

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1914817039

Doc# 1914817039 Fee \$145.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 05/28/2019 11:12 AM PG: 1 OF 20

The property identified as: PIN: 18-13-206-001-0000

Address:

Street: 7205 West Archer

Street line 2:

City: Summit

State: IL

ZIP Code: 60501

Lender: Bank of Montreal

Borrower: Burger King Corporation

Loan / Mortgage Amount: \$97,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: 21253AA3-0F86-4619-A308-D183B2CB13F6

Execution date: 5/24/2019

101
P
S
M
SC
E
INT

UNOFFICIAL COPY

MORTGAGE AND ASSIGNMENT OF RENTS

BURGER KING CORPORATION, a Florida corporation

as Mortgagor,

TO

BANK OF MONTREAL, a Canadian Chartered Bank, as Administrative Agent

as Mortgagee

Effective as of May 24 2019

Relating to Premises located in:

Village of Summit,
Cook County Illinois

Tax Parcel ID # 18-13-206-001-0000, 18-13-206-002-0000,
18-13-206-003-0000, 18-13-206-004-0000, 18-13-206-005-0000,
18-13-206-006-0000, 18-13-206-039-0000 and 18-13-206-040-0000

THIS INSTRUMENT WAS PREPARED BY AND
AFTER RECORDED RETURN TO:

Buchanan Ingersoll & Rooney P.C.
301 Grant Street, 20th Floor
Pittsburgh, PA 15219
Attention: Donald E. Malecki, Esq.

UNOFFICIAL COPY

MORTGAGE AND ASSIGNMENT OF RENTS

THIS MORTGAGE AND ASSIGNMENT OF RENTS ("Mortgage") is made this 24th day of May, 2019 to be effective as of May 24, 2019 by **BURGER KING CORPORATION**, a Florida corporation (the "**Mortgagor**"), with an address at 5707 Blue Lagoon Drive, Miami, FL 33126-2029, Attn: Lisa Giles-Klein to **BANK OF MONTREAL**, a Canadian chartered bank, as Administrative Agent under the Credit Agreement (as defined below) for the Tranche 3 Lenders (as defined in the Credit Agreement) (the "**Mortgagee**"), with an address at 250 Yonge Street, 11th Floor, Toronto, ON M5B 2L7, Attn: Indrani Lazarus. Capitalized terms used and not otherwise defined herein shall have the meaning as set forth in the Credit Agreement.

WHEREAS, the Mortgagor is the owner of those certain tracts or parcels of land located in Cook County, Illinois described in Exhibit A attached hereto and made a part hereof, together with the improvements now or hereafter erected thereon;

WHEREAS, subject to the terms and conditions of the Credit Agreement, the Tranche 3 Lenders have agreed to make loans under the Tranche 3 Facility to THE TDL GROUP CORP. a/k/a GROUPE TDL CORPORATION, a corporation existing under the laws of British Columbia (the "**Borrower**") in an aggregate principal amount not to exceed NINETY-SEVEN MILLION NINE HUNDRED THOUSAND CANADIAN DOLLARS (CAD\$97,900,000) (as the same may be amended, supplemented or replaced from time to time, collectively, the "**Loan**"). The Loan is governed by the terms and conditions of that certain Amended and Restated Credit Agreement dated as of May 24, 2019 (as the same may be amended, supplemented or replaced from time to time, the "**Credit Agreement**") between Borrower, the Tranche 3 Lenders, the Guarantors, and Mortgagee for the purposes set forth in the Credit Agreement;

WHEREAS, Mortgagor is providing a guaranty of the Loan and all other Tranche 3 Secured Obligations owing now or hereafter in favor of the Tranche 3 Lenders;

WHEREAS, Mortgagor has agreed to deliver this Mortgage as security for its obligations under its Guarantee and as security for the Tranche 3 Secured Obligations, in each case whether on account of direct obligations, guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all reasonable fees and disbursements of counsel to the Mortgagee or to the Tranche 3 Lenders that are required to be paid by Mortgagor pursuant to the terms of the Loan Documents);

NOW, THEREFORE, for the purpose of securing the payment and performance of the following obligations, but only to the extent that such obligations constitute Tranche 3 Secured Obligations (collectively called the "**Indebtedness**"):

(A) The Loan, the Credit Agreement, the Guarantee, the other Loan Documents, the Tranche 3 Secured Obligations, and all other loans, advances, debts, liabilities, obligations, covenants and duties owing by the Mortgagor or any other obligor or guarantor of any of the Tranche 3 Secured Obligations, including without limitation, the Borrower to the Mortgagee, of any kind or nature, present or future (including any interest accruing thereon after maturity, or after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to the Mortgagor or any other obligor or guarantor of any of the Tranche 3

UNOFFICIAL COPY

Secured Obligations, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), whether direct or indirect (including those acquired by assignment or participation), absolute or contingent, joint or several, due or to become due, now existing or hereafter arising, whether or not (i) evidenced by any note, guaranty or other instrument, (ii) arising under any agreement, instrument or document, (iii) for the payment of money, (iv) arising by reason of an extension of credit, opening of a letter of credit, loan, equipment lease or guarantee, or (v) arising out of overdrafts on deposit or other accounts or out of electronic funds transfers (whether by wire transfer or through automated clearing houses or otherwise) or out of the return unpaid of, or other failure of the Mortgagee to receive final payment for, any check, item, instrument, payment order or other deposit or credit to a deposit or other account, or out of the Mortgagee's non-receipt of or inability to collect funds or otherwise not being made whole in connection with depository or other similar arrangements; and any amendments, extensions, renewals and increases of or to any of the foregoing and all costs and expenses of the Mortgagee incurred in the documentation, negotiation, modification, enforcement, collection and otherwise in connection with any of the foregoing, including reasonable attorneys' fees and expenses.

