303
Telephone: (334) 793-1115
Fax: (334) 793-6603

If to Landlord:

CPCG GOLD I, LLC
545 S. Figueroa Street, Suite 614
Los Angeles, CA 90071
Attention: Kent Wright
Telephone: (213) 488-9325
Fax: (213) 488-9878

with a copy to:

Gorman & Miller
201 Santa Monica Blvd., Suite 300
Santa Monica, CA 90401
Attention: Ken Miller
Telephone: (310) 394-4747
Fax: (310) 917-1205

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above.

30. **Holding Over.** If Tenant remains in possession of the Premises after the expiration of the term hereof, Tenant, at Landlord's option and within Landlord's sole discretion, may be deemed a tenant on a month-to-month basis and shall continue to pay rentals and other sums in the amounts herein provided, except that the Base Monthly Rental shall be automatically doubled, and comply with all the terms of this Lease; provided that nothing herein nor the acceptance of rent by Landlord shall be deemed a consent to such holding over. Tenant shall defend, indemnify, protect and hold the Indemnified Parties harmless for, from and against any and all Losses resulting from Tenant's failure to surrender possession upon the expiration of the Lease Term, including, without limitation, any claims made by any succeeding Tenant.

31. **Net Worth.** At all times while this Lease is in effect, Tenant shall maintain a net worth of at least \$5 million, as determined in accordance with GAAP.

32. **Removal of Personal Property.** At the expiration of the Lease Term, if an Event of Default does not exist, Tenant may remove all Personal Property from the Premises. Tenant shall repair any damage caused by such removal and shall leave the Premises broom clean and in good and working condition and repair inside and out. Any property of Tenant left on the Premises on the thirtieth day following the expiration of the Lease Term shall, at Landlord's option, automatically and immediately become the property of Landlord.

33. **Financial Statements.** Within 45 days after the end of each fiscal quarter and within 120 days after the end of each fiscal year of Tenant, Tenant shall deliver to Landlord and Lender (i) complete financial statements of Tenant including a balance sheet, profit and loss statement, statement of cash flows and all other related schedules for the fiscal period then ended; and (ii) operating statements for the business at the Premises. All such financial statements shall be prepared in accordance with GAAP. The annual financial statements shall be reviewed by a certified public accountant in accordance with the Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants, and all other financial statements shall be certified to be accurate and complete by Tenant. Tenant understands that Landlord and Lender will rely upon such financial statements

and Tenant represents that such reliance is reasonable. In the event the property and business at the Premises is ordinarily consolidated with other business for financial statement purposes, such financial statements shall be prepared on a consolidated basis showing separately the sales, profits and losses, assets and liabilities pertaining to the Premises with the basis for allocation of overhead of other charges being clearly set forth. The financial statements delivered to Landlord and Lender need not be audited, but Tenant shall deliver to Landlord and Lender copies of any audited financial statements of Tenant which may be prepared, as soon as they are available.

34. ***Force Majeure; Administrative Processing and Review.*** A. Any prevention, delay or stoppage due to strikes, lockouts, acts of God, enemy or hostile governmental action, civil commotion, fire or other casualty beyond the control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to rental and other monies to be paid by Tenant pursuant to this Lease and any indemnification obligations imposed upon Tenant under this Lease.

B. In the event Tenant makes any request upon Landlord requiring Landlord or the attorneys of Landlord to review and/or prepare (or cause to be reviewed and/or prepared) any documents, plans, specifications or other submissions in connection with or arising out of this Lease, then Tenant shall (x) reimburse Landlord upon demand therefor for all out-of-pocket costs and expenses incurred by Landlord in connection with such review and/or preparation, including, without limitation, reasonable attorneys' fees, and (y) pay Landlord a reasonable processing and review fee determined in the aggregate for this Lease and all of the Related Leases subject to such request.

35. ***Time is of the Essence.*** Time is of the essence with respect to each and every provision of this Lease in which time is a factor.

36. ***Landlord's Liability.*** Notwithstanding anything to the contrary provided in this Lease, (i) there shall be absolutely no personal liability on the part of Landlord, Lender, their successors or assigns and the trustees, members, partners, shareholders, officers, attorneys, directors, employees and agents of Landlord and Lender and their successors or assigns, to Tenant with respect to any of the terms, covenants and conditions of this Lease, (ii) Tenant waives all claims, demands and causes of action against the trustees, members, partners, shareholders, officers, attorneys, directors, employees and agents of Landlord and its successors or assigns in the event of any breach by Landlord of any of the terms, covenants and conditions of this Lease to be performed by Landlord, and (iii) Tenant shall look solely to the Premises for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord of any of the terms, covenants and conditions of this Lease to be performed by Landlord, or any other matter in connection with this Lease or the Premises, such exculpation of liability to be absolute and without any exception whatsoever.

37. ***Consent of Landlord.*** A. Unless specified otherwise in this Lease, including but not limited to Section 27(B) hereof, Landlord's consent to any request of Tenant may be conditioned or withheld in Landlord's reasonable discretion.

B. It is understood and agreed that to the extent Landlord is required to obtain the consent, approval, agreement or waiver of Lender with respect to a matter for which Landlord's approval has been requested under this Lease, Landlord shall in no event be deemed to have unreasonably withheld Landlord's consent, approval, agreement or waiver thereof if Lender shall not have given its approval if required.

38. **Waiver and Amendment.** No provision of this Lease shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. No acceptance by Landlord of an amount less than the monthly rent and other payments stipulated to be due under this Lease shall be deemed to be other than a payment on account of the earliest such rent or other payments then due or in arrears nor shall any endorsement or statement on any check or letter accompanying any such payment be deemed a waiver of Landlord's right to collect any unpaid amounts or an accord and satisfaction.

39. **Successors Bound.** Except as otherwise specifically provided herein, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of the respective heirs, successors, executors, administrators and assigns of each of the parties hereto.

40. **No Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not result in a merger of Landlord's and Tenant's estates, and shall, at the option of Landlord, either terminate any or all existing subleases or subtenancies, or operate as an assignment to Landlord of any or all of such subleases or subtenancies.

41. **Captions.** Captions are used throughout this Lease for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

42. **Severability.** The provisions of this Lease shall be deemed severable. If any part of this Lease shall be held unenforceable by any court of competent jurisdiction, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.

43. **Characterization.** A. It is the intent of the parties hereto that the business relationship created by this Lease and any related documents is solely that of a long-term commercial lease between landlord and tenant and has been entered into by both parties in reliance upon the economic and legal bargains contained herein. None of the agreements contained herein, is intended, nor shall the same be deemed or construed, to create a partnership between Landlord and Tenant, to make them joint venturers, to make Tenant an agent, legal representative, partner, subsidiary or employee of Landlord, nor to make Landlord in any way responsible for the debts, obligations or losses of Tenant.

B. Landlord and Tenant acknowledge and warrant to each other that each has been represented by independent counsel and has executed this Lease after being fully advised by said counsel as to its effect and significance. This Lease shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Whenever in this

Lease any words of obligation or duty are used, such words or expressions shall have the same force and effect as though made in the form of a covenant.

44. **Easements.** During the Lease Term, Landlord shall have the right to grant utility easements on, over, under and above the Premises without the prior consent of Tenant, provided that such easements will not materially interfere with Tenant's use of the Premises.

45. **Bankruptcy.** A. As a material inducement to Landlord executing this Lease, Tenant acknowledges and agrees that Landlord is relying upon (i) the financial condition and specific operating experience of Tenant and Tenant's obligation to use the Premises specifically in accordance with system-wide requirements imposed from time to time on Permitted Concepts, (ii) Tenant's timely performance of all of its obligations under this Lease as to the Premises notwithstanding the entry of an order for relief under the Code for Tenant and (iii) all defaults under this Lease as to the Premises being cured promptly and this Lease being assumed within 60 days of any order for relief entered under the Code for Tenant, or this Lease being rejected within such 60 day period and the Premises surrendered to Landlord.

Accordingly, in consideration of the mutual covenants contained in this Lease and for other good and valuable consideration, Tenant hereby agrees that:

(i) All obligations that accrue or become due under this Lease (including the obligation to pay rent), from and after the date that an Action is commenced shall be timely performed exactly as provided in this Lease and any failure to so perform shall be harmful and prejudicial to Landlord;

(ii) Any and all obligations under this Lease that accrue or become due from and after the date that an Action is commenced and that are not paid as required by this Lease shall, in the amount of such rents, constitute administrative expense claims allowable under the Code with priority of payment at least equal to that of any other actual and necessary expenses incurred after the commencement of the Action;

(iii) Any extension of the time period within which Tenant may assume or reject this Lease without an obligation to cause all obligations accruing or coming due under this Lease from and after the date that an Action is commenced to be performed as and when required under this Lease shall be harmful and prejudicial to Landlord;

(iv) Any time period designated as the period within which Tenant must cure all defaults and compensate Landlord for all pecuniary losses which extends beyond the date of assumption of this Lease shall be harmful and prejudicial to Landlord;

(v) Any assignment of this Lease must result in all terms and conditions of this Lease being assumed by the assignee without alteration or amendment, and any assignment which results in an amendment or alteration of the terms and conditions of this Lease without the express written consent of Landlord shall be harmful and prejudicial to Landlord;

(vi) Any proposed assignment of this Lease to an assignee: (a) that will not use the Premises specifically as a Permitted Concept in accordance with franchise, license and/or area development agreements with Franchisor, or (b) that does not possess financial condition,

operating performance and experience characteristics equal to or better than the financial condition, operating performance and experience of Tenant as of the Commencement Date, shall be harmful and prejudicial to Landlord;

(vii) The rejection (or deemed rejection) of this Lease for any reason whatsoever shall constitute cause for immediate relief from the automatic stay provisions of the Code, and Tenant stipulates that such automatic stay shall be lifted immediately and possession of the Premises will be delivered to Landlord immediately without the necessity of any further action by Landlord; and

(viii) This Lease shall at all times be treated as consistent with the specific characterizations set forth in Section 3 of this Lease, and assumption or rejection of this Lease shall be (a) in its entirety, (b) for all of the Premises, and (c) in strict accordance with the specific terms and conditions of this Lease.

B. No provision of this Lease shall be deemed a waiver of Landlord's rights or remedies under the Code or applicable law to oppose any assumption and/or assignment of this Lease, to require timely performance of Tenant's obligations under this Lease, or to regain possession of the Premises as a result of the failure of Tenant to comply with the terms and conditions of this Lease or the Code.

C. Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as such, shall constitute "rent" for the purposes of the Code.

D. For purposes of this Section addressing the rights and obligations of Landlord and Tenant in the event that an Action is commenced, the term "Tenant" shall include Tenant's successor in bankruptcy, whether a trustee, Tenant as debtor in possession or other responsible person.

46. **No Offer.** No contractual or other rights shall exist between Landlord and Tenant with respect to the Premises until both have executed and delivered this Lease, notwithstanding that deposits may have been received by Landlord and notwithstanding that Landlord may have delivered to Tenant an unexecuted copy of this Lease. The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation of or an option for Tenant to lease or otherwise create any interest on the part of Tenant in the Premises.

47. **Other Documents.** Each of the parties agrees to do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, documents and assurances as may be reasonably required or deemed advisable to carry into effect the purposes of this Lease, to perfect any lien or security interest granted in this Lease and for the better assuring and confirming of all of Landlord's rights, powers and remedies under this Lease.

