

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:

CBK FUTURES, INC.

Debtor.

Chapter 11

CASE NO. 17-16795

JUDGE JESSICA E. PRICE SMITH

**MOTION FOR ENTRY OF AN ORDER (A) AUTHORIZING THE SALE OF  
CERTAIN MEMBERSHIP INTERESTS FREE AND CLEAR OF ALL LIENS,  
CLAIMS, ENCUMBRANCES AND INTERESTS; (B) AUTHORIZING THE  
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS;  
AND (C) GRANTING RELATED RELIEF**

CBK Futures, Inc. ("CBK" or the "Debtor"), hereby moves this Court (the "Motion"), pursuant to sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the entry of an order, substantially in the form attached hereto as Exhibit A, (a) authorizing and approving the sale by CBK of certain of its Class B membership rights in Hopkins Restaurant Services, LLC, as same relate to Burger King No. 21752 (the "Membership Interests") to Restaurant Systems Company, LLC ("Buyer"), pursuant to the terms contained in the binding Letter of Intent ("LOI") attached hereto as Exhibit B, free and clear of all liens, claims, encumbrances and interests; (b) authorizing and approving the assumption and assignment of certain executory contracts and unexpired leases; and (c) granting such other relief as this Court deems just and proper.

In support of this motion, CBK respectfully states as follows:

## **BACKGROUND FACTS**

1. On November 15, 2017 (the "Petition Date"), Debtor commenced its chapter 11 case (the "Case") by filing its voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

2. Debtor is continuing in possession of its properties and assets and is operating and managing its business as debtor-in-possession pursuant to Sections 1107 and 1108. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Case.

### ***Debtor and Debtor's Business***

3. The Debtor operates eight (8) stand-alone Burger King® restaurants situated in Cuyahoga County (Parma Heights, Garfield Heights, Seven Hills, Middleburg Heights, and Brook Park)<sup>1</sup>, Lorain County, Ohio (Elyria and Sheffield Village) and Erie County (Sandusky) (collectively, the "Stand-Alone Locations"). The Debtor also operates one (1) EB-5 direct investment restaurant located in Cleveland, near to Cleveland Hopkins International Airport, in which CBK is the 25% owner and managing partner (the "EB-5 Location"). The Membership Interests the Debtor seeks to sell to Buyer are related to the EB-5 Location.

4. More detailed factual background regarding the Debtor, including its business operations, capital and debt structure, and the events leading to the filing of the Case, is set forth in detail in the Declaration of Dennis Zarrelli in Support of Chapter 11 Petitions and First Day Motions (the "Zarrelli Declaration"), filed on the Petition Date and fully incorporated herein by reference.

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<sup>1</sup> On the eve of filing, Debtor ceased operations at its Strongsville location, surrendered the premises to its landlord and equipment to Spirit Finance Acquisitions, LLC, the second party holding an interest in such equipment.

***Sale and Marketing Efforts.***

5. In evaluating its options, including the cessation of financial support from Unique Ventures Group LLC, which is the 95% equity holder of Debtor, Debtor realized that a sale of its assets to a purchaser prepared to take on the capital and operational requirements from, and meeting the qualifications of, Burger King<sup>®</sup> was its only option to preserve jobs and opportunities for vendors and business partners. Debtor determined that such a sale would need to be pursuant to the relief afforded in the Bankruptcy Code, namely the ability to sell assets free and clear of liens and encumbrances under Section 363 of the Bankruptcy Code.

6. Beginning in July of 2017, CBK began a wide marketing process to locate and secure a purchaser and/or stalking-horse bidder for its assets, including the assets of the Stand-Alone Locations and the Membership Interests in the EB-5 Location. With the assistance of counsel, CBK prepared materials to showcase its assets, highlighting the benefit of purchasing assets pursuant to Section 363 of the Bankruptcy Code. Such materials included, among other things, a pitchbook with information on all of the stores and locations, historical financial and demographic data, and development of a weekly cashflow budget and forecast to communicate financially with interested parties. Importantly, the materials provided also informed all parties on the process and the cash needs of the Debtor, including both (i) a projected Chapter 11 filing date and the increased costs and administrative expense obligations arising following such hypothetical filing date and (ii) detail on the necessary and required capital and operating expense needs of CBK which expect to exceed \$4,000,000 (collectively, the "Marketing Materials").