(B) Any sums advanced by the Mortgagee or which may otherwise become due pursuant to the provisions of the Credit Agreement, this Mortgage, or any other document or instrument at any time delivered to the Mortgagee to evidence or secure any of the Tranche 3 Secured Obligations or which otherwise relate to any of the Tranche 3 Secured Obligations (as each of the same may be amended, supplemented or replaced from time to time, collectively, the "**Loan Documents**").

NOW, THEREFORE, TO secure payment of the Indebtedness of Mortgagor, for good and valuable consideration, Mortgagor, intending to be legally bound hereby, hereby irrevocably mortgages, warrants, grants, conveys, transfers and assigns to Mortgagee (for the benefit of the Tranche 3 Lenders), upon the statutory mortgage condition for breach of which this Mortgage is subject to foreclosure as provided by law, with mortgage covenants and right of entry and possession, all estate, right, title and interest which Mortgagor now has or may later acquire in the following property and all accessions, additions, remainders, reversions thereto and substitutions, replacements and proceeds thereof (collectively, the "**Premises**").

(i) all of the property located in the County of Cook, State of Illinois and described on Exhibit A attached hereto and made a part hereof (the "**Land**");

(ii) all of the appurtenances belonging or appertaining to said Land;

(iii) all buildings, structures, and other improvements now or hereafter constructed or situated thereon (the "**Improvements**");

(iv) intentionally deleted;

(v) all streets, alleys, roads, waterways and public places adjoining said property;

(vi) all easements and rights of way, now or hereafter used or existing in connection with the Premises, including without limitation, all those as described on Exhibit B hereto and made a part hereof; (the "**Easements**");

(vii) all leases, licenses, subleases or any other use or occupancy agreement now or hereafter entered into covering all or any part of the Land or Improvements, including all cash,

UNOFFICIAL COPY

guaranties, letters of credit or securities deposited or delivered under the Leases to secure performance of lessees of their obligations thereunder, whether such cash, guaranties, letters of credit or securities are to be held until the expiration of the terms of such Leases or applied to one or more installments of rent coming due prior to the expiration of such terms (collectively, the "Leases"); and

(viii) all revenues, rents, income, issues and profits arising or issuing from the Land, the Improvements or the Leases including, without limitation, (i) early termination fees, break fees, or reimbursements of concessions provided to lessees due to Mortgagor, (ii) payments or reimbursements of percentage rent, operating costs, taxes, insurance, or services provided to lessees, and (iii) all advantages and claims against guarantors of any Leases whether any of the foregoing arise before or after the commencement by or against Mortgagor of any case or proceeding under any federal or state bankruptcy, insolvency or similar laws (collectively, the "Rents");

Notwithstanding anything herein to the contrary, this Mortgage shall not serve to mortgage or grant a security interest in any personal property, including without limitation any fixtures, located on the Premises.

TO HAVE AND TO HOLD the Premises unto Mortgagee and its successors and assigns, forever.

PROVIDED ALWAYS, and these presents are upon the express condition that, upon the occurrence of the satisfaction of all of Borrower's Indebtedness, then this Mortgage and the estate hereby granted shall cease and become void and Mortgagee will, if requested to do so by Mortgagor and at Mortgagor's expense, execute and deliver to Mortgagor such documents as Mortgagor shall reasonably request to evidence or otherwise effect such event.

THIS MORTGAGE secures payment of any and all Indebtedness, but the maximum principal amount of Indebtedness secured, or which by any contingency may be secured hereby is the amount stated above, and if the amount of Indebtedness outstanding at any time exceeds said maximum amount secured, all payments in reduction of the Indebtedness shall be applied first to such excess not secured hereby and the lien of this Mortgage shall continue until all Indebtedness secured hereby is finally and irrevocably paid in full. Notwithstanding anything to the contrary set forth herein, including the maximum amount secured by this Mortgage, Borrower shall only be responsible for, and any deficiency judgment shall be based upon, the actual Indebtedness outstanding at any time, from time to time.

1. Representations and Warranties.

(a) Authority. Mortgagor represents and warrants that the execution and delivery of this Mortgage has been duly authorized and that no other authorization is required under the terms of its organizational documents.

(b) Commercial Purpose. Mortgagor represents and warrants that the Loans (as defined in the Credit Agreement) or other financial accommodations included in the Indebtedness secured by this Mortgage were obtained solely for a business or commercial purpose and not for personal, residential, consumer or household purposes.

UNOFFICIAL COPY

(c) Title. Mortgagor represents and warrants that (i) it has good and marketable title to an estate in fee simple absolute in the Land and Improvements and has all right, title and interest in all other property constituting a part of the Premises, in each case free and clear of all liens and encumbrances, except as may otherwise be set forth either (1) in the Credit Agreement, or (2) on Exhibit C hereto (collectively, the “**Permitted Liens**”) and (ii) this Mortgage is a valid and enforceable first lien on the Premises subject only to Permitted Liens.

2. Affirmative Covenants. Until all of the Indebtedness shall have been fully paid, satisfied and discharged the Mortgagor shall:

(a) Legal Requirements. Promptly comply in all material respects with and conform in all material respects to all present and future laws, statutes, codes, ordinances, orders and regulations and all covenants, restrictions and conditions which may be applicable to the Mortgagor or to any of the Premises (the “**Legal Requirements**”).