48. **Attorneys' Fees.** In the event of any judicial or other adversarial proceeding between the parties concerning this Lease, to the extent permitted by law, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other costs in addition to any

other relief to which it may be entitled. In addition, Landlord shall, upon demand, be entitled to all reasonable attorneys' fees and all other reasonable costs incurred in the preparation and service of any notice or demand hereunder, whether or not a legal action is subsequently commenced.

49. **Entire Agreement.** This Lease and any other instruments or agreements referred to herein constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements except as herein provided. Without limiting the foregoing, Tenant specifically acknowledges that neither Landlord nor any agent, officer, employee or representative of Landlord has made any representation or warranty regarding the projected profitability of the business to be conducted on the Premises. Furthermore, Tenant acknowledges that Landlord did not prepare or assist in the preparation of any of the projected figures used by Tenant in analyzing the economic viability and feasibility of the business to be conducted by Tenant at the Premises.

50. **Governing Law.** The terms and provisions of this Lease shall be governed by the laws of the state in which the Premises is located.

51. **Counterparts.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original.

52. **Memorandum of Lease.** Concurrently with the execution of this Lease, Landlord and Tenant are executing the Memorandum to be recorded in the applicable real property records with respect to the Premises. Further, upon Landlord's request, Tenant agrees to execute and acknowledge a termination of lease and/or quit claim deed in recordable form with respect to the Premises to be held by Landlord until the expiration or sooner termination of the Lease Term.

53. **No Brokerage.** Landlord and Tenant represent and warrant to each other that they have had no conversation or negotiations with any broker concerning the leasing of the Premises. Each of Landlord and Tenant agrees to protect, indemnify, save and keep harmless the other, against and from all liabilities, claims, losses, costs, damages and expenses, including attorneys' fees, arising out of, resulting from or in connection with their breach of the foregoing warranty and representation.

54. **Waiver of Jury Trial and Punitive Damages.** LANDLORD AND TENANT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF ANY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, TENANT AND LANDLORD HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO SEEK PUNITIVE

DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY TENANT AND LANDLORD OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

55. **OFAC Laws and Regulations.** Tenant shall immediately notify Landlord in writing if any individual or entity owning directly or indirectly any interest in any of the Tenant Parties or any director, officer, member, manager or partner of any of such holders is an individual or entity whose property or interests are subject to being blocked under any of the OFAC Laws and Regulations or is otherwise in violation of any of the OFAC Laws and Regulations, or is under investigation by any governmental entity for, or has been charged with, or convicted of, drug trafficking, terrorist-related activities or any violation of Anti-Money Laundering Laws, has been assessed civil penalties under these or related laws, or has had funds seized or forfeited in an action under these or related laws; provided, however, the covenant contained in this sentence shall not apply to any Person to the extent that such Person's interest is in or through a U.S. Publicly-Traded Entity.

56. **Noncompete.** During the Lease Term and any extensions of the Lease Term, Tenant shall not own an interest in, or operate, another restaurant of the same concept as the concept operated at the Premises within a one mile radius of the Premises (the "Noncompete"); provided, however, Landlord agrees to waive the Noncompete if in Landlord's reasonable business judgment such other restaurant will not have a Material Adverse Effect. So long as Tenant is operating a Burger King restaurant at the Premises, the phrase "restaurant of the same concept" shall refer to a fast food restaurant serving hamburgers. The Noncompete shall only apply to restaurant properties constructed or purchased after the Commencement Date.

57. **Compliance Certificate.** Within 60 days after the end of each fiscal year of Tenant, at the request of Landlord, Tenant shall deliver a compliance certificate to Landlord in a form to be provided by Landlord in order to establish that Tenant is in compliance in all material respects with all of its obligations, duties and covenants under this Lease.

58. **Waiver of Landlord's Lien.** Landlord waives any statutory or common law landlord's lien granted to Landlord in the Personal Property. Landlord agrees to execute such documents as Tenant may reasonably require to evidence such waiver provided that the form and substance of any such waiver is reasonably satisfactory to Landlord and Tenant promptly reimburses Landlord for all reasonable out-of-pocket costs incurred by Landlord in connection with such waiver, including, without limitation, reasonable attorneys' fees.

59. **Right of First Refusal.** A. During the Lease Term, Tenant shall have the right of first refusal to purchase the Premises upon the terms and conditions set forth in this Section. If at any time during the Lease Term, Landlord shall receive a bona fide offer from a third party for

the purchase of the Premises (whether or not solicited by Landlord) and Landlord shall desire to accept such offer, Landlord shall notify Tenant of any such offer (the "Offering Notice") by notice to Tenant specifying the following terms and information: (i) the name and address of the third-party offeror, (ii) the purchase price for the Premises, and (iii) any other terms and conditions set forth in the letter of intent or purchase agreement between Landlord and such third-party offeror (the "Third-Party Purchase Agreement") that are material to the sale of the Premises, as determined by Landlord in Landlord's reasonable discretion. Notwithstanding the foregoing, Tenant shall not have the right to exercise the right of first refusal or consummate the exercise thereof if at the time of exercise or consummation, an Event of Default shall have occurred and be continuing or if any condition shall exist which upon the giving of notice or the passage of time, or both, would constitute an Event of Default by Tenant under this Lease.

B. Tenant shall have ten calendar days from the date of delivery of the Offering Notice to exercise its right of first refusal hereunder. Such right of first refusal shall be exercisable by Tenant notifying Landlord (within such ten day period) of Tenant's irrevocable election to purchase the Premises, subject only to the terms and conditions set forth in the Offering Notice (the "Exercise Notice") except that to the extent the Offering Notice provides for the transfer to Landlord of non-cash consideration, Tenant may instead pay Landlord cash equal to the fair market value of such non-cash consideration. Time shall be of the essence with respect to Tenant's election and the giving of the Exercise Notice, and any failure to give Landlord the Exercise Notice within such five day period shall be deemed to be an election by Tenant to waive the rights with respect to that Offering Notice granted to Tenant under this Section.

C. Upon Tenant giving Landlord the Exercise Notice, Landlord and Tenant shall open an escrow account with a recognized title insurance or trust company or attorney selected by Landlord. Such escrow shall be subject to the standard escrow instructions of the escrow agent, to the extent they are not inconsistent with the terms of this Section or the terms of the Offering Notice. At or before the close of escrow, Landlord shall deliver to the escrow agent its special warranty deed (or such other type of deed as is specified in the Offering Notice) conveying to Tenant all of Landlord's right, title and interest in the Premises, free and clear of all liens and encumbrances, except liens for taxes and assessments and easements, covenants and restrictions of record which were attached to the Premises as of the date hereof, attached during the Lease Term through Tenant's action or inaction, as the case may be, have been granted by Landlord in lieu of a taking by the power of eminent domain or the like, have been approved by Tenant, or which do not materially adversely affect the use of the Premises as a Permitted Concept or as otherwise specified in the Offering Notice. If Landlord (in the exercise of Landlord's good faith reasonable efforts) is unable to convey title as required, Tenant agrees that Tenant's sole remedy or recourse shall be either (i) to accept such title as Landlord can convey, or (ii) to elect not to consummate its exercise of the right of first refusal, in which case the right of first refusal shall lapse and Landlord shall be entitled to sell and convey the Premises to the third-party offeror substantially on the terms set forth in the Offering Notice.

D. Both Landlord and Tenant agree to execute a purchase agreement, escrow instructions and such other instruments as may be necessary or appropriate to consummate the sale of the Premises in the manner herein provided. Unless otherwise specifically provided in the Offering Notice, the sale of the Premises to Tenant shall be an "AS IS" and "WHERE IS"

sale, without any representations or warranties, express or implied, on the part of Landlord relative to the Premises and the condition of the Premises and the suitability of the Premises for any particular use or purpose, and with "ALL FAULTS" associated with the Premises.

E. Notwithstanding any term or provision contained in the Third-Party Purchase Agreement to the contrary, the close of escrow of the sale of the Premises to Tenant shall occur no later than the date that is forty-five (45) days after Tenant gives Landlord the Exercise Notice. At the close of escrow of the sale of the Premises to Tenant pursuant to Tenant's right of first refusal hereunder (i) this Lease shall terminate and Tenant shall receive a credit towards the purchase price in an amount equal to that portion of the Base Monthly Rental paid to Landlord prior to the date of the close of escrow that is attributable to the period of time after the close of escrow, and (ii) Tenant shall pay to the third-party offeror identified in the Offering Notice, in immediately available funds, an amount equal to such third-party's reasonable out-of-pocket costs and expenses incurred in connection with the proposed sale of the Premises to such third party, including, without limitation, its reasonable attorneys' fees, but in no event more than \$15,000.00 for the Premises.

F. Notwithstanding any other provision or right contained in this Lease to the contrary, if Tenant shall exercise its right of first refusal to purchase the Premises by giving the Exercise Notice, and Tenant shall thereafter fail to purchase the Premises on the terms set forth or incorporated by reference in the Exercise Notice and in this Section (except if such failure is the result of a default by Landlord of its obligations under this Section), Tenant's right of first refusal set forth in this Section shall cease to exist for all purposes, Tenant shall have no right to reinstate its right of first refusal, and Landlord shall thereafter and forever be entitled to sell the Premises to the original third-party offeror or to any subsequent third-party offeror, free and clear of any right granted to Tenant under this Section.

G. If Tenant waives or is deemed to have waived its right of first refusal to purchase the Premises, then (i) Landlord shall have the right to sell the Premises to such third-party offeror during the twelve month period following Tenant's waiver at a price which is at least 95% of the price set forth in the Offering Notice and on terms which are otherwise substantially similar to the terms set forth in the Offering Notice, and (ii) upon the consummation of such a sale, Tenant's right of first refusal shall cease to exist, and this Section shall no longer be part of this Lease. If Landlord shall not consummate such a sale to the third party offeror on terms substantially similar to those terms contained in the Offering Notice or shall desire to sell the Premises to another third-party offeror on terms not substantially similar to the terms set forth in the Offering Notice, then Tenant's right of first refusal shall remain in full force and effect for the remainder of the Lease Term, and Landlord shall be required to again offer the Premises to Tenant in accordance with this Section.

H. Notwithstanding any provision or right contained in this Lease to the contrary, Tenant's right of first refusal shall not be applicable to any of the following events, sales, dispositions or transfers, whether occurring in one transaction or a series of transactions:

(i) any disposition, sale or other transfer of the Premises during the period of time commencing on the Commencement Date and ending on the day immediately preceding the third anniversary of the Commencement Date;

(ii) any disposition, sale or other transfer of the Premises to an Affiliate of Landlord, any change in the form of business entity or ownership of Landlord, including, but not limited to, any change by merger or consolidation of Landlord, any acquisition, sale, disposition or other transfer of all or a substantial portion of the assets or business of Landlord, any sale, disposition, pledge, creation, issuance, repurchase, redemption, exchange or swap of common stock, preferred stock or other equity interests of any type or nature in Landlord, or any capitalization, recapitalization or reorganization in any form of Landlord, or any disposition, sale, assignment or other transfer of the Premises by Landlord to a corporation, trust or other entity identified by Landlord and the issuance of certificates or other instruments evidencing interests in pools of properties (of which the Premises forms all or a part), in connection with any asset securitization or other financing or investment arrangement; or

(iii) any disposition, sale or other transfer of the Premises to the holder of a mortgage, lien or deed of trust covering Landlord's interest in the Premises, or any nominee of such holder, or any other person, firm, corporation, or other entity who or which shall acquire title to Landlord's interest in the Premises as a result of a foreclosure of such mortgage, lien or deed of trust or as a result of delivery of a deed in lieu of foreclosure.