7. Upon finalization of the Marketing Materials, CBK began contacting parties reasonably (or even tangentially) expected to have an interest or to have a connection to parties that could have an interest, in purchasing some or all of the assets of CBK. Specifically, CBK,

on its own and through counsel, contacted, among other parties (i) many current Burger King® operators (through its own contacts and lists provided by Burger King Corporation ("BKC")); (ii) other national, regional and local franchise restaurant operators (including operators of franchises of Pizza Hut, Kentucky Fried Chicken, McDonalds, Subway, Arby's, International House of Pancakes, Perkins, Quaker Steak & Lube, among other food franchises); (iii) local, regional and national bankruptcy counsel (with knowledge of potential purchasers of distressed assets); (iv) local, regional and national bankruptcy consultants and professionals (with knowledge both in the franchising space and with purchasers of distressed assets); (v) other mergers and acquisition professionals and investment bankers; (vi) CBK's landlords; (vii) other real estate professionals; and (viii) any other parties known to have or presented to have interest in acquiring CBK's assets. In short, CBK canvassed all parties it could reasonably think of, short of advertising in a publication, to find a party, or parties, it needed to responsibly effectuate a transaction to continue operations and complete a sale of its assets.

8. Any party who responded to any inquiry and executed a simple non-disclosure agreement (in each case, a "NDA") was provided access to not only the Marketing Materials, but also additional financial and operational information and detail. Moreover, unfettered access to CBK's management and locations was provided to any such interested parties. At least thirteen (13) parties executed NDAs and considered CBK's assets more closely. Most of these parties were existing Burger King® operators, but some operated non-Burger King® franchises and/or had other designs for the assets. Some that are not current Burger King® operators had interest in becoming Burger King® operators. BKC expressed willingness to meet with any such party interested in joining the "Burger King® family" and BKC has expressed continued willingness to expediently vet and consider any party that presents a bid for substantially all of Debtor's assets, including the Membership Interests.

9. Following this thorough vetting and exploratory process, covering more than 100 days and virtually every contact CBK and counsel could reasonably consider, TOMS King (Ohio II), LLC ("TOMS King") came forward as the only party willing to serve as both the stalking-horse bidder (for the assets of the Stand-Alone Locations) and as Debtor's debtor-in-possession lender.

10. Based on the steps taken by Debtor, as more fully described above, on the Petition Date, the Debtor filed its *Motion for Entry of Orders: (A) Approving Bidding Procedures and Bidder Protection for Stalking-Horse-Bidder; (B) Approving Form and Manner of Notice of Auction and Sale; (C) Approving Credit Bid Rights of TOMS King (Ohio II), LLC; (D) Approving Form and Manner of Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases; (E) Approving Sale of Substantially All of Debtors' Assets; and (f) Granting Related Relief* [Dkt. No. 15] (the "Sale Procedures Motion"). Pursuant to the Sale Procedures Motion, since granted [Dkt. No. 67; "Sale Procedures Order"], Debtor seeks to sell the assets of the Stand-Alone Locations to TOMS King, with a hearing on such proposed sale scheduled for January 9, 2017 at 10:30 a.m. The proposed sale to TOMS King does not include the Membership Interests in the EB-5 Location.

11. As more fully described below, Buyer is only interested in purchasing the Membership Interests in the EB-5 Location, and not the assets of the Stand-Alone Locations. As such, Buyer's proposal will not interfere with, or disturb in any manner, Debtor's sale of the assets of the Stand-Alone Locations to TOMS King, should this Court approve such sale.

***Buyer's Proposal for the Membership Interests***

12. CBK, prior to the Petition Date, and the Debtor, subsequent to the Petition Date, has marketed the Membership Interests in the EB-5 Location. Although certain parties exhibited some interest in the Membership Interests, Buyer is the only party to submit to the Debtor a

binding letter of intent with no conditions or contingencies. Debtor and its counsel have determined that Buyer's offer to purchase the Membership Interests pursuant to the terms contained in the LOI constitutes the highest and best offer at this time, and provides the best opportunity for Debtor to realize the greatest return on the Membership Interests.