(b) Impositions. Before interest or penalties are due thereon and otherwise when due, the Mortgagor shall pay all taxes of every kind and nature, all charges for any easement or agreement maintained for the benefit of any of the Premises, all general and special assessments (including any condominium or planned unit development assessments, if any), casualty insurance, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other charges and liens, whether of a like or different nature, imposed upon or assessed against the Mortgagor or any of the Premises (the “**Impositions**”), subject to Mortgagor’s right to contest the Impositions in conformity with the requirements of Section 11.1(f) of the Credit Agreement. Within forty-five (45) days after the payment of any Imposition, the Mortgagor shall deliver to the Mortgagee written evidence of such payment. The Mortgagor’s obligations to pay the Impositions attributable to Mortgagor’s period of ownership shall survive the Mortgagee’s taking title to (and possession of) the Premises through foreclosure, deed-in-lieu or otherwise.

(c) Maintenance of Security. Use, and permit others to use, the Premises only for (i) a Burger King Corporation restaurant, (ii) a Popeyes Louisiana Kitchen restaurant, (iii) a Tim Hortons restaurant, or (iv) such other uses as permitted by applicable Legal Requirements and approved in writing by the Mortgagee, which approval shall not be unreasonably withheld, conditioned or delayed. The Mortgagor shall keep the Premises in a rentable and tenantable state of repair, provided, however, that no structural repairs, renewals or replacements shall be made without the Mortgagee’s prior written consent, not to be unreasonably withheld, conditioned or delayed. The Mortgagor shall not remove or demolish the Premises, nor commit or suffer waste by Mortgagor with respect thereto, nor permit the Premises to become deserted or abandoned, subject to Mortgagor’s right to close the restaurant located on the Premises in accordance with Section 15.3 of the Credit Agreement. Notwithstanding anything in this paragraph to the contrary, the Mortgagor shall have the right, in Mortgagor’s sole discretion and without Mortgagee’s prior written consent, to make or cause to be made any improvements, alterations, and remodelings, whether structural or non-structural, to bring the Premises into conformance with the Mortgagor’s national and local plans, specifications and standards for the image of franchised restaurants, which improvements may include without limitation, the demolition and rebuilding of the Premises. The Mortgagor covenants and agrees not to take or permit any action with respect to the Premises which will in any manner impair the security of this Mortgage or the use of the Premises as set forth in the Loan Documents.

UNOFFICIAL COPY

3. Leases. The Mortgagor shall not execute an assignment or pledge of the Rents and/or the Leases other than in favor of the Mortgagee. Except as set forth in the Credit Agreement, any or all Leases of all or any part of the Premises shall be subordinated to this Mortgage and to the Mortgagee's rights (provided that the rights of any tenant under any Leases shall not be disturbed in the event of Mortgagee's exercise of any remedies hereunder as a result of an Event of Default, as long as the tenant is not in default under its Lease) and, together with any and all rents, issues or profits relating thereto, shall be assigned at the time of execution to the Mortgagee as additional collateral security for the Indebtedness, all in such form, substance and detail as is satisfactory to the Mortgagee in its sole discretion.

4. Insurance.

(a) The Mortgagor shall maintain, or cause to be maintained, the insurance coverages required by Section 11.1(e) of the Credit Agreement.

(b) Rights to Insurance Proceeds. Mortgagee agrees that, in the event of a casualty, insurance proceeds will be paid to Mortgagor, and Mortgagor shall be required to comply with Section 15.2 of the Credit Agreement.

5. Condemnation. Mortgagee agrees that, in the event of a condemnation or taking, any award or compensation for Premises taken or for damage to property not taken, whether as a result of condemnation proceedings or negotiations in lieu thereof, will be paid to Mortgagor, and Mortgagor shall be required to comply with Section 15.4 of the Credit Agreement.

6. Environmental Matters.

(a) For purposes of this Section 6, the terms "**Environmental Laws**," "**Hazardous Materials**," and "**Environmental Liabilities**" shall each have the meaning set forth in the Credit Agreement.

(b) The Mortgagor hereby agrees that the representations and warranties set forth in Section 10.1(c) (with respect to Environmental Laws) and Section 10.1(j) of the Credit Agreement are true and correct in all material respects with respect to the Premises. These representations and warranties shall be true as of the date hereof, and shall be deemed to be continuing representations and warranties which must remain true, correct and accurate in all material respects during the entire duration of the term of this Mortgage.

(c) The Mortgagor shall ensure that, at its sole cost and expense, the Premises and the conduct of all operations and activities thereon comply and continue to comply in all material respects with the environmental compliance covenants set forth in Section 11.1(m) of the Credit Agreement.

(d) The Mortgagee or the Tranche 3 Lenders shall not be liable for, and the Mortgagor shall indemnify, defend and hold the Mortgagee and the Tranche 3 Lenders and the Indemnified Persons (as defined in the Credit Agreement) and all of their respective successors and assigns harmless from and against all Indemnified Liabilities (as set forth in Section 8.4(b) of the

UNOFFICIAL COPY

Credit Agreement) that the Tranche 3 Lenders and the Mortgagee or any Indemnified Party may suffer or incur (including as holder of the Mortgage, as mortgagee in possession or as successor in interest to the Mortgagor as owner of the Premises by virtue of a foreclosure or acceptance of a deed in lieu of foreclosure) as a result of or in connection with (i) the breach or violation of any Environmental Laws by Mortgagor to the extent related to the Premises; (ii) the presence on or under or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Material from the Premises; or (iii) any other Environmental Liabilities, to the extent related to the Premises, except for any Indemnified Liabilities that a court of competent jurisdiction determines arose on account of the relevant Indemnified Person's gross negligence or willful misconduct.