I. If any bona-fide offeror proposes a purchase of the Premises together with any one or more of the properties subject to the Related Leases, Tenant shall only have the right to exercise the right of first refusal described in this Section with respect to the Premises if Tenant exercises the right of first refusal set forth in the applicable Related Leases with respect to the other properties included in such bona-fide offer and consummates the purchase of the Premises and the properties described in such Related Leases.

60. State Specific Provisions. If the Premises are located in the State of Florida, then the following provisions shall apply:

A. The following disclosure is made pursuant to Section 404.056, Florida Statutes:

RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

B. (i) In accordance with the applicable provisions of the Construction Lien Law and specifically Section 713.10, Florida Statutes, no interest of Landlord, whether personally or in the Premises, or in the underlying land or improvements of which the Premises are a part or the leasehold interest therein, shall be subject to liens for improvements made by Tenant or caused to be made by Tenant hereunder. Further, Tenant acknowledges that Tenant, with respect to improvements or alterations made by Tenant or caused to be made by Tenant hereunder, shall promptly notify, as required by state law, the contractor making such improvements to the Premises of this provision exculpating Landlord's liability for such liens.

(ii) Notwithstanding the foregoing, if any mechanic's lien or other lien, attachment, judgment, execution, writ, charge or encumbrance is filed against the Premises or this leasehold, or any alterations, fixtures or improvements therein or thereto, as a result of any work action or inaction done by or at the direction of Tenant or any of Tenant's agents, Tenant will discharge the same of record within ten days after the filing thereof, failing which Tenant will be in default under this Lease. In such event, without waiving Tenant's default, Landlord, in addition to all other available rights and remedies, without further notice, may discharge the same of record by payment, bonding or otherwise, as Landlord may elect, and upon request Tenant will reimburse Landlord for all costs and expenses so incurred by Landlord plus interest thereon from the date of such expenditure at the highest rate allowed by law.


[Signature pages follow.]

IN WITNESS WHEREOF, Landlord and Tenant have entered into this Lease as of the Commencement Date.

LANDLORD:

CPCG GOLD I, LLC,
a Delaware limited liability company


By


Kenton Wright, Manager

TENANT:

GOLDCO, INC.,
an Alabama corporation

By


Bryan M. Applefield, Chief Executive Officer

IN WITNESS WHEREOF, Landlord and Tenant have entered into this Lease as of the Commencement Date.

LANDLORD:

CPCG GOLD I, LLC,
a Delaware limited liability company

By _____
Kenton Wright, Manager

TENANT:

GOLDCO, INC.,
an Alabama corporation

By 
Bryan M. Applefield, Chief Executive Officer

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES)

On August 15, 2006, before me, Maria Gordon, Notary Public, personally appeared Kenton Wright, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Maria Gordon
Signature of notarial officer



STATE OF ALABAMA)

COUNTY OF HOUSTON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Bryan M. Applefield, whose name as Chief Executive Officer of Golco, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 15th day of August, 2006.

Lorey K. Monte-Hatke
Notary Public

My Commission Expires: 3-21-2009

Legal Description
Burger King Store No. 12279

Parcel I:

All that tract or parcel of land containing 0.867 acres more or less situated, lying and being in the NE 1/4 of the NW 1/4 of Section 29 and the SE 1/4 of the SW 1/4 of Section 20, Township 3 North, Range 27 East of Houston County, Alabama, and being more particularly described as follows:

Commence at the Southwest Corner of the NE 1/4 of the NW 1/4 of Section 29, Township 3 North, Range 27 East of Houston County, Alabama; thence run North 00°40'02" West along the West line of said forty for a distance of 794.12 feet to a point on the East right-of-way margin of Ross Clark Circle; thence run North 14°46'08" East along said Circle for a distance of 311.17 feet to a point; thence run North 14°22'03" East along said Circle for a distance of 131.93 feet to a point; thence run South 76°37'00" East for a distance of 69.28 feet to a point; thence run North 12°11'59" East for a distance of 54.60 feet to a point, said point being the True Point of Beginning; thence continue North 12°11'59" East for a distance of 150.00 feet to a point; thence run South 77°48'01" East for a distance of 251.93 feet to a point; thence run South 12°11'59" West for a distance of 150.00 feet to a point; thence run North 77°48'01" West for a distance of 251.93 feet to the Point of Beginning.

SCHEDULE I

A. Base Annual Rental: \$108,806.

B. Tenant's Organizational Information:

1. U.S. Federal Tax Identification Number: [REDACTED]

2. Alabama organizational number: [REDACTED]

3. Principal Place of Business: 2330 Montgomery Highway, Dothan, Alabama 36303.

C. "*Environmental Report*" means the Phase I environmental assessment of the Premises dated May 23, 2006 prepared for Landlord by URS Corporation in connection with Landlord's acquisition of the Premises.

MASTER FIRST LEASE AMENDMENT

THIS MASTER FIRST LEASE AMENDMENT ("*Amendment*") is entered into on Nov 14, 2013 to be effective as November 15, 2013 (the "*Effective Date*"), between ARC CAFEUSA001, LLC, a Delaware limited liability company, whose address is 405 Park Avenue, 15th Floor, New York, New York 10022 ("*Landlord*"), and GOLDCO, LLC, an Alabama limited liability company, whose address is 100 Ashford Center North, Suite 130, Atlanta, Georgia 30338 ("*Tenant*").

A. Landlord is the current landlord and fee owner and Tenant is the current tenant under Leases, dated August 18, 2006 and described on *Exhibit A* (the "*Leases*"), between Landlord, as successor to the landlord's interest through assignment, and Tenant, whereby Landlord leases to Tenant certain real property and improvements more particularly described on *Exhibit B* (the "*Premises*").

B. Landlord and Tenant desire to amend the Leases as set forth in this Amendment.

C. Capitalized terms used in this Amendment and not otherwise defined shall have the meaning ascribed to such term in the Leases.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Amendments to Leases. Effective as of the Effective Date hereof, Landlord and Tenant agree that the Leases are amended in accordance with the following terms and conditions:

(a) The following definition is hereby added to Page 3 of the Leases between the definitions for "*Extended Term*" and "*Franchise Agreements*":

"*First Modified Adjustment Date*" means April 1, 2014.

(b) The following definition is hereby added to Page 6 of the Leases between the definitions for "*Restoration Cost*" and "*Securitization*":

"*Second Modified Adjustment Date*" means September 1, 2016.

(c) Section 4 of the Leases is hereby amended to extend the Primary Term of the Lease from August 31, 2026 to August 31, 2028.

(d) Section 5(B) of the Leases is hereby deleted in its entirety and restated as follows:

B. Commencing on the first Adjustment Date and on each Adjustment Date thereafter, with the exception of the Adjustment Date that falls on the same date as the Second Modified Adjustment Date, the Base Annual Rental shall increase by an amount equal to the product of the then current Base Annual Rental multiplied by 7.5%, and the increased Base Annual Rental shall constitute the Base Annual Rental due and payable until the next Adjustment Date. On the First Modified Adjustment Date, the Base Annual Rental shall increase by an amount equal to the product of the then current Base Annual Rental multiplied by 3.75%, and the increased Base Annual Rental shall constitute the Base

Annual Rental due and payable until the Second Modified Adjustment Date. On the Second Modified Adjustment Date, the Base Annual Rental shall increase by an amount equal to the product of the Base Annual Rental as in effect immediately prior to the First Modified Adjustment Date multiplied by 7.5%, and the increased Base Annual Rental shall constitute the Base Annual Rental due and payable until the next Adjustment Date. [See attached **Schedule 1**]

(e) Section 29 of the Leases is hereby amended in accordance with the following terms and conditions as follows:

If to Landlord: American Realty Capital
200 Dryden Road, Suite 1100
Dresher, PA 19025
Attn: Asset Manager

If to the Tenant: Goldco, LLC
100 Ashford Center North
Suite 130
Atlanta, Georgia 30338

(f) Section 33 of the Leases is hereby amended to include the following:

Within 15 days after the end of each calendar month, Tenant shall deliver to Landlord unit level sales information for the Premises. Each such statement shall be accompanied by a written statement signed by Tenant and certified by Tenant to be true and correct.

(g) Section 59 of the Leases is hereby amended in its entirety and restated as follows:

59. **Right of First Offer.** If, at any time after the first anniversary of the Commencement Date during the Lease Term, Landlord desires to sell its interest in the Premises to a third party then, provided that no Event of Default, or any event or circumstance which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, has occurred and is continuing, Landlord shall give Tenant the right to purchase such interest (the "Interest") for a price and on terms and conditions, determined by Landlord and set forth in a notice (the "ROFO Notice") given to Tenant. Tenant shall have 20 calendar days to elect in writing to acquire such Interest at such price and on such terms and conditions. Tenant's silence shall be deemed a waiver of its right to acquire such Interest. Any such election by Tenant shall only be effective if accompanied by Tenant's payment to Landlord of a cash down payment equal to 10% of such price. If Tenant timely and properly elects to acquire such Interest, the closing shall take place within 60 days after the ROFO Notice is given to Tenant. The balance of the purchase price shall be paid in cash at closing. If Tenant does not timely elect to acquire such Interest, Landlord shall be free to sell the Interest to any other Person within 12 months of Tenant's rejection or deemed rejection without being required to comply again with the foregoing provisions of this Section, provided that, if Landlord intends to sell the Interest (i) after

such 12 month period or (ii) within such 12 month period at a price less than 90% of the price described in the ROFO Notice, Landlord shall give Tenant written notice, setting forth the applicable purchase price and terms and conditions, and Tenant shall have 20 calendar days to elect in writing to purchase the Interest at such purchase price and on such terms and conditions. The right of first offer granted by this Section shall not survive the expiration or earlier termination of this Lease or, subject to the preceding sentence, the purchase of the Premises by a third party after Tenant's failure to exercise such right or Tenant's waiver of such right. Furthermore, the right of first offer granted by this Section shall not apply to a foreclosure of any of the Mortgages or delivery to Lender of a deed-in-lieu of foreclosure and shall not survive any such foreclosure or delivery of a deed-in-lieu of foreclosure. Upon the termination of the right of first offer, Tenant shall execute such instruments as may be reasonably required by Landlord to provide constructive notice of the termination of such right.

- (h) The following Section is added to the Leases as Section 61:

Anti-Terrorism and Anti-Money Laundering Provisions. Tenant shall not take any action or engage in any activity of any nature whatsoever, and will use its best efforts to ensure that no other Tenant Party nor Affiliate of any Tenant Party takes any such action or engages in any such activity that would or could result in Tenant, such other Tenant Party or such Affiliate of any Tenant Party being (a) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC or any other similar lists maintained by OFAC or any other Governmental Authority pursuant to any authorizing statute, Executive Order or regulation; (b) designated under Section 1(b), (c) or (d) of Executive Order No. 13224 (September 23, 2001), any related enabling legislation, or any other similar Executive Orders; or (c) subject to any trade restrictions under any Applicable Law, including those referenced in clauses (a) and (b) of this Section. Neither Tenant nor any other Tenant Party shall fund any Contractual Obligation with funds derived from any Person referred to in clauses (a) and (b) of this Section. Tenant shall comply with, and will use its best efforts to ensure that each of the other Tenant Parties and each of the other Affiliates of the Tenant Parties complies with, the applicable provisions of the BSA and all other laws, regulations, and government guidance relating to the prevention and detection of money laundering violations or terrorist activities or threats.