13. The material terms of the proposal are as follows:

- (i) **Purchase Price:** The total purchase price for the Membership Interests is \$3,500.00 (the "Purchase Price").
- (ii) **Good Faith Deposit:** Within three (3) business days of full execution of the LOI, Buyer will deposit with Debtor's counsel<sup>2</sup> Buyer's good faith deposit of \$350.00 (the "Good Faith Deposit"). The Good Faith Deposit will be applied to the Purchase Price (should the sale to Buyer be approved by the Court), or refunded to Buyer, as the case may be.
- (iii) **Membership Interests:** Buyer will purchase Debtor's Class B membership rights in Hopkins Restaurant Services, LLC, as same relate to Burger King No. 21752.
- (iv) **Assumed and Assigned Contracts:** Debtor will assume, and thereafter assign to Buyer, all Debtor's rights and obligations, if any, related to that certain Operating Agreement and Management Agreement by and between Debtor and Hopkins Restaurant Services, LLC.
- (v) **Private Sale:** The transaction contemplated herein is a private sale, but subject to the Debtor's rights pursuant to its fiduciary duties to consider higher and better offers for the Membership Interests.

14. Debtor believes that the terms of the LOI represent the highest and best offer for the Membership Interests and that Buyer's offer is currently the only viable offer to purchase the Membership Interests under the circumstances.

### ***Relief Requested***

15. Debtor respectfully requests that the Court enter an order: (a) authorizing the sale of the Membership Interests to the Buyer pursuant to binding LOI, free and clear of all liens,

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<sup>2</sup> The binding LOI makes reference to an Escrow Agent holding the Good Faith Deposit. After consultation with Buyer, the parties have agreed that Debtor's counsel will hold the Good Faith Deposit in counsel's IOLTA account pending closing of the proposed transaction.

claims, encumbrances or other interests pursuant to sections 363(b), (f) and (m) and 365 of the Bankruptcy Code, with such liens, claims, rights, interests and encumbrances to attach to the sale proceeds of the Membership Interests with the same validity, priority, extent and perfection as existed immediately prior to such sale; (b) approving the assumption and assignment of the Assigned Contracts under section 365 of the Bankruptcy Code; and (c) granting such other relief as may be necessary or appropriate.

### ***Basis for Relief***

#### **A. Business Justification**

16. "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). In determining whether to authorize such use, sale, or lease of property outside the ordinary course of business and outside of any chapter 11 plan pursuant to Section 363(b), Debtor must show that a sound business purpose justifies such actions. *Stephens Indus., Inc. v. McClung*, 789 F.2d at 389-90. A debtor's showing of a sound business purpose need not be unduly exhaustive; rather, a debtor is "simply required to justify the proposed disposition with sound business reasons." *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984); see also *In re Lionel Corp.*, 722 F.2d at 1070. The issue directly before the *Lionel* court was "to what extent Chapter 11 permits a bankruptcy judge to authorize the sale of an important asset of the bankrupt's estate, out of the ordinary course of business and prior to acceptance and outside of any plan of reorganization." *In re Lionel Corp.*, 722 F.2d at 1066.

17. The *Lionel* test requires a debtor to establish, as a threshold matter, a "sound business reason" justifying the pre-confirmation sale of assets. The *Lionel* court held that, when addressing a motion pursuant to Section 363(b), a bankruptcy judge should consider all salient

factors and the business justifications for a debtor to sell assets pursuant to Section 363(b). *Id.* at 1071.

18. In order to demonstrate a sound business purpose warranting a sale, courts within the Sixth Circuit and in other jurisdictions have developed a four-part test requiring a debtor to demonstrate: "1) sound business reason; 2) accurate and reasonable notice; 3) adequate price; and 4) good faith." *In re Country Manor of Kenton, Inc.*, 172 B.R. 217, 220-21 (Bankr. N.D. Ohio 1994) (citations omitted). All factors weigh in favor of approving the sale of the Purchased Assets.