7. Certain Rights and Obligations.

(a) Upon the occurrence and during the continuance of an Event of Default, subject to the provisions of the Credit Agreement and the other Loan Documents, Mortgagee may take, but is not obligated to take, such action as Mortgagee deems appropriate in its reasonable discretion to protect the Premises or the status or priority of the lien of this Mortgage, including, but not limited to: (i) entry upon the Premises to protect the Premises from deterioration or damage, or to cause the Premises to be put in compliance with any governmental, insurance rating or contract requirements; (ii) payment of delinquent amounts on liens having priority over this Mortgage; (iii) payment of any delinquent tax or charge for purposes of assuring the priority or enforceability of this Mortgage; (iv) obtaining insurance on the Premises to the extent Mortgagor has failed to procure or maintain the same in accordance with the Credit Agreement; (v) commencement or defense of any legal action or proceeding to assert or protect the validity or priority of the lien of this Mortgage; or (vi) reappraisal of the Premises, if required by policy, at Mortgagor's expense. Within thirty (30) days following demand by Mortgagee, Mortgagor shall reimburse Mortgagee for all reasonable and actual expenses in taking any such action, with interest, and the amount thereof shall be Indebtedness secured by this Mortgage and shall, to the extent permitted by law, be in addition to the maximum amount of the Indebtedness heretofore stated.

(b) Mortgagor authorizes Mortgagee, without notice, demand or any reservation of rights and without affecting this Mortgage, from time to time, subject to the provisions of the Credit Agreement and the other Loan Documents: (i) to accept from any person or entity and hold additional collateral for the payment of the Indebtedness or any part thereof, and to exchange, enforce or refrain from enforcing, or release such collateral or any part thereof; (ii) to accept and hold any indorsement or guaranty of payment of the Indebtedness or any part thereof, and to release or substitute any such obligation of any such indorser or guarantor, or any person or entity who has given any collateral as security for the payment of the Indebtedness or any part thereof, or any other person or entity in any way obligated to pay the Indebtedness or any part thereof, and to enforce or refrain from enforcing, or compromise or modify, the terms of any obligation of any such indorser, guarantor, person or entity; (iii) upon the occurrence and during the continuance of an Event of Default, to direct the order or manner of the disposition of any and all collateral and the enforcement of any and all indorsements and guaranties relating to the Indebtedness or any part thereof as Mortgagee may determine; and (iv) to the extent permitted by applicable law, to determine the manner, amount and time of application of payments and credits, if any, to be made on all or any part of any component or components of the Indebtedness (whether principal, interest, costs and expenses, or otherwise).

(c) If any Event of Default shall occur in the payment of any Indebtedness, this Mortgage shall remain valid, binding and enforceable: (i) without requiring

UNOFFICIAL COPY

protest or notice of nonpayment or notice of default to Mortgagor, or to any other person; (ii) without demand for payment or proof of such demand; (iii) without requiring Mortgagee to resort first to Mortgagor or to any other guaranty or any collateral which Mortgagee may hold; (iv) without requiring notice of acceptance hereof or assent hereto by Mortgagee; and (v) without requiring notice that any indebtedness has been incurred or of the reliance by Mortgagee upon this Mortgage; all of which, to the extent permitted by law, Mortgagor hereby waives. Mortgagor does not waive any notice except for the purposes expressly set forth herein.

(d) To the extent permitted by applicable law, the enforceability of this Mortgage shall not be affected by: (i) any failure to perfect or continue the perfection of any security interest in or other lien on any collateral securing payment of the Indebtedness; (ii) the invalidity, unenforceability, or loss or change in priority of any such security interest or other lien; (iii) any failure to protect, preserve or insure any such collateral; and (iv) the invalidity or unenforceability of any of the Indebtedness, all of which Mortgagor hereby waives.

(e) If Mortgagee shall receive from or on behalf of Mortgagor any sum less than the full amount then due and payable, Mortgagee may, but shall not be obligated to, accept the same and, if it elects to accept any such payment, it may without waiving any demand or Event of Default: (i) apply such payment on account of the Indebtedness or any amount payable hereunder, or (ii) hold same or any part thereof, without liability for interest, in a special account and from time to time apply same or any part thereof as specified in subsection (i) above.

8. Mortgagee's Costs and Expenses.

If, after the occurrence of an Event of Default, any action is commenced to foreclose this Mortgage or to collect the Indebtedness, Mortgagor agrees to pay to Mortgagee all reasonable, out of pocket costs and expenses of every kind actually incurred by Mortgagee in connection with such action, which costs and expenses may be collected in such action and shall, to the extent permitted by law, be a lien on the Premises prior to any interest in, or claim upon the Premises arising subsequent to the lien hereof. As used in the preceding sentence, "**costs and expenses**" shall include, without limitation, the reasonable and actual attorneys' fees incurred by Mortgagee in retaining counsel for advice, suit, appeal, or any insolvency or other proceedings under the Federal Bankruptcy Code or otherwise.

9. Default and Remedies. Any "Event of Default" under the Credit Agreement shall constitute an "**Event of Default**" hereunder, and any Event of Default hereunder shall be subject to the provisions of the Credit Agreement and the other Loan Documents (including the giving of any applicable notice and the expiration of applicable cure periods as set forth in the Credit Agreement). Notwithstanding anything in this Mortgage to the contrary, Mortgagee may not exercise any remedies under this Mortgage, including without limitation, taking any action described in Section 7(a) or this Section 9, unless: (i) an Event of Default shall have occurred and be continuing; and (ii) such exercise of remedies complies with the provisions of the Credit Agreement. Upon satisfaction on the foregoing conditions, Mortgagee may, but shall not be obligated to, exercise any or all of the following remedies:

(a) Mortgagee may declare all or any part of any Indebtedness not payable on demand to be immediately due and payable without demand or notice of any kind. The provisions of this paragraph are not intended in any way to affect any rights of Mortgagee with respect to any Indebtedness which may now or hereafter be payable on demand.