- (i) The following Section is added to the Leases as Section 62:

Remodeling. If the remodeling of Stores 4058 (Asset # 6293 Troy, Alabama), 4848 (Asset # 6272 Enterprise, Alabama), 8457 (Asset # 6366 Opp, Alabama) and 8727 (Asset # 6367 Niceville, Florida) to the standards set forth in the Burger King Image Policy as of the date such remodel commences is not completed by or before December 31, 2014, then Tenant shall pay to Landlord a one-time fee in an amount equal to (i) the difference between the (A) Base Monthly Rental in effect as of the Second Modified Adjustment Date and (B) the Base Monthly Rental in

effect as of the First Modified Adjustment Date, multiplied by (ii) the number of calendar months between April 1, 2014 through the final completion date of the Store Remodeling.

2. Representations and Warranties. As a material inducement to Landlord to enter into this Amendment, Tenant represents and warrants to Landlord:

(i) Tenant is wholly owned by Goldco Parent, LLC, a Delaware limited liability company ("**Goldco Parent**"), with approximately 67% of the equity interests in Goldco Parent, on a fully diluted basis, owned by PNC RiverArch Capital, a division of PNC Capital Finance, LLC, and the remaining 33% of the equity interests in Goldco Parent, on a fully diluted basis, owned by certain other members, including without limitation Fred B. Beilstein III and Fred B Beilstein IV.

(j) All of the representations and warranties in the Leases are true and correct in all material respects as of the Effective Date; and

(k) Other than the Event of Default being waived concurrently pursuant to that certain Consent to Prohibited Transaction and Waiver of Default between Landlord and Tenant no Event of Default or event with which notice or the lapse of time (or both) would become an Event of Default has occurred and is continuing as of the Effective Date. Without limiting the foregoing, Tenant represents and warrants that Tenant is in compliance with the provisions of **Section 23** of the Leases (which Section is entitled "Franchise Agreement").

3. Release. Tenant fully, finally and forever releases and discharges Landlord and its affiliates from any and all actions, causes of action, claims, debts, demands, liabilities, obligations and suits, of whatever kind or nature, in law or equity, that Tenant has or in the future may have, whether known or unknown, against Landlord or its affiliates: (a) in respect of the Lease, this Amendment, or the actions or omissions of Landlord or any of Landlord's affiliates in respect of the Leases or this Amendment; and arising from events occurring prior to the date of this Amendment; or (b) relating to the making, validity, or enforceability of the Lease.

4. Binding Effect. This Amendment shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns.

5. Submission to Jurisdiction. Any legal action or proceeding with respect to this Amendment shall be brought exclusively in the courts of the State of New York located in New York County or of the United States for the District of New York, and each party accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts; provided, however, that nothing in this Amendment shall limit or restrict the right of either party to commence any proceeding in the federal or state courts located in the state in which the Premises are located where the sole remedy sought is specific performance. Landlord and Tenant hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that either of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

6. Attorneys' Fees. Should either party institute any legal action or proceeding to enforce the provisions of this Amendment, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with the exercise of its rights and remedies hereunder as well as court costs and expert witness fees as the court shall determine.

7. Amendment Controls. Except as is specifically amended herein, the terms and conditions of the Leases are ratified and confirmed and shall remain in full force and effect. If any provision of the Leases is in conflict with any provision of this Amendment, the terms of this Amendment shall control.

8. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Amendment to physically form one document. Signatures on counterparts of this Amendment that are delivered via facsimile or by other electronic means are authorized, and this Amendment shall be deemed executed when an executed counterpart hereof is transmitted by a party to the other party physically or via any electronic means.

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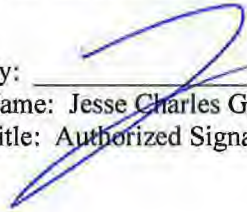
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the Effective Date.

LANDLORD:

ARC CAFEUSA001, LLC, a Delaware limited liability company

By: American Realty Capital Operating Partnership IV, L.P., a Delaware limited partnership, its sole member

By: 
Name: Jesse Charles Galloway
Title: Authorized Signatory

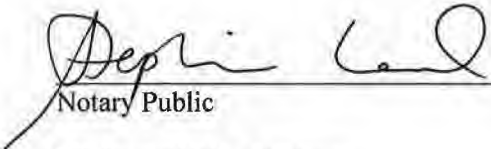
STATE OF NEW YORK
COUNTY OF NEW YORK

:
:
: ss
:

On this, the 15 day of November, 2013, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Jesse Charles Galloway who acknowledged himself/herself to be the Authorized Signatory of American Realty Capital Operating Partnership IV, L.P., a Delaware limited partnership, the sole member of ARC CAFEUSA001, LLC, a Delaware limited liability company and further acknowledged that he/she, as such authorized signatory being authorized to do so, executed the foregoing instrument as the act and deed of the limited liability company for the purposes therein contained by signing the name of the limited liability company by himself/herself as such authorized signatory.

WITNESS my hand and seal the day and year aforesaid.

STEPHANIE ALISON LEAL
Notary Public, State of New York
No. 01LE6268688
Qualified in Kings County
Commission Expires Sept. 17, 2016


Notary Public
My Commission Expires:

TENANT:

GOLDCO, LLC, an Alabama limited liability company

By: F.B. Beilstein III
Name: Frederick B. Beilstein III
Title: CFO

STATE OF Georgia)
) ss.
COUNTY OF DeKalb)

The foregoing instrument was acknowledged before me this 20th day of November, 2013, by F.B. Beilstein III, who is personally known to me, as the CFO of Goldco LLC, a an Alabama limited liability company, on behalf of the Tenant.



Name: Robin Joseph
Notary Commission No. _____
My Commission Expires: October 22, 2017

EXHIBIT A

Description of Premises/Leases

Asset #	Store #	Address	City	State
6124	3345	3092 Ross Clark Circle	Dothan	Alabama

Asset # 6124 - 3092 Ross Clark Circle, Dothan , Alabama

Lease Agreement dated August 18, 2006, between CPCG Gold I, LLC, a Delaware limited liability company ("Landlord") and Goldco, Inc. an Alabama corporation ("Tenant), as assigned by Landlord to GE Capital Franchise Finance Corporation, a Delaware corporation, ("Assignee") by Assignment and Assumption of Lease dated as of May 31, 2007, and as further assigned by Assignee to ARC CAFEUSA001, LLC, a Delaware limited liability company by Assignment and Assumption of Lease Documents dated June 27, 2013.

Asset #	Store #	Address	City	State
6275	12279	1165 Ross Clark Circle	Dothan	Alabama

Asset # 6275 - 1165 Ross Clark Circle, Dothan, Alabama

Lease Agreement dated August 18, 2006, between CPCG Gold I, LLC, a Delaware limited liability company ("Landlord") and Goldco, Inc. an Alabama corporation ("Tenant), as assigned by Landlord to GE Capital Franchise Finance Corporation, a Delaware corporation, ("Assignee") by Assignment and Assumption of Lease dated as of May 31, 2007, and as further assigned by Assignee to ARC CAFEUSA001, LLC, a Delaware limited liability company by Assignment and Assumption of Lease Documents dated June 27, 2013.

Asset #	Store #	Address	City	State
6293	4058	832 Hwy 231	Troy	Alabama

Asset # 6293 - 832 Hwy 231, Troy, Alabama

Lease Agreement dated August 18, 2006, between CPCG Gold I, LLC, a Delaware limited liability company ("Landlord") and Goldco, Inc. an Alabama corporation ("Tenant), as assigned by Landlord to GE Capital Franchise Finance Corporation, a Delaware corporation, ("Assignee") by Assignment and Assumption of Lease dated as of May 31, 2007, and as further assigned by Assignee to ARC CAFEUSA001, LLC, a Delaware limited liability company by Assignment and Assumption of Lease Documents dated June 27, 2013

Exhibit A

Legal Descriptions

Legal Description Burger King Store No. 3345

Parcel I

All that tract or parcel of land containing 0.860 acres more or less situated, lying and being in the City of Dothan, AL, and being more particularly described as follows:

BEGINNING at the intersection of the Eastern right of way margin of Ross Clark Circle (variable public right of way) and the Southern right of way margin of West Main Street (U.S. Highway 84) (variable public right of way), thence, along said Southern right of way margin of West Main Street, run North 82° 13' 00" East for a distance of 164.73 feet to an iron pin; thence, continuing along said Southern right of way margin of West Main Street, run North 88° 02' 00" East for a distance of 1.80 feet to an iron pin; thence run South 00° 25' 00" East for a distance of 218.40 feet to an iron pin; thence run South 89° 35' 00" West for a distance of 198.35 feet to an iron pin located on the said Eastern right of way margin of Ross Clark Circle; thence, along said Eastern right of way margin of Ross Clark Circle, run North 09° 08' 00" East for a distance of 200.00 feet to an iron pin and the POINT OF BEGINNING.

Legal Description Burger King Store No. 12279

Parcel I:

All that tract or parcel of land containing 0.867 acres more or less situated, lying and being in the NE 1/4 of the NW 1/4 of Section 29 and the SE 1/4 of the SW 1/4 of Section 20, Township 3 North, Range 27 East of Houston County, Alabama, and being more particularly described as follows:

Commence at the Southwest Corner of the NE 1/4 of the NW 1/4 of Section 29, Township 3 North, Range 27 East of Houston County, Alabama; thence run North 06°40'02" West along the West line of said forty for a distance of 794.12 feet to a point on the East right-of-way margin of Ross Clark Circle; thence run North 14°46'08" East along said Circle for a distance of 311.17 feet to a point; thence run North 14°22'03" East along said Circle for a distance of 131.93 feet to a point; thence run South 76°37'00" East for a distance of 69.28 feet to a point; thence run North 12°11'59" East for a distance of 54.60 feet to a point, said point being the True Point of Beginning; thence continue North 12°11'59" East for a distance of 150.00 feet to a point; thence run South 77°48'01" East for a distance of 251.93 feet to a point; thence run South 12°11'59" West for a distance of 150.00 feet to a point; thence run North 77°48'01" West for a distance of 251.93 feet to the Point of Beginning.

Legal Description Burger King Store No. 4058

Parcel I:

All that tract or parcel of land containing 5.864 acres more or less situated, lying and being in the South 1/2 of the SW 1/4 of the NE 1/4 of Section 5, Township 9 North, Range 21 East, Pike County, Alabama, and being more particularly described as follows:

Commence at the South 1/2 of the SW 1/4 of the NE 1/4 of Section 5, Township 9 North, Range 21 East, Pike County, Alabama and the West right-of-way margin of South Brundidge Street; thence run South 03°08'00" East along the West right-of-way margin of said South Brundidge Street for a distance of 513.18 feet to a point North right-of-way margin of U.S. Highway #231, said point being the True Point of Beginning; thence run South 62°29'00" West along said Highway flare for a distance of 111.50 feet to a point; thence run North 66°49'00" West along said flare for a distance of 204.50 feet to a point; thence run North 18° 11' 00" East for a distance of 113.00 feet to a point; thence run South 87°49'00" East for a distance of 270.00 feet to a point on the West right-of-way margin of South Brundidge Street; thence run South 08°12'44" West along said right-of-way margin for a distance of 127.37 feet to a point and back to the True Point of Beginning.