19. There is a sound business justification for approving the Sale. Debtor has marketed the Membership Interests to numerous parties. Buyer is the only party that has proposed a binding offer to Debtor for the Membership Interests; a sale for a sum certain that carries no contingencies. Thus, Buyer is the only option available to preserve the value of these particular assets and keep them working for the benefit of creditors (albeit more on a go forward basis), employees and other business partners. Accordingly, Debtor has determined that a Sale pursuant to Section 363 to a purchaser with adequate resources to continue operations at the EB-5 Location will maximize the value of Debtor's estate for the benefit of its creditors, customers, and employees. Conversely, failure to locate and negotiate a sale, as the Debtor has done with Buyer, would have a materially adverse impact upon CBK, its estate, employees, customers, and creditors. Beyond the foregoing, and perhaps most importantly, this transaction with respect to the EB-5 Location may be the only alternative to protect the jobs of its many employees and the Debtor's customers. As a result, this transaction is justified. See *In re Trans World Airlines, Inc.*, 322 F.3d 283, 293 (3d Cir. 2003) (affirming the bankruptcy court's sale of substantially all of the debtor's assets, considering the strong likelihood of piecemeal liquidation should the sale not occur).



20. The Membership Interests are being sold for a tested price. As demonstrated above, and more fully described in the previously filed Sale Motion, Debtor, with the assistance of its counsel, has aggressively marketed all of the Debtor's assets, including the Membership Interests, and identified potential bidders who exhibited interest in acquiring a turnkey fast-food restaurant franchise, attracting the interest of as many potential purchasers as reasonably possible. Buyer's bid is the most offered for the Membership Interests.

21. Finally, Debtor negotiated the contemplated Sale transaction at arm's length, without collusion, and in good faith within the meaning of Section 363(m). Although Buyer is the operating arm of Hopkins Restaurant Services, LLC, Debtor has kept parties in interest, including, but not limited to, BKC up to date and informed on Debtor's progress to sell the Membership Interests. Furthermore, no prejudice will result to any parties in interest because the sale of the Membership Interests will be noticed in accordance with the notice provisions established by the Bankruptcy Rules. Such notice will: (a) afford all creditors and parties in interest with adequate and reasonable notice of the proposed transaction; (b) provide sufficient information regarding the sale of the Membership Interests and the time for filing objections to the proposed transaction; and (c) meet the requirements of the Bankruptcy Code, the Bankruptcy Rules and legal due process.

22. CBK requests that the Court determine that the entire Sale process was conducted in good faith within the meaning of Section 363(m) and that Debtor and Buyer (or any other party who may come forth with a higher and better offer for the Membership Interests) are entitled to the protections of Section 363(m). *See, e.g., In re Apex Oil Co.*, 92 B.R. 847, 873-74 (Bankr. E.D. Mo. 1988).

23. Based upon the foregoing, Debtor submits that a sale of the Membership Interests represents a sound exercise of Debtor's business judgment, is in the best interest of Debtor's estate, and should be approved in all respects.

**B. Sale Free and Clear of Any and All Liens, Claims, Interests and Encumbrances**

24. A debtor-in-possession may sell all or any part of its property free and clear of any and all liens, claims, interests and encumbrances in such property if,

- a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- b) such entity consents;
- c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- d) such interest is in bon a fide dispute; or
- e) such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. §363(f).

25. Section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests." The term "any interest," as used in section 363(f), is not defined in the Bankruptcy Code. *Folger Adam Security v. DeMatteis/MacGregor, JV*, 209 F. 3d 252, 259 (3d Cir. 2000). In *Folger Adam Security*, the Third Circuit specifically addressed the scope of the term "any interest" and observed that, while some courts have "narrowly interpreted that phrase to mean only in rem interests in Property," the trend in modern cases is towards "a broader interpretation which includes other obligations that may flow from ownership of the Property." *Id.* at 258; see also *In re White Motor Credit Corp.*, 75 B.R. 944 (Bankr. N.D. Ohio 1987) (holding that section 363(f) precluded tort claims against asset purchaser). As the Fourth Circuit determined in *In re Leckie Smokeless Coal Co.*, 99 F. 3d 573, 581-582 (4th Cir. 1996), section

363(f) is not limited to in rem interests. Therefore, a debtor "could sell [its] assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute." *Leckie*, 99 F. 3d at 581-582; see also *In re Appalachia Fuels, LLC*, 503 F.3d 538 (6th Cir. 2007) (approving a sale free and clear of "claims" arising as coal commission sales).