UNOFFICIAL COPY

(b) Whether or not foreclosure proceedings have been instituted, (i) Mortgagor shall, upon demand made in accordance with applicable law, surrender possession of the Premises to Mortgagee, and (ii) Mortgagee may enter into and upon all or any part of the Premises, and may exclude Mortgagor, its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control the Premises and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers. If a receiver is appointed, this covenant shall inure to the benefit of such receiver. Notwithstanding any provision of law to the contrary, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of tenants of the Premises, whose Leases are subordinate to the lien of this Mortgage, provided that such tenant's possession shall not be disturbed as long as the tenant is not in default under its Lease;

(c) The holder of this Mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

(d) The Mortgagee may judicially foreclose this Mortgage as provided by law and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. In connection with any such sale the Mortgagee may execute and deliver to the purchaser an instrument of conveyance pursuant to the terms hereof. Any foreclosure sale may, at the sole option of the Mortgagee, be made en masse or in parcels, any law to the contrary notwithstanding, and Mortgagor hereby knowingly, voluntarily and intelligently waives any right to require any such foreclosure sale to be made in parcels or any right to select which parcels shall be sold. The proceeds of any foreclosure sale shall be applied, as the Mortgagee elects, to the payment of the Mortgagee's expenses incurred in connection with such foreclosure sale, including reasonable attorney fees, and/or to the payment of the Indebtedness, with the surplus, if any, to be remitted to the Mortgagor or the Mortgagor's successor in interest.

(e) The Mortgagee may, in its sole and absolute discretion: (i) collect any or all of the Rents, including any Rents past due and unpaid, (ii) perform any obligation or exercise any right or remedy of the Mortgagor under any Lease, (iii) enforce any obligation of any tenant of any of the Premises, or (iv) enforce all other rights, remedies and benefits available as provided by law. The Mortgagee may exercise any right under this subsection (e), whether or not the Mortgagee shall have entered into possession of any of the Premises, and nothing herein contained shall be construed as constituting the Mortgagee a "mortgagee in possession" or an owner or operator of the Premises as may be defined in any state or federal environmental law or regulation, unless the Mortgagee shall have entered into and shall continue to be in actual possession of the Premises. The Mortgagor hereby authorizes and directs each and every present and future tenant of any of the Premises to pay all Rents directly to the Mortgagee and to perform all other obligations of that tenant for the direct benefit of the Mortgagee, as if the Mortgagee were the landlord under the Lease with that tenant, immediately upon receipt of a demand by the Mortgagee to make such payment or perform such obligations. The Mortgagor hereby waives any right, claim or demand it may now or hereafter have against any such tenant by reason of such payment of Rents or performance of obligations to the Mortgagee, and any such payment or performance to the Mortgagee shall discharge the obligations of the tenant to make such payment or performance to the Mortgagor. The collection of Rents by the Mortgagee shall in no way waive the right of the Mortgagee to foreclose this Mortgage following an Event of Default. In the event of a sale on foreclosure which shall result in a deficiency, the Assignment of Rents shall stand as security during the redemption period for the payment of such deficiency.

UNOFFICIAL COPY

(f) If the Indebtedness shall exceed the amount secured by this Mortgage, or as evidenced by a combination of instruments that singularly or in part collectively may be less than said secured amount but combined exceed said secured amount, Mortgagee, in any foreclosure hereof, shall, to the extent permitted by applicable law, have the right to sue and collect the excess in the same action as commenced for the foreclosure hereof, and recover a money judgment for said excess with all the rights attendant thereto, including, without limitation, the issuance of an execution to the sheriff for collection thereof, and Mortgagor hereby waives, to the extent permitted by applicable law, any defense based upon a claim that in doing so, Mortgagee is splitting its cause of action if it seeks to foreclose this Mortgage for part of the Indebtedness and recover at law for another part.

(g) In the event of foreclosure of this Mortgage, at the option of Mortgagee and to the extent permitted by applicable law, any portion of the Premises or the Land may be sold in one or more parcels, notwithstanding any provision of law to the contrary.

(h) Mortgagee may pursue, take or refrain from pursuing any remedy for collection of the Indebtedness, including an action to foreclose this Mortgage or to sell the Premises or any part thereof pursuant to procedures provided by and permitted under applicable law. Any reference in this Mortgage to an action or right of Mortgagee in regard to or in connection with a foreclosure or a foreclosure proceeding shall be deemed to include a sale and/or proceeding under this subsection to the extent the same are provided by and permitted under applicable law.

(i) If any provision of this Mortgage is inconsistent with any applicable provision of the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes Chapter 735, Section 5/15-1101 et seq. (the "Illinois Act"), the provisions of the Illinois Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Illinois Act.

(j) Without in any way limiting or restricting any of the Mortgagee's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, the Mortgagee shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Illinois Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to the Mortgagee any rights, remedies, powers or authorities upon default of Mortgagor which are more limited than the rights that would otherwise be vested in the Mortgagee under the Illinois Act in the absence of said provision, the Mortgagee shall be vested with all of the rights, remedies, powers and authorities granted in the Illinois Act to the fullest extent permitted by law.

(k) Without limiting the generality of the foregoing, all expenses incurred by the Mortgagee, to the extent reimbursable, under Sections 5/15-1510, 5/15-1512, or any other provision of the Illinois Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the indebtedness secured by this Mortgage and by the judgment of foreclosure.

Notwithstanding anything herein to the contrary, upon the occurrence of an Event of Default, Mortgagee shall not have any rights of enforcement with respect to any personal property,

UNOFFICIAL COPY

including without limitation any fixtures, located on the Premises.

10. Due on Sale Clause. Except as permitted under Section 15.1 of the Credit Agreement, or as permitted with respect to Permitted Liens, Mortgagor shall not sell, lease, transfer, or otherwise dispose of any property comprising the Premises (whether voluntarily or by operation of law), or agree to do so, without Mortgagee's prior written consent.

11. Real Estate Tax and Insurance Account.

(a) Intentionally deleted.