SCHEDULE 1

ASSET # 6124 Dothan, AL

Current Annual Rent of \$116,965.32 with rent increases to \$121,351.52 on April 1, 2014 and to \$125,737.72 on September 1, 2016. Rent increases of seven and one half percent (7.5%) every five (5) years thereafter.

ASSET # 6275 Dothan, AL

Current Annual Rent of \$116,966.52 with rent increases to \$121,352.76 on April 1, 2014 and to \$125,739.01 on September 1, 2016. Rent increases of seven and one half percent (7.5%) every five (5) years thereafter.

ASSET # 6293 Troy, AL

Current Annual Rent of \$120,190.44 with rent increases to \$124,697.58 on April 1, 2014 and to \$129,204.72 on September 1, 2016. Rent increases of seven and one half percent (7.5%) every five (5) years thereafter.

ASSIGNMENT AND ASSUMPTION OF LEASE
(Goldco Portfolio)

THIS ASSIGNMENT AND ASSUMPTION OF LEASE (the "Assignment") is made as of this 31st day of May 2007 ("Effective Date") by and between CPCG GOLD I, LLC, a Delaware limited liability company ("Assignor") and the entity shown as Assignee on the signature page hereof ("Assignee").

WHEREAS, Assignor is presently the holder of the lessor's interest under the leases and the other lease documents listed on Exhibit A attached hereto (collectively, the "Leases") and by this reference incorporated herein. The Leases affect the real property described on Exhibit B attached hereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. As of the Effective Date, Assignor hereby assigns, conveys, transfers and sets over unto Assignee all of Assignor's right, title and interest in, to and under the Leases, including, without limitation, all of Assignor's right, title and interest in and to security or other deposits and in and to any claims for rent, arrears rent or any other claims arising under the Leases against any lessee thereunder, subject to the rights of the respective lessees under the respective Leases.

2. Assumption. Assignee hereby accepts such assignment and assumes and agrees to pay all sums, and perform, fulfill and comply with all covenants and obligations, which are to be paid, performed, fulfilled and complied with by the lessor under the Leases, from and after the Effective Date.

3. Assignee's Indemnification of Assignor. Assignee shall and does hereby indemnify Assignor against, and agrees to hold Assignor harmless for, from and against all liabilities, obligations, actions, suits, proceedings or claims, and all costs and expenses, including but not limited to reasonable attorneys' fees, incurred in connection with the Leases, based upon or arising out of any breach or alleged breach of the Leases by Assignee occurring or alleged to have occurred after the Effective Date.

4. Assignor's Indemnification of Assignee. Assignor shall and does hereby indemnify Assignee against, and agrees to hold Assignee harmless for, from and against all liabilities, obligations, actions, suits, proceedings or claims, and all costs and expenses, including but not limited to reasonable attorneys' fees, incurred in connection with the Leases, based upon or arising out of any breach or alleged breach of the Leases by Assignor occurring or alleged to have occurred on or prior to the Effective Date.

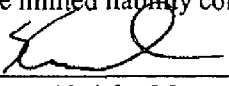
5. Binding Effect. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

6. Counterparts. The parties agree that this Assignment may be executed by the parties in one or more counterparts and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee have duly executed this Assignment as of the day and year first above written.

Assignor:

CPCG GOLD I, LLC,
a Delaware limited liability company

By: 
Kenton Wright, Manager

[Assignee's Signature page follows.]

Assignee's Signature Page to Assignment and Assumption of Lease
(Goldco Portfolio)

Assignee:

GE CAPITAL FRANCHISE FINANCE CORPORATION,
a Delaware corporation

By:

Barbara Adam

Name

Barbara Adam

Its

Authorized Signatory

EXHIBIT A

THE LEASES

"Leases" made as of August 18, 2006 by and between Assignor as Landlord, and GOLDCO, INC., an Alabama corporation, as Tenant, which demise certain premises located at:

1. 3092 Ross Clark Circle, Store #3345, Dothan, Alabama
2. 832 Highway 231, Store #4058, Troy, Alabama
3. 1165 Ross Clark Circle, Store #12279 Dothan, Alabama

EXHIBIT B

LEGAL DESCRIPTION OF REAL PROPERTY

[attached on the immediately following pages]

Legal Description
Burger King Store No. 3345

Parcel I

All that tract or parcel of land containing 0.860 acres more or less situated, lying and being in the City of Dothan, AL, and being more particularly described as follows:

BEGINNING at the intersection of the Eastern right of way margin of Ross Clark Circle (variable public right of way) and the Southern right of way margin of West Main Street (U.S. Highway 84) (variable public right of way), thence, along said Southern right of way margin of West Main Street, run North 82° 13' 00" East for a distance of 164.73 feet to an iron pin; thence, continuing along said Southern right of way margin of West Main Street, run North 88° 02' 00" East for a distance of 1.80 feet to an iron pin; thence run South 00° 25' 00" East for a distance of 218.40 feet to an iron pin; thence run South 89° 35' 00" West for a distance of 198.35 feet to an iron pin located on the said Eastern right of way margin of Ross Clark Circle; thence, along said Eastern right of way margin of Ross Clark Circle, run North 09° 08' 00" East for a distance of 200.00 feet to an iron pin and the POINT OF BEGINNING.

Legal Description
Burger King Store No. 4058

Parcel I

All that tract or parcel of land containing 0.96 acres more or less situated, lying and being in the South 1/2 of the SW 1/4 of the NE 1/4 of Section 5, Township 9 North, Range 21 East, Pike County, Alabama, and being more particularly described as follows:

Commence at the South 1/2 of the SW 1/4 of the NE 1/4 of Section 5, Township 9 North, Range 21 East, Pike County, Alabama and the West right-of-way margin of South Brundidge Street; thence run South 03°08'00" East along the West right-of-way margin of said South Brundidge Street for a distance of 518.18 feet to a point North right-of-way margin of U.S. Highway #231, said point being the True Point of Beginning; thence run South 62°29'00" West along said Highway flare for a distance of 111.50 feet to a point; thence run North 66°49'00" West along said flare for a distance of 204.50 feet to a point; thence run North 18° 11' 00" East for a distance of 113.00 feet to a point; thence run South 87°49'00" East for a distance of 270.00 feet to a point on the West right-of-way margin of South Brundidge Street; thence run South 08°12'44" West along said right-of-way margin for a distance of 127.37 feet to a point and back to the True Point of Beginning.

Legal Description
Burger King Store No. 12279

Parcel I:

All that tract or parcel of land containing 0.867 acres more or less situated, lying and being in the NE 1/4 of the NW 1/4 of Section 29 and the SE 1/4 of the SW 1/4 of Section 20, Township 3 North, Range 27 East of Houston County, Alabama, and being more particularly described as follows:

Commence at the Southwest Corner of the NE 1/4 of the NW 1/4 of Section 29, Township 3 North, Range 27 East of Houston County, Alabama; thence run North 00°40'02" West along the West line of said forty for a distance of 794.12 feet to a point on the East right-of-way margin of Ross Clark Circle; thence run North 14°46'08" East along said Circle for a distance of 311.17 feet to a point; thence run North 14°22'03" East along said Circle for a distance of 131.93 feet to a point; thence run South 76°37'00" East for a distance of 69.28 feet to a point; thence run North 12°11'59" East for a distance of 54.60 feet to a point, said point being the True Point of Beginning; thence continue North 12°11'59" East for a distance of 150.00 feet to a point; thence run South 77°48'01" East for a distance of 251.93 feet to a point; thence run South 12°11'59" West for a distance of 150.00 feet to a point; thence run North 77°48'01" West for a distance of 251.93 feet to the Point of Beginning.

MASTER ASSIGNMENT AND ASSUMPTION OF LEASE DOCUMENTS

THIS MASTER ASSIGNMENT AND ASSUMPTION OF LEASE DOCUMENTS (this "Assignment") is effective as of July 31, 2013 (the "Effective Date"), between GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation ("Assignor"), and ARC CAFEUSA001, LLC, a Delaware limited liability company ("Assignee").

A. Assignor, as the landlord, leases the real property and improvements described by address and Asset Number on *Exhibit A* (the "Premises") to the corresponding tenants of the Premises as indicated on *Exhibit A* (collectively, the "Tenants"), pursuant to leases for the Premises (such leases, together with any guaranty(ies) thereof, and any amendments, supplements or assignments thereto, collectively the "Lease Documents").

B. Assignor and American Realty Capital Operating Partnership IV, L.P., a Delaware limited partnership ("ARC"), among others, entered into that certain Purchase and Sale Agreement dated as of June 2, 2013 (the "Purchase Agreement"), whereby Assignor agreed to sell to ARC or its designee, and ARC agreed to purchase or cause its designee to purchase from Assignor the Premises.

C. ARC has designated Assignee to purchase the Premises.

D. Pursuant to the Purchase Agreement, Assignor agreed to assign to Assignee and Assignee agreed to assume Assignor's interest and obligations as landlord in, to and under the Lease Documents, subject to and in accordance with the provisions hereof.

E. In connection with the conveyance of the Premises, Assignor desires to assign to Assignee and Assignee desires to assume all of Assignor's interest and obligations as landlord in, to and under the Lease Documents, subject to and in accordance with the provisions hereof.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignment. Subject to the terms and conditions of the Purchase Agreement, Assignor hereby assigns unto Assignee all of Assignor's right, title, interest, responsibilities, liabilities and obligations in, to and under the Lease Documents from and after the Effective Date. Assignor represents and warrants to Assignee that: (a) Assignor has not assigned any of its right, title, interest, responsibilities, liabilities or obligations under the Lease Documents to any other party, and (b) Assignor has full power and authority to assign all of its right, title, interest, responsibilities, liabilities and obligations under the Lease Documents to Assignee by virtue of this Assignment.

2. Acceptance and Assumption. As of the Effective Date, Assignee hereby (a) accepts this assignment of all of Assignor's rights, title, and interest under the Lease Documents; and (b) assumes and agrees to perform and observe all of Assignor's covenants, responsibilities, and obligations set forth in the Lease Documents arising from and after the Effective Date.

3. Indemnity. Assignor and Assignee shall each have the indemnification rights and obligations with respect to the Lease Documents as are provided in Article X of the Purchase Agreement, which shall be the sole indemnification rights and obligations with respect to the assignment and assumption of the Lease Documents provided for in this Assignment.

4. As-Is Assignment. Other than and except for the express representations and warranties with respect to the Lease Documents, the Leases, the Tenants, and the Premises made by Assignor to Assignee in the Purchase Agreement, Assignee acknowledges and agrees (a) that the Lease Documents are being assigned "AS-IS", and not in reliance on any agreement, understanding, condition, warranty or representation made by Assignor or any agent or employee of Assignor as to the condition, enforceability or quality thereof, as to the rent or other amounts payable thereunder, or as to any other matter in connection therewith, and (b) that neither Assignor nor any party

acting on behalf of Assignor has made or shall be deemed to have made any such agreement, condition, representation or warranty.

5. Binding Effect. This Assignment shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns.

6. Governing Law. This Assignment will be governed by, and construed and enforced in accordance with, the laws of the state in which the Premise is located, regardless of the laws that might otherwise govern under applicable conflicts of law principles thereof.