26. Moreover, section 363(f) of the Bankruptcy Code is drafted in the disjunctive. Consequently, satisfaction of any of the requirements enumerated therein will suffice to allow the sale of the Membership Interests free and clear of all liens and encumbrances, except with respect to any assumed liabilities or obligations related to the Assumed Liabilities/Assigned Contracts. See *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 506 (Bankr. N.D. Ala. 2002); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988). Debtor submits that each lien or encumbrance that is not one of the assumed liabilities/assigned contracts under the binding LOI falls within at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such lien or encumbrance will be adequately protected by either being paid in full at the time of closing, or attaching to the proceeds of the sale, subject to any claims and defenses Debtor may possess with respect thereto.

### **C. Assumption and Assignment of Executory Contracts**

27. Pursuant to Sections 365(a), (b) and (f), but conditioned on the closing of the Sale, Debtor requests entry of an order approving the assumption by Debtor and the assignment by Debtor to Buyer (or any other party who may come forth with a higher and better offer for the Membership Interests) of certain assumed liabilities/executory contracts, at the election of such party.

28. Section 365(a) provides:

[e]xcept as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

11 U.S.C. § 365(a). This authority extends to debtors-in-possession, like Debtor. 11 U.S.C. §1107(a).

29. A debtor's decision to assume or reject an unexpired lease or executory contract must only satisfy the business judgment rule and will not be disturbed unless such decision is clearly an unreasonable exercise of such judgment. *See Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 567 n. 16 (8th Cir. 1996). *See also Phar-Mor, Inc. v. Strauss Bldg. Assocs.*, 204 B.R. 948, 952 (N.D. Ohio 1997); *In re Structurelite Plastics Corp.*, 86 B.R. 922, 925 n.4 (Bankr. S.D. Ohio 1988).

30. Section 365(b)(1) requires a debtor-in-possession to satisfy certain requirements at the time of assumption if a default exists under the contract to be assumed. Section 365(b)(1) provides:

(b)(1) [i]f there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee —

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

31. Prior to assignment of an executory contract, a debtor-in-possession must comply with Section 365(f)(2), which provides:

(2) [t]he trustee may assign an executory contract or unexpired lease of the debtor only if-

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 S.C. § 365(f)(2).

32. Debtor will seek the cure of any defaults under the Assumed Contracts that are actually assumed at or before Closing (unless otherwise negotiated), thereby satisfying Sections 365(b)(1)(A) and (B), subject to the determination of Buyer (or any other party who may come forth with a higher and better offer for the Membership Interests). Adequate assurance of future performance depends upon the facts and circumstances of each case but should be given practical, pragmatic construction. *In re Tama Beef Packing, Inc.*, 277 B.R. 407, 411 (Bankr. N.D. Iowa 2002) (citations omitted) (holding that "[i]n making the determination of 'adequate assurance,' the Court must give a practical pragmatic construction based on the circumstances of each case"). Evidence of adequate assurance of future performance can be established based upon the financial health and experience of the assignee in the type of enterprise and property involved. *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986); *In re Alipat, Inc.*, 36 B.R. 274, 278 (Bankr. E.D. Mo. 1984) (holding that a business assigned to an experienced operator that will operate the business in substantially the same way will provide adequate assurance). Here, Buyer is financially sound and known to parties in interest, including BKC. Accordingly, Debtor submits that adequate assurance of future performance exists.

#### **D. Substitute Transaction**

33. Although Debtor expects, subject to the Court's approval, to consummate the proposed transaction with Buyer, Debtor has a duty to the estate to consider higher and better offers for the Membership Interests prior to any scheduled hearing before the Court on this Motion. To conserve the resources of all parties involved, Debtor is requiring that any other party interested in making a bid for the Membership Interests do so on or before **January 5, 2018**. Any party making such bid must make an offer that is (i) non-contingent; made in cash with a 10% deposit received by Debtor prior to the hearing on this Motion; and based on the form of binding LOI submitted with this Motion. Debtor reserves the right to hold an auction for the Membership Interests if another bid is timely received.

#### ***Waiver of 4-Day Stays of Rules 6004(h) and 6006(d)***

34. Unless the Court orders otherwise, all orders authorizing the sale of property pursuant to Section 363 and the assumption and assignment of executory contracts pursuant to Section 365 are automatically stayed for 14 days after entry. Fed. R. Bankr. P. 6004(h) & 6006(d). The purpose of Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. See *Advisory Committee Notes to Fed R. Bankr. P. 6004(h) and 6006(d)*.