(b) Upon Mortgagee's request after the occurrence of an Event of Default, Mortgagor will pay to Mortgagee by depositing into a non-interest bearing deposit account with Mortgagee ("**Imposition Account**") on the first day of each month during the term hereof, or any renewal term, a sum equal to one-twelfth (1/12) of the annual aggregate amount, as estimated from time to time by Mortgagee, of the Impositions. On the date of such request, Mortgagor will deposit with Mortgagee a lump sum in the amount necessary to establish a fund which, with the monthly payments, will be sufficient for payment of all such expenses when due, which will be held by Mortgagee and applied by Mortgagee to the payment of such Impositions as they become due and payable. If such payments shall be reasonably deemed by Mortgagee to be insufficient to pay such Impositions, Mortgagor will pay the amount of such deficiency, on demand, to Mortgagee.

Mortgagor hereby pledges all sums in the possession of Mortgagee held pursuant to **Section 11(b)** above to Mortgagee as additional security for the Indebtedness secured hereby. Upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have no obligation to apply any sums held by Mortgagee pursuant to this **Section 11(b)** to the payment of such Impositions unless directed to do so by Mortgagor in writing delivered during a period of time when no uncured Event of Default shall exist setting forth the particular Imposition to be paid. Notwithstanding the foregoing, upon the occurrence and during the continuance of an Event of Default, Mortgagee may, but shall not be required to, pay any such Imposition without written direction from Mortgagor or contrary to the direction of Mortgagor. So long as no Event of Default shall exist, Mortgagor may in good faith contest any Imposition in conformity with the requirements of Section 11.1(f) of the Credit Agreement. Upon the occurrence and during the continuation of any Event of Default Mortgagee may, but shall not be required to pay any such contested Imposition out of the Imposition Account or otherwise even if such payment is to prejudice Mortgagor's ability thereafter to contest such items.

12. Assignment of Rents and Leases.

As additional security for the Indebtedness and performance of the covenants and agreements set forth herein, the Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee, and grants the Mortgagee a security interest in, any and all Leases and Rents derived from the use of the Property or any portion thereof, whether due or to become due. These assignments shall run with the land and shall be good and valid against the Mortgagor and all persons claiming by, under, or through the Mortgagor from the date of recording of this Mortgage and shall continue to be operative during foreclosure or any other proceedings taken to enforce this Mortgage. If any foreclosure sale results in a deficiency, the assignments shall continue as security during the foreclosure redemption period. Any and all costs, expenses and

UNOFFICIAL COPY

sums paid by the Mortgagee in performing the landlord's obligations under any Lease, including reasonable attorney fees, shall be added to the Indebtedness secured by this Mortgage. Upon the occurrence and during the continuance of an Event of Default, Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact for the purposes set forth in this paragraph. THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.

13. No Modifications or Waivers.

(a) This Mortgage is absolute and unconditional and shall not be changed or affected by any representation, oral agreement, act or thing whatsoever, except as herein provided. This Mortgage is intended by Mortgagor to be the final, complete and exclusive expression of the agreement between Mortgagor and Mortgagee. No modification or amendment of any provision of this Mortgage shall be effective unless it is: (i) made in accordance with the Credit Agreement; and (ii) in writing, which writing shall make a specific reference to this Mortgage and shall be signed by a duly authorized officer of Mortgagee; and

(b) No course of dealing between Mortgagor and Mortgagee and no act, delay or omission by Mortgagee in exercising any right or remedy hereunder, including, without limitation, acceptance of any partial payment on the Indebtedness, shall operate as a waiver of any right, remedy or default hereunder, or of any other right or remedy, and no single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. All rights and remedies of Mortgagee hereunder are cumulative.

14. Maximum Amount Secured. The maximum amount secured by the lien of this Mortgage is CAD\$195,800,000.

15. Business Loan. Mortgagor stipulates, represents, warrants, affirms and agrees that each of the loans and other obligations secured hereby constitute a "business loan" within the meaning of the Illinois Compiled Statutes, Chapter 815, Sections 205/4(1)(a) or (c), as amended.

16. No Property Manager Lien. Any property management agreement for or relating to all or any part of the Premises, whether now in effect or entered into hereafter by Mortgagor or on behalf of Mortgagor, shall contain a subordination provision whereby the property manager forever and unconditionally subordinates to the lien of this Mortgage any and all mechanic's lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law, including, without limitation, Illinois Compiled Statutes, Chapter 770, Section 60/1), as amended. Such property management agreement or a short form thereof, including such subordination, shall, at the Mortgagee's request, be recorded with the office of the recorder of deeds for the county in which the Premises is located. Mortgagor's failure to cause any of the foregoing to occur shall constitute an Event of Default under this Mortgage.

17. Cross Default/Cross-Collateralization With Other Mortgages.

Mortgagor acknowledges that Mortgagee has made the Loan to the Borrower (and may make future loans to the Borrower) in reliance upon the aggregate of the property secured by all of the mortgages or deeds of trust (collectively, the "Mortgages") from the Guarantor taken together being of greater value as collateral security than the sum of each properties taken separately. Mortgagor agrees that the Security Documents are and will be cross defaulted and cross-collateralized with each other so that (i) an Event of Default under the Security Documents for any of the Mortgage Properties shall constitute an Event of Default under each of the other Security

UNOFFICIAL COPY

Documents which secure the Tranche 3 Secured Obligations or other loans made to Borrower for which Existing U.S. Properties serve as Security under the Credit Agreement; (ii) an Event of Default under the Credit Agreement shall constitute an Event of Default under each of the Mortgages; (iii) the Mortgages shall constitute security for the Loan or other loans to Borrower for which Existing U.S. Properties serve as Security under the Credit Agreement, as if a single blanket lien were placed on all of the Existing U.S. Properties serving as Security for the Loan and other loans; (iv) such cross collateralization shall in no event be deemed to constitute a fraudulent conveyance; and (v) Mortgagee may release any property at any time at its sole discretion without impairing its interest in the remaining Secured Assets (including, without limitation, any release required pursuant to Section 15.1 of the Credit Agreement), may foreclose or not foreclose in any order, with no priority, and sell the properties individually or in bulk all at its sole and absolute discretion subject to the terms of the Credit Agreement. Notwithstanding anything herein to the contrary, this Mortgage shall not secure the payment and performance of the Tranche 1 Secured Obligations or the Tranche 4 Secured Obligations, nor any other Secured Obligations for which Existing U.S. Properties do not serve as Security.