7. Right to Jury Trial. ASSIGNOR AND ASSIGNEE EACH IRREVOCABLY WAIVES ITS RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS ASSIGNMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

8. Jurisdiction. Assignor and Assignee each (a) irrevocably consents to submit itself to the exclusive jurisdiction of any federal or state court sitting in Manhattan, New York in the event any dispute arises out of this Assignment or any of the transactions contemplated by this Assignment and (b) waives any objection that it may now or hereafter have to the venue or jurisdiction of any such dispute in any such court or that such dispute was brought in an inconvenient forum, and agrees not to plead or claim the same.

9. Tenant's Obligations. Notwithstanding any other provision of this Assignment but subject to the limitations contained in the Purchase Agreement, this Assignment shall not be interpreted or construed as modifying, amending, terminating, limiting or affecting in any manner, and Assignor retains any and all claims or causes of action that Assignor may have concerning, each Tenant's indemnification and hold harmless obligations to Assignor set forth in the Lease Documents.

10. Recording of Memorandum of Assignment. Concurrently with the execution of this Assignment, the parties shall execute a memorandum of this Assignment for each Premises for which a memorandum of lease is already recorded in the county records, and such memorandum of assignment shall be recorded in the applicable county recorder's office at Assignee's sole cost and expense.

11. Counterparts. This Assignment may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. This Assignment may be executed by facsimile signature or in portable document format (PDF).

12. Further Assurances. Assignor and Assignee agree that, from time to time, whether before, at or after the Effective Date, each of them will execute and deliver such further instruments of assignment and transfer and take such other actions as may be necessary to carry out the purposes and intents of this Assignment.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have entered into this Assignment as of the Effective Date.

ASSIGNOR:

**GE CAPITAL FRANCHISE FINANCE
CORPORATION**, a Delaware corporation

By: _____

Todd V. Jones

Authorized Signatory

[SIGNATURES CONTINUE ON NEXT PAGE]

ASSIGNEE:

ARC CAFEUSA001, LLC, a Delaware limited liability company

By: American Realty Capital Operating Partnership IV, L.P., a Delaware limited partnership, its sole member

By: 

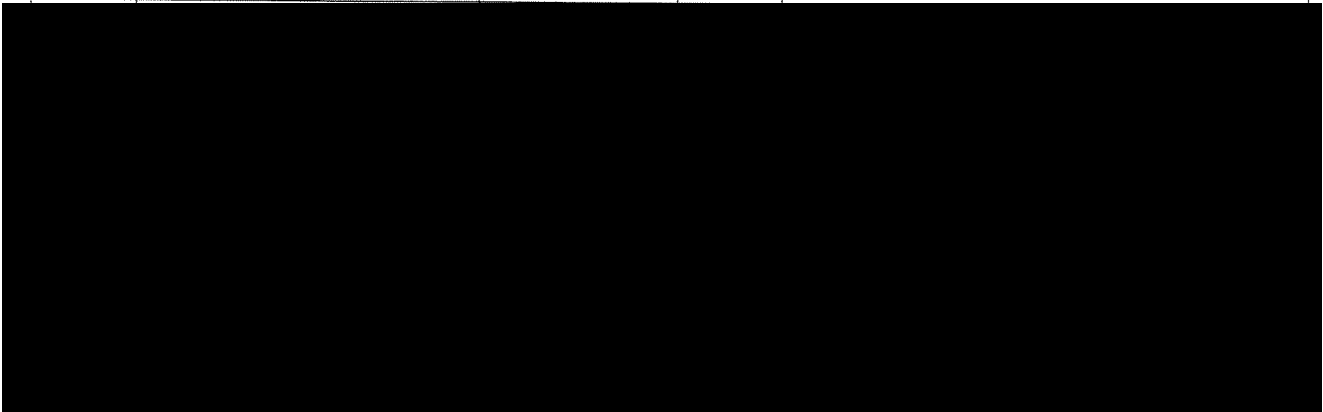
O. Akomea Poku-Kankam
Authorized Signatory

EXHIBIT A

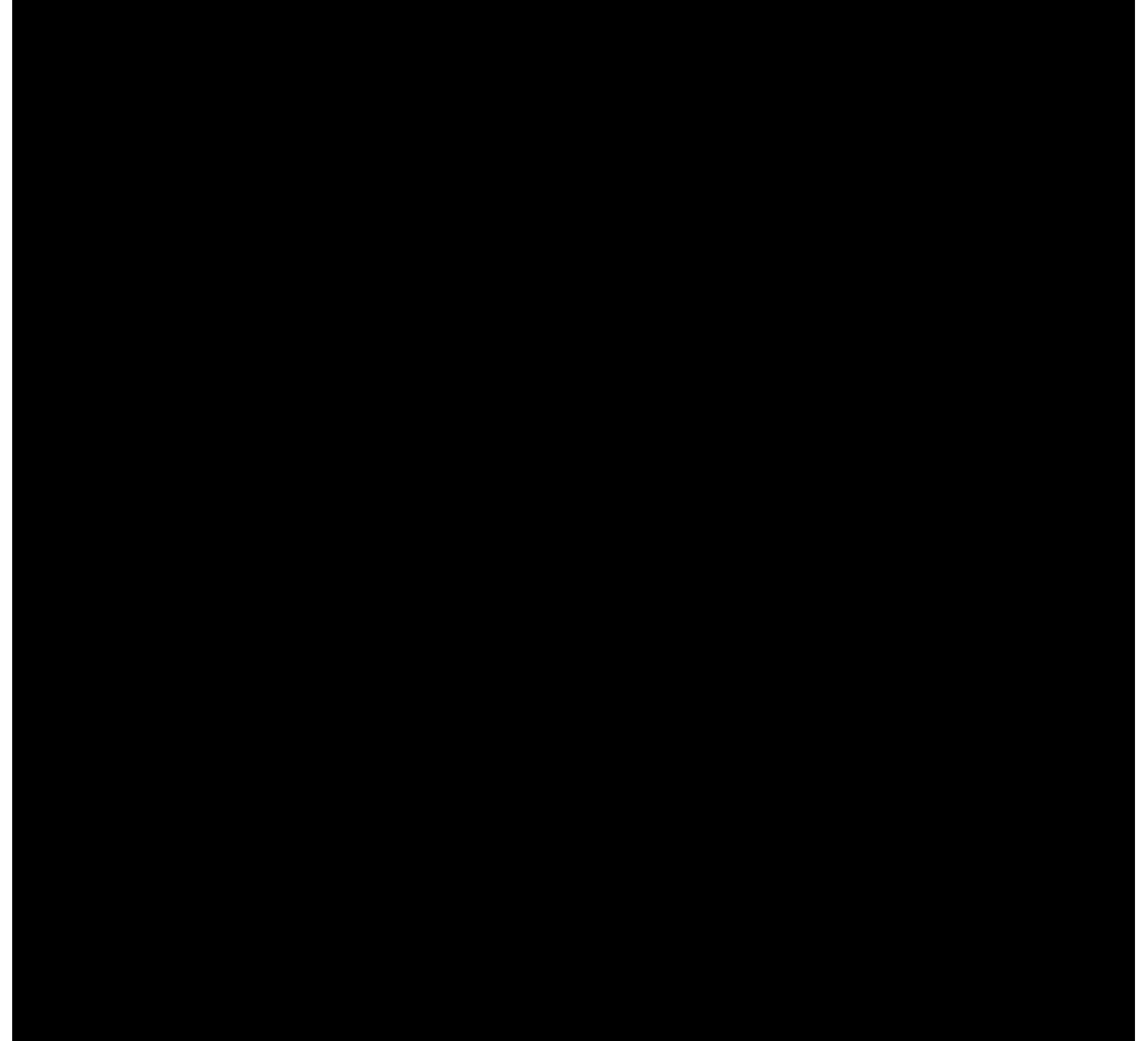
LEASE INFORMATION

Asset No.	Street Address	City	ST	Tenant

Asset No.	Street Address	City	ST	Tenant
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6275	1165 Ross Clark Circle	Dothan	AL	Goldco, LLC
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ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT

THIS ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT (this "Agreement") is made effective as of June 30, 2014 (the "Effective Date"), by and among ARC CAFEUSA001, LLC, a Delaware limited liability company ("Landlord"), GOLDCO, LLC, an Alabama limited liability company ("Tenant"), and BURGER GULF COAST, LLC, a Delaware limited liability company ("Assignee").

RECITALS

Landlord and Tenant are parties to that certain Lease dated as of August 18, 2006, as amended by Master First Lease Amendment dated effective November 15, 2013, and as assigned (collectively, the "Lease"), with respect to real property located at 1165 Ross Clark Circle, Dothan, Alabama. Tenant desires to assign all of its right, title and interest under the Lease to Assignee and Assignee desires to accept and assume the same under the terms and conditions set forth below. Tenant and Assignee have requested that Landlord execute this Agreement to evidence its consent to such assignment.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord, Tenant and Assignee hereby agree as follows:

1. **Defined Terms.** Except for those terms expressly defined in this Agreement, all capitalized terms used herein shall have the meanings set forth in the Lease.
2. **Assignment.** As of the Effective Date, Tenant hereby assigns to Assignee all of its right, title and interest in and to the Lease (the "Assignment").
3. **Acceptance of Assignment.** Assignee hereby accepts the Assignment, agrees to be substituted in the place of Tenant as "Tenant" under the Lease and agrees to be bound by all of the terms and conditions of the Lease and this Agreement.
4. **No Release of Tenant.** Nothing contained in this Agreement will act to release Tenant from any of its duties or obligations under the Lease.
5. **Consent to Assignment.** Landlord hereby consents to the Assignment, which shall not be construed to constitute consent to any future assignment or transfer of this Agreement or the Lease by Assignee. The effectiveness of Landlord's consent set forth herein is subject to the following conditions:
 - (a) **Proof of Insurance.** On or prior to the Effective Date, Assignee shall have provided Landlord with evidence satisfactory to Landlord that all insurance required by the Lease is in full force and effect.

(b) Franchise Agreement. On or prior to the Effective Date, Tenant or Assignee shall have provided Landlord with evidence satisfactory to Landlord that either Tenant's franchise agreement with Burger King Corporation ("Franchisor") has been assigned to Assignee, or that Franchisor and Assignee have entered into a new franchise agreement, and all assignment and/or franchise fees in connection therewith have been paid or waived and Assignee is in good standing with Franchisor.

(c) Fees and Expenses. Tenant and Assignee agree that the following amounts shall be paid to Landlord on or prior to the Effective Date: (i) the Base Monthly Rental due to Landlord for July, 2014, (ii) a \$500 administrative and processing fee, to be paid by Tenant, (iii) all out of pocket expenses incurred by Landlord in connection with this Agreement, including reasonable attorneys' fees, to be paid by Tenant, and (iv) all other fees and amounts required to be paid pursuant to this Agreement and together with any other outstanding unpaid fees and costs due under the Lease, to be paid by Tenant.

6. **Representations and Warranties.**

(a) The representations and warranties of Tenant contained in this Section are being made to induce Landlord and Assignee to execute and deliver this Agreement and Landlord and Assignee have relied, and will continue to rely, upon such representations and warranties. Tenant represents and warrants to Landlord as follows:

(i) *Organization, Authority and Status of Tenant.*

(1) Tenant has been duly organized or formed, is validly existing and in good standing under the laws of its state of formation. All necessary action has been taken to authorize the execution, delivery and performance by Tenant of this Agreement and of the other documents, instruments and agreements provided for herein.

(2) The person who has executed this Agreement on behalf of Tenant is duly authorized to do so.