35. Although Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the 14-day stay period, *Collier on Bankruptcy* suggests that the 14-day period should be eliminated in order to allow the sale or other transaction to close immediately "where there has been no objection to the procedure." 10 Collier on Bankruptcy 6004.09. Furthermore, *Collier on Bankruptcy* provides that if an objection is filed and overruled, and the objecting party informs the Court of its intent to appeal, the stay may be reduced to the amount of time necessary to file such appeal. *Id.*

36. Debtor has every expectation that it will be in a position to close this proposed transaction as soon as possible after entry of an order on this Motion. Accordingly, Debtor respectfully requests that the Court waive the 14-day stay period under Rules 6004(h) and 6006(d) in this instance.

### *Notice*

37. Notice of this Motion has been provided to (i) the office of the United States Trustee for Region IX; (ii) Debtor's post-petition secured lender TOMS King (Ohio II), LLC, and counsel John Jureller with Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036; (iii) Debtor's Stalking-Horse Bidder for the assets related to the Stand-Alone Locations, TOMS King (Ohio II), LLC and counsel John Jureller with Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036; (iv) Chapter 11 Trustee M. Colette Gibbons for the estate of Unique Ventures, CBK's 95% shareholder and counsel Nicholas Pagliari with MacDonald Illig, 100 State Street, #700, Erie, Pennsylvania 16507; (v) Burger King Corporation; (vi) the creditors identified on the Debtor's list of twenty (20) largest unsecured creditors; (vii) all Debtor's landlords; (viii) other known claimants having liens or security interests in property of Debtor; (ix) the Internal Revenue Service; (x) the Office of the United States Attorney; (xi) the United States Department of Justice; and (xii) parties that have expressed interest in the Membership Interests. In light of the nature of the relief requested, Debtor submits that no other or further notice is necessary.

WHEREFORE, Debtor respectfully requests the entry an order: (a) authorizing the sale of the Membership Interests to the Buyer pursuant to binding LOI, free and clear of all liens, claims, encumbrances or other interests pursuant to sections 363(b), (f) and (m) and 365 of the Bankruptcy Code, with such liens, claims, rights, interests and encumbrances to attach to the sale

proceeds of the Membership Interests with the same validity, priority, extent and perfection as existed immediately prior to such sale; (b) approving the assumption and assignment of the Assumed Liabilities/Assigned Contracts under section 365 of the Bankruptcy Code; and (c) granting such other relief as may be necessary or appropriate.

December 26, 2017

Respectfully submitted,

/s/ Christopher W. Peer

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# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

In re:

CBK FUTURES, INC., et al.

Debtors.

Chapter 11

CASE NO. 17-16795

JUDGE JESSICA E. PRICE SMITH

**ORDER GRANTING DEBTOR'S MOTION FOR ENTRY OF AN ORDER (A)  
AUTHORIZING THE SALE OF CERTAIN MEMBERSHIP INTERESTS FREE AND  
CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (B)  
AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN  
EXECUTORY CONTRACTS; AND (C) GRANTING RELATED RELIEF**

This matter having come before the Court pursuant to the December 26, 2017 *Motion for Entry of an Order (A) Authorizing the Sale of Certain Membership Interests Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts; and (C) Granting Related Relief*, Docket No. \_\_\_\_ (the "Sale Motion"). The Court, having considered the Sale Motion and the relief requested therein hereby FINDS that (a) notice of the Motion and the relief requested therein was just and proper and in accordance with all applicable laws and rules including, without limitation, the Bankruptcy

Code, Bankruptcy Rules, and Local Bankruptcy Rules of this Court; (b) the binding LOI and all terms and conditions thereof are fair and reasonable, and were entered into in good faith and at arm's length by Debtor and Buyer; (c) Debtor's determination to enter into the binding LOI is a sound exercise of Debtor's business judgment; (d) the relief set forth in the Motion, to the extent granted herein, is in the best interests of Debtor, its estate, all creditors, and all other interested parties; and (e) jurisdiction and venue of this Case and the matters set forth in the Motion is proper before this Court.

**IT IS HEREBY ORDERED THAT:**

1. The Motion shall be, and hereby is