18. Miscellaneous.

(a) Upon the occurrence and during the continuance of an Event of Default, Mortgagor hereby appoints Mortgagee as attorney-in-fact of Mortgagor, irrevocably and with power of substitution, in the same manner, to the same extent and with the same effect as if Mortgagor were to do the same, as applicable, (i) to make, adjust or settle and receive payment on any insurance claims with respect to the Premises; (ii) [intentionally deleted]; (iii) to execute proofs of claim and loss; (iv) upon the issuance of a deed or assignment of lease pursuant to the foreclosure of this Mortgage or the delivery of a deed or assignment of lease in lieu of foreclosure, to execute endorsements, assignments or other instruments of conveyance or transfer; and (v) to perform all other acts which Mortgagee reasonably deems appropriate to protect and preserve the Premises and to enforce the terms of this Mortgage. The agency hereunder is unconditional and shall not terminate until all of the Indebtedness is paid in full.

(b) All notices, elections or demands permitted or required herein shall be in writing, signed by the party giving such notice, election or demand and given personally or by mail, addressed to the appropriate party at the address designated for such party in the heading of this Mortgage, or such other address in the continental United States as the party who is to receive such notice may designate by notice to the other party. Notice by mail shall be by registered or certified United States mail, addressed to the party to be notified, and with the proper amount of postage affixed thereto. The effective date of the notice, election or demand shall be the date of personal delivery or the third business day following the date of mailing, as the case may be. Rejection or other refusal to accept, or inability to deliver because of a change of address of which no notice was given shall be deemed to be receipt of the notice, election or demand sent.

(c) If more than one party joins in the execution of this Mortgage, their obligations hereunder shall be joint and several and shall be binding upon their heirs, executors, administrators, successors, and assigns.

(d) Any reference herein to "**Mortgagee**" shall be deemed to include and apply to every subsequent holder of this Mortgage and any reference herein to "**Mortgagor**" shall be deemed to include and apply to every subsequent owner of the Premises, unless the language or circumstances clearly requires the contrary.

UNOFFICIAL COPY

(e) “Mortgagor” shall include any successor individual or individuals, association, partnership, limited liability company or corporation to which all or substantially all of the business or assets of Mortgagor shall have been transferred.

(f) If after receipt of any payment of all or any part of the Indebtedness, Mortgagee is for any reason compelled to surrender such payment to any person or entity because such payment is determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, to the extent permitted by applicable law, this Mortgage shall continue in full force notwithstanding any contrary action which may have been taken by Mortgagee in reliance upon such payment, and any such contrary action so taken shall be without prejudice to Mortgagee’s rights under this Mortgage and shall be deemed to have been conditioned upon such payment having become final and irrevocable.

(g) Without limiting any other right of Mortgagee, upon the occurrence and during the continuance of an Event of Default, Mortgagee may, but shall not be obligated to, set off against the Indebtedness any and all moneys then owed to Mortgagor or by Mortgagee in any capacity, whether or not the Indebtedness or the obligation to pay such moneys owed by Mortgagee is then due, and Mortgagee shall be deemed to have exercised such right of setoff immediately at the time of such election even though any charge therefor is made or entered on Mortgagee’s records subsequent hereto.

(h) Captions of the paragraphs of this Mortgage are solely for the convenience of Mortgagor and Mortgagee, and are not an aid in the interpretation of this Mortgage.

(i) If any provision of this Mortgage is unenforceable in whole or in part, the remaining provisions shall continue to be effective.

(j) To the fullest extent permitted by applicable law, Mortgagor and Mortgagee shall not assert, and hereby waives any claim against the other, on any theory of liability, for special, indirect, consequential or punitive damages (but excluding direct or actual damages) arising out of, in connection with, or as a result of, this Mortgage.

(k) This Mortgage shall be governed and construed in accordance with the laws of the State in which the Land is located (without regard to conflict of law provisions thereof).

(l) Notwithstanding anything to the contrary in this Mortgage, this Mortgage is subject to the terms of the Credit Agreement; if there is any conflict between the provisions of this Mortgage, and the provisions of the Credit Agreement, the provisions of the Credit Agreement shall control and prevail in all cases.

19. Consents and Waivers Relating to Legal Proceedings.

(a) MORTGAGOR KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY (i) CONSENTS IN EACH ACTION AND OTHER LEGAL PROCEEDING COMMENCED BY MORTGAGEE AND ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT, ANY OF THE INDEBTEDNESS, ANY OF THE COLLATERAL OR ANY OTHER COLLATERAL TO THE NONEXCLUSIVE PERSONAL JURISDICTION OF ANY COURT THAT IS EITHER A COURT OF RECORD OF THE STATE OF ILLINOIS OR A COURT OF THE UNITED STATES LOCATED IN THE

UNOFFICIAL COPY

STATE OF ILLINOIS, (ii) WAIVES EACH OBJECTION TO THE LAYING OF VENUE OF ANY SUCH ACTION OR OTHER LEGAL PROCEEDING, (iii) WAIVES PERSONAL SERVICE OF PROCESS IN EACH SUCH ACTION AND OTHER LEGAL PROCEEDING, AND (iv) CONSENTS TO THE MAKING OF SERVICE OF PROCESS IN EACH SUCH ACTION AND OTHER LEGAL PROCEEDING BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE LAST ADDRESS OF MORTGAGOR SHOWN IN THE RECORDS RELATING TO THIS AGREEMENT MAINTAINED BY MORTGAGEE.