(ii) *Lease.* The Lease has not been modified, amended, supplemented, assigned by Tenant or otherwise revised and is the only lease between Landlord and Tenant with respect to the Premises. The Premises is not subject to any subleases other than the Lease. The Lease is in full force and effect against Tenant and constitutes the legal, valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms. To Tenant's knowledge, no event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default under the Lease. As of the Effective Date, to Tenant's knowledge, Tenant has no defenses, offsets, counterclaims, claims or demands of any nature which can be asserted against Landlord.

(iii) *Litigation.* There are no suits, actions, proceedings or investigations pending, or to the best of its knowledge, threatened against or involving Tenant or the Premises which might reasonably result in a material

adverse change in the contemplated business, condition, worth or operations of Tenant or the Premises.

(iv) *Absence of Breaches or Defaults.* Tenant is not in default under any document, instrument or agreement to which Tenant is a party or by which Tenant, the Premises or any of Tenant's property is subject or bound which default might reasonably result in a material adverse change in the business, condition, worth or operations of Tenant. The authorization, execution, delivery and performance of this Agreement and the documents, instruments and agreements provided for herein will not result in any breach of or default under any document, instrument or agreement to which Tenant is a party or by which Tenant or any of Tenant's property is subject or bound.

(v) *Taxes.* There are no taxes or assessments which are the responsibility of Tenant under Section 9 that are delinquent or on which there is an unpaid balance against which interest is accruing.

(b) The representations and warranties of Assignee contained in this Section are being made to induce Tenant and Landlord to execute and deliver this Agreement and Tenant and Landlord have relied, and will continue to rely, upon such representations and warranties. Assignee represents and warrants to Landlord as follows:

(i) *Organization, Authority and Status of Assignee.*

(1) Assignee has been duly organized or formed, is validly existing and in good standing under the laws of its state of formation. All necessary action has been taken to authorize the execution, delivery and performance by Assignee of this Agreement and of the other documents, instruments and agreements provided for herein.

(2) The person who has executed this Agreement on behalf of Assignee is duly authorized to do so.

(3) Assignee certifies that it is not acting, directly or indirectly, for or on the behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "**Specifically Designated National and Blocked Person**" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and Assignee further certifies it is not engaged in the transaction, directly or indirectly, on behalf of, or instigation or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Assignee hereby agrees to defend, indemnify, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, and expenses (including

attorneys' fees and costs) arising from or related to any breach of the foregoing certification.

(ii) *Litigation.* There are no suits, actions, proceedings or investigations pending, or to the best of its knowledge, threatened against or involving Assignee or the Premises which might reasonably result in any material adverse change in the contemplated business, condition, worth or operations of Assignee or the Premises.

(iii) *Absence of Breaches or Defaults.* Assignee is not in default under any document, instrument or agreement to which Assignee is a party or by which Assignee, the Premises or any of Assignee's property is subject or bound. The authorization, execution, delivery and performance of this Agreement and the documents, instruments and agreements provided for herein will not result in any breach of or default under any document, instrument or agreement to which Assignee is a party or by which Assignee, the Premises or any of Assignee's property is subject or bound.

7. **Release.** Tenant hereby fully and forever releases and discharges Landlord and its officers, directors, employees, affiliates, successors and assigns (collectively, the "**Released Parties**"), as applicable, for, from and against any and all obligations, claims and liabilities of any nature (matured or unmatured, known or unknown), which Tenant may have or hereafter have or claim to have against Landlord by reason of any act or matter arising and accruing in connection with the Lease or the Premises on or prior to the Effective Date. Tenant hereby agrees and covenants not to sue the Released Parties (without limiting any defenses Tenant may assert with respect to any action brought by Landlord against Tenant) for any act or matter arising and accruing in connection with the Lease or the Premises on or prior to the Effective Date.

8. **Notice Addresses.** All notices that may be given under the terms of the Lease to Landlord and/or Assignee shall be in writing and given in the manner permitted under the Lease to the address of Landlord and Assignee listed below or any subsequent address that either party may notify the other party of in the manner permitted under the Lease:

To Landlord:

Landlord's Address for Payments: ARC CAFEUSA001, LLC
[REDACTED]
[REDACTED]
P.O. Box 29650
Phoenix, Arizona 85038-9650

Landlord's Address for Notices: ARC CAFEUSA001, LLC
c/o American Realty Capital Properties, Inc.
2325 East Camelback Road, Suite 1100
Phoenix, Arizona 85016
Attention: Property Manager

With a copy of all Notices to:

ARC CAFEUSA001, LLC
c/o American Realty Capital Properties, Inc.
2600 Maitland Center Parkway, Suite 165
Maitland, Florida 32751
Attention: Asset Management

To Assignee:

BURGER GULF COAST, LLC
196 University Parkway #200
Pomona, CA 91768
Attention: Kishan Patel

With a copy to:

ANAND ENTERPRISE, INC.
648 Riviera Drive
Boynton Beach, Florida 33435
Attention: Anand Patel

And with a copy to:

Lowndes, Drosdick, Doster, Kantor &
Reed, P.A.
215 North Eola Drive
Orlando, FL 32801
Attention: Jacqueline Bozzuto, ESQ

9. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

10. **Severability.** If any provision of this Agreement or the application thereof to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

11. **Effect of Agreement.** Except as expressly modified herein, the Lease is unmodified and shall continue in full force and effect. In the event of any conflict between the terms of the Lease and the terms of this Agreement, this Agreement shall control.


12. **Broker.** Tenant and Assignee each represents that it has not dealt with any broker in connection with this Agreement, except for TM Capital Corp who represents Tenant, and that no broker negotiated this Agreement on behalf of Tenant or Assignee and is entitled to any commission in connection therewith, and Tenant and Assignee each hereby agrees to indemnify and hold Landlord harmless for, from and against all claims to any commission or other payments due by anyone claiming representation of Tenant or Assignee, as applicable, in connection with this Agreement.

WHEREFORE, the parties hereto have executed this Agreement as of the day and date first above written.

LANDLORD:

ARC CAFEUSA001, LLC, a Delaware limited liability company

By: ARC Operating Partnership, L.P., a Delaware limited partnership, its sole member

By: 
Todd J. Weiss, Authorized Signatory

Signature Date: June 30, 2014

TENANT:

GOLDCO, LLC, an Alabama limited liability company

By _____
Printed Name _____
Its _____

Signature Date: _____, 2014

ASSIGNEE:

BURGER GULF COAST, LLC, a Delaware limited liability company

By _____
Printed Name _____
Its _____

Taxpayer Identification Number: _____

Signature Date: _____, 2014

WHEREFORE, the parties hereto have executed this Agreement as of the day and date first above written.

LANDLORD:

ARC CAFEUSA001, LLC, a Delaware limited liability company

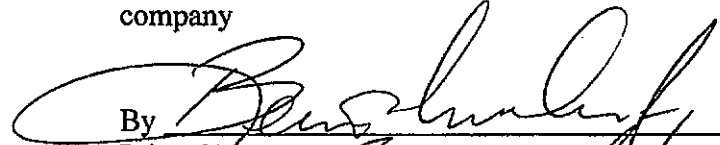
By: ARC Operating Partnership, L.P., a Delaware limited partnership, its sole member

By: _____
Todd J. Weiss, Authorized Signatory

Signature Date: _____, 2014

TENANT:

GOLDCO, LLC, an Alabama limited liability company

By 
Printed Name Bennie About
Its President

Signature Date: June 30, 2014

ASSIGNEE:

BURGER GULF COAST, LLC, a Delaware limited liability company

By _____
Printed Name _____
Its _____

Taxpayer Identification Number: _____

Signature Date: _____, 2014

WHEREFORE, the parties hereto have executed this Agreement as of the day and date first above written.

LANDLORD:

ARC CAFEUSA001, LLC, a Delaware limited liability company

By: ARC Operating Partnership, L.P., a Delaware limited partnership, its sole member

By: _____
Todd J. Weiss, Authorized Signatory

Signature Date: _____, 2014

TENANT:

GOLDCO, LLC, an Alabama limited liability company

By _____
Printed Name _____
Its _____

Signature Date: _____, 2014

ASSIGNEE:

BURGER GULF COAST, LLC, a Delaware limited liability company

By: Anand. d. Patel
Printed Name Anand Patel
Its member

Taxpayer Identification Number: _____

Signature Date: 6/30, 2014

Prepared by and Return to:

John A. Howard, Esq.
5529 Carmichael Road
Montgomery, AL 36117

ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT

THIS ASSIGNMENT, ASSUMPTION AND CONSENT AGREEMENT (this "Agreement") is made effective as of October 26, 2016 (the "Effective Date"), by and among ARC CAFEUSA001, LLC, a Delaware limited liability company ("Lessor"), BURGER GULF COAST, LLC, a Delaware limited liability company ("Lessee"), and PREMIER KINGS, INC., an Alabama corporation ("Assignee").

RECITALS

WHEREAS, Lessor and Lessee are parties to that certain Lease dated as of August 18, 2006, as amended by that certain Assignment and Assumption of Lease dated May 31, 2007, that certain Assignment and Assumption of Lease Documents dated July 31, 2013, that certain Master First Lease Amendment dated November 14, 2013, that certain Consent to Prohibited Transaction and Waiver of Default dated November 14, 2013, and that certain Assignment, Assumption and Consent Agreement dated June 30, 2014 (the "2014 Assignment") (collectively, the "Lease"), originally entered into by and between CPCG GOLD I, LLC, a Delaware limited liability company ("Original Lessor"), as lessor, and GOLDCO, INC., an Alabama corporation ("Original Lessee") as lessee, with respect to real property located at 1165 Ross Clark Circle, Dothan, Alabama, 36330 (#12279), more particularly described in Exhibit "B" attached hereto and incorporated herein by reference (the "Premises"), as evidenced of record by that certain Memorandum of Lease, a copy of which is attached hereto for reference as Exhibit "C".

WHEREAS, Lessor is the successor in interest to Original Lessor.

WHEREAS, Lessee is the successor in interest to Original Lessee and is the current holder of the leasehold estate as evidenced by the 2014 Assignment, a copy of which is attached hereto as Exhibit "A".

WHEREAS, Lessee desires to assign all of its right, title and interest under the Lease to Assignee and Assignee desires to accept and assume the same under the terms and conditions set forth below.

WHEREAS, Lessee and Assignee have requested that Lessor execute this Agreement to, among other things, evidence its consent to such assignment.

3. **Acceptance of Assignment.** Assignee hereby accepts the Assignment, agrees to be substituted in place of Lessee as "Lessee" under the Lease and agrees to be bound by all of the terms and conditions of the Lease and this Agreement.
4. **No Release of Lessee.** Nothing contained in this Agreement will act to release Lessee from any of its duties or obligations under the Lease.
5. **Consent to Assignment.** Lessor hereby consents to the Assignment, which shall not be construed to constitute consent to any future assignment or transfer of the Agreement or the Lease by Assignee. The effectiveness of Lessor's consent set forth herein is subject to the following conditions:
 - (a) **Proof of Insurance.** On or prior to the Effective Date, Assignee shall have provided Lessor with evidence satisfactory to Lessor that all insurance required by the Lease is in full force and effect.
 - (b) **Franchise Agreement.** On or prior to the Effective Date, Lessee or Assignee shall have provided Lessor with evidence satisfactory to Lessor that with Lessee's franchise agreement with Burger King Corporation ("Franchisor") has been assigned to Assignee, or that Franchisor and Assignee have entered into a new franchise agreement, and all assignment and/or franchise fees in connection therewith have been paid or waived and Assignee is in good standing with Franchisor.
 - (c) **Fees and Expenses.** Lessee and Assignee agree that the following amounts shall be paid to Lessor on or prior to the Effective Date: (i) a \$500 administrative and processing fee, to be paid by Lessee, (ii) all out of pocket expenses incurred by Lessor in connection with this Agreement, including reasonable attorneys' fees, to be paid by Lessee, and (iii) all other fees and amounts required to be paid pursuant to this Agreement and together with any other outstanding unpaid fees and costs due under the Lease, to be paid by Lessee.
6. **Representations and Warranties.**
 - (a) The representations and warranties of Lessee contained in this Section are being made to induce Lessor and Assignee to execute and deliver this Agreement and Lessor and Assignee have relied, and will continue to rely, upon such representations and warranties. Lessee represents and warrants to Lessor as follows:
 - (i) **Organization, Authority and Status of Lessee.**
 1. Lessee has been duly organized or formed, are validly existing and in good standing under the laws of its state of formation. All necessary action has been taken to authorize the execution, delivery and performance by Lessee of this Agreement and of the other documents, instruments and agreements provided for herein.

2. The person who has executed this Agreement on behalf of the Lessee is duly authorized to do so.
 - (ii) *Lease.* The Lease has not been modified, amended, supplemented, assigned by Lessee or otherwise revised and is the only lease between Lessor and Lessee with respect to the Premises. The Premises is not subject to any subleases other than the Lease. The Lease is in full force and effect against Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms. To Lessee's knowledge, no event has occurred and no condition exists which, with the giving of notice or the lapse of time or both, would constitute a default under the Lease. As of the Effective Date, to Lessee's knowledge, Lessee has no defenses, offsets, counterclaims, claims or demands of any nature which can be asserted against Lessor.
 - (iii) *Litigation.* There are no suits, actions proceedings or investigations pending, or to the best of its knowledge, threatened against or involving Lessee, or the Premises which might reasonably result in a material adverse change in the contemplated business, condition, worth or operations of Lessee, or the Premises.
 - (iv) *Absence of Breaches or Defaults.* Lessee is not in default under the Lease, or any document, instrument or agreement to which Lessee is a party or by which such party, the Premises or any of Lessee's property is subject or bound which default might reasonably result in a material adverse change in the business, condition, worth or operations of Lessee. The authorization, execution, delivery and performance of this Agreement and the documents, instruments and agreements provided for herein will not result in any breach of or default under any document, instrument or agreement to which Lessee is a party or by which Lessee or any of Lessee's property is subject or bound.
 - (v) *Taxes.* There are no taxes or assessments which are the responsibility of Lessee under Section 9 of the Lease that are delinquent or on which there is an unpaid balance against which interest is accruing.
- (b) The representations and warranties of Assignee contained in this Section are being made to induce Lessee and Lessor to execute and deliver this Agreement and Lessee and Lessor have relied, and will continue to rely, upon such representations and warranties. Assignee represents and warrants to Lessor as follows:
 - (i) *Organization, Authority and Status of Assignee.*
 1. Assignee has been duly organized or formed, is validly existing and in good standing under the laws of its state of formation. All necessary action has been taken to authorize the execution,

delivery and performance by Assignee of this Agreement and of the other documents, instruments and agreements provided for herein.

2. The person who has executed this Agreement on behalf of Assignee is duly authorized to do so.
3. Assignee certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specifically Designated National and Blocked Person" or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and Assignee further certifies it is not engaged in the transaction, directly or indirectly, on behalf of, or instigation or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Assignee hereby agrees to defend, indemnify, and hold harmless Lessor from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorneys' fees and costs) arising from or related to any breach of the foregoing certification.
 - (ii) *Litigation.* There are no suits, actions, proceedings, or investigations pending, or to the best of its knowledge, threatened against or involving Assignee or the Premises which might reasonably result in any material adverse change in the contemplated business, condition, worth or operations of Assignee or the Premises.
 - (iii) *Absence of Breaches or Defaults.* Assignee is not in default under any document, instrument or agreement to which Assignee is a party or by which Assignee, the Premises or any of Assignee's property is subject or bound. The authorization, execution, delivery and performance of this Agreement and the documents, instruments and agreements provided for herein will not result in any breach of or default under any document, instrument or agreement to which Assignee is a party or by which Assignee, the Premises or any of the Assignee's property is subject or bound.
7. **Cross Default.** The parties acknowledge and agree that the Lease contains cross default provisions, and that such provisions shall only apply to the Related Leases (as defined in the Lease) in which Assignee or its affiliate, successor or assign is the tenant/lessee. It is expressly acknowledged that the purpose of this provision is to prohibit any cross default between the Lease and another lease in which the tenant is not the Assignee or an affiliate of Assignee.
8. **Release.**

- (a) Lessee hereby fully and forever releases and discharges Lessor and its officers, directors, employees, affiliates, successors and assigns (collectively, the **"Released Parties"**), as applicable, for, from and against any and all obligations, claims and liabilities of any nature (matured or unmatured, known or unknown), which Lessee may have or hereafter have or claim to have against Lessor by reason of any act or matter arising and accruing in connection with the Lease or the Premises on or prior to the Effective Date. Lessee hereby agrees and covenants not to sue the Released Parties (without limiting any defenses Lessee may assert with respect to any action brought by Lessor against Lessee) for any act or matter arising and accruing in connection with the Lease or the Premises on or prior to the Effective Date.
- b. Neither the Assignment nor the consent thereto contained herein shall release or discharge Lessee from any liability under the Lease and Lessee shall remain liable and responsible for the full performance and observance of, and the full compliance with, all of the provisions of the Lease to be performed, observed and complied with by Lessee thereunder.
9. **Notice Addresses.** All notices that may be given under the terms of the Lease to Lessor and/or Assignee shall be in writing and given in the manner permitted under the Lease to the address of Lessor and Assignee listed below or any subsequent address that either party may notify the other party of in the manner permitted under the Lease:

To: Lessor

Lessor's Address for Payments
via Standard Mail:

ARC CAFEUSA001, LLC
Dept. [REDACTED]
P. O. Box 29650
Phoenix, Arizona 85038-9650

Lessor's Address for Payments
via Overnight Mail:

JPMorgan Chase (AZ-2170)
Restaurant (JPM) Lockbox Dept. #880044
1820 E. Sky Harbor Circle South
Phoenix, Arizona 85034

Lessor's Address for Notices:

ARC CAFEUSA001, LLC
c/o VEREIT Operating Partnership, L.P.
2325 East Camelback Road, Suite 1100
Phoenix, Arizona 85016
Attention: Property Manager

To Assignee:

Premier Kings, Inc.
5529 Carmichael Road
Montgomery, Alabama 36117

10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures transmitted by facsimile or e-mail, through scanned or electronically transmitted .pdf, .jpg or .tif files, shall have the same effect as the delivery of original signatures and shall be binding upon and enforceable against the parties hereto as if such facsimile or scanned documents were an original executed counterpart.
11. **Severability.** If any provision of this Agreement or the application thereof to any party or circumstance shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.
12. **Effect of Agreement.** Except as expressly modified herein, the Lease is unmodified and shall continue in full force and effect. In the event of any conflict between the terms of the Lease and the terms of this Agreement, this Agreement shall control.
13. **Broker.** Lessee and Assignee each represents that it has not dealt with any broker in connection with this Agreement and that no broker negotiated this Agreement on behalf of Lessee or Assignee and is entitled to any commission in connection therewith, and Lessee and Assignee each hereby agrees to indemnify and hold Lessor harmless for, from and against all claims to any commission or other payments due by anyone claiming representation of Lessee or Assignee, as applicable, in connection with this Agreement.

[SIGNATURES AND ACKNOWLEDGEMENTS APPEAR ON THE FOLLOWING PAGES]

WHEREFORE, the parties hereto have executed this Agreement as of the day and date first above written.

Witnesses:

Pauline Thomas
Print Name: Pauline Thomas

Jamie Ruhl
Print Name: Tambre Ruhl

LESSOR:

ARC CAFEUSA001, LLC, a Delaware limited liability company

By: VEREIT Operating Partnership, L.P., a Delaware limited partnership, its sole member

By: [Signature]
Print Name: Todd J Weiss
Title: Authorized Signatory

STATE OF ARIZONA

COUNTY OF MARICOPA

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Todd J Weiss, who is named as the Authorized Signatory of VEREIT Operating Partnership, L.P., a Delaware limited partnership, the sole member of ARC CAFEUSA001, LLC, a Delaware limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand on 1/25, 2016.

[S E A L]



My Commission Expires:

10/7/20

Katie Kes
Notary Public, State of AZ

Katie Kes
Printed Name of Notary Public

Witnesses:

LESSEE:

BURGER GULF COAST, LLC, a Delaware
limited liability company

Mair A. Dame
Print Name: GAIL A. DAME

By: Anand d. Patel
Name: Anand Patel
Title: Manager

Mary E. Trece
Print Name: Mary E. Trece

STATE OF Missouri

COUNTY OF Cape Girardeau

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Anand Patel, who is named as Manager of BURGER GULF COAST, LLC, a Delaware limited liability company, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand on Oct 25, 2016.

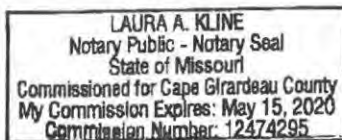
[SEAL]

Laura A. Kline
Notary Public, State of Missouri

My Commission Expires:

5-15-2020

Laura A. Kline
Printed Name of Notary Public



ASSIGNEE:

WITNESSES:

Print Name: _____

Print Name: _____

PREMIER KINGS, INC., an Alabama
corporation

By: _____
Name: Manraj Sidhu
Title: President

STATE OF Alabama
COUNTY OF Montgomery

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Manraj Sidhu, who is named as President of PREMIER KINGS, INC., an Alabama corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand on October 24, 2016.

[S E A L]

My Commission Expires:

MY COMMISSION EXPIRES NOVEMBER 13, 2017

Jessica Wilson
Notary Public, State of Alabama

Jessica Wilson
Print Name of Notary Public

EXHIBIT "A"

Legal Description
Burger King Store No. 12279

Parcel 1:

All that tract or parcel of land containing 0.367 acres more or less situated, lying and being in the NE 1/4 of the NW 1/4 of Section 29 and the SE 1/4 of the SW 1/4 of Section 20, Township 3 North, Range 27 East of Houston County, Alabama, and being more particularly described as follows:

Commence at the Southwest Corner of the NE 1/4 of the NW 1/4 of Section 29, Township 3 North, Range 27 East of Houston County, Alabama; thence run North 06°40'32" West along the West line of said forty for a distance of 734.12 feet to a point on the East right-of-way margin of Ross Clark Circle; thence run North 14°46'08" East along said Circle for a distance of 311.37 feet to a point; thence run North 14°22'03" East along said Circle for a distance of 131.53 feet to a point; thence run South 76°37'00" East for a distance of 69.28 feet to a point; thence run North 12°11'59" East for a distance of 54.60 feet to a point, said point being the True Point of Beginning; thence continue North 12°11'59" East for a distance of 150.00 feet to a point; thence run South 77°48'01" East for a distance of 251.93 feet to a point; thence run South 12°11'59" West for a distance of 150.00 feet to a point; thence run North 77°48'01" West for a distance of 251.93 feet to the Point of Beginning.