[REMAINDER OF PAGE LEFT BLANK]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(b) MORTGAGOR KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES EACH RIGHT MORTGAGOR MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO, AND IN, ANY ACTION OR OTHER LEGAL PROCEEDING OF ANY NATURE, RELATING TO (i) THIS MORTGAGE, ANY RELATED FINANCING DOCUMENT OR ANY COLLATERAL RELATED HERETO, (ii) ANY TRANSACTION CONTEMPLATED BY ANY SUCH DOCUMENT OR (iii) ANY NEGOTIATION, PERFORMANCE OR ENFORCEMENT OF THIS MORTGAGE, OR ANY COLLATERAL RELATED HERETO. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL AS NECESSARY AND APPROPRIATE. MORTGAGEE, BY ACCEPTANCE OF THIS MORTGAGE, KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES EACH RIGHT MORTGAGEE MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO (A) THIS MORTGAGE, ANY RELATED FINANCING DOCUMENT OR ANY COLLATERAL RELATED HERETO, (B) ANY TRANSACTION CONTEMPLATED BY ANY SUCH DOCUMENTS OR (C) ANY NEGOTIATION, PERFORMANCE OR ENFORCEMENT OF THIS MORTGAGE, OR ANY COLLATERAL RELATED HERETO.

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage, with the intent to be legally bound hereby dated as of the date first set forth above.

MORTGAGOR:

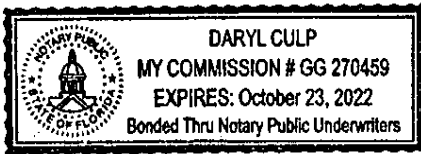
BURGER KING CORPORATION,
a Florida corporation

By: [Signature]
Name: Flavio montini
Title: Treasurer

STATE OF FLORIDA)
)SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 15th day of May, 2019 by Flavio montini as the Treasurer of BURGER KING CORPORATION, a Florida corporation, on behalf of the corporation. ~~He~~ She is personally known to me or produced _____ as identification.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Daryl Culp
Print or Stamp Name: Daryl Culp
Notary Public, State of Florida
Commission No.: _____
My Commission Expires: _____

UNOFFICIAL COPY

EXHIBIT A

DESCRIPTION OF LAND

#92

Tract I

THAT PART OF LOTS 1 THROUGH 12, BOTH INCLUSIVE, AND THAT PORTION OF THE 16-FOOT PUBLIC ALLEY LYING WEST OF HARLEM AVENUE AS WIDENED AND LYING DIRECTLY NORTH OF SAID LOT 11, IN HARLEM AND ARCHER AVENUES, BEING A SUBDIVISION OF BLOCK 1 IN CANAL TRUSTEE'S SUBDIVISION OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH 89 DEGREES 47 MINUTES 37 SECONDS EAST ALONG THE NORTH LINE OF SAID LOTS 1 THROUGH 7 A DISTANCE OF 172.00 FEET TO A POINT OF CURVATURE, SAID POINT BEING 92.00 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 10; THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVE BEING CONCAVE TO THE SOUTHWEST, BEING ALSO THE WESTERLY LINE OF HARLEM AVENUE AS WIDENED ACCORDING TO DOCUMENT NUMBER 20026123, HAVING A RADIUS OF 69.16 FEET, HAVING A CHORD BEARING OF SOUTH 44 DEGREES 26 MINUTES 48 SECONDS EAST FOR A DISTANCE OF 109.47 FEET TO A POINT OF TANGENCY; THENCE SOUTH 00 DEGREES 54 MINUTES 00 SECONDS WEST ALONG SAID WESTERLY LINE OF HARLEM AVENUE AS WIDENED 139.55 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 12, SAID POINT BEING 22.0 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 12; THENCE NORTH 89 DEGREES 24 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT 12 A DISTANCE OF 102.12 FEET TO THE SOUTHWEST CORNER OF SAID LOT 12; THENCE NORTH 00 DEGREES 55 MINUTES 27 SECONDS EAST ALONG THE WEST LINE OF SAID LOTS 11 AND 12 AND THE NORTHERLY EXTENSION THEREOF A DISTANCE OF 83.58 FEET TO THE SOUTH LINE OF SAID LOTS 1 THROUGH 6; THENCE NORTH 89 DEGREES 53 MINUTES 38 SECONDS WEST ALONG SAID SOUTH LINE 140.06 FEET TO THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 00 DEGREES 57 MINUTES 52 SECONDS EAST ALONG THE WEST LINE OF SAID LOT 1 A DISTANCE OF 125.51 FEET TO THE PLACE OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS.

Common Address: 7205 West Archer Avenue
Summit, IL 60501

Permanent Parcel Number(s): 18-13-206-001-0000; 18-13-206-002-0000;
18-13-206-003-0000; 18-13-206-004-0000;
18-13-206-005-0000; 18-13-206-006-0000;
18-13-206-039-0000; 18-13-206-040-0000

UNOFFICIAL COPY

EXHIBIT B

DESCRIPTION OF EASEMENTS

None

Property of Cook County Clerk's Office

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

UNOFFICIAL COPY

EXHIBIT C

PERMITTED LIENS

All exceptions from coverage as listed in the pro forma loan title insurance policy from Stewart Title Guaranty Company in favor of Bank of Montreal, as Agent for the Tranche 3 Lenders, commitment/policy #18000150649111.

Property of Cook County Clerk's Office

**COOK COUNTY
RECORDER OF DEEDS**

4841-0609-6020 v. 2

**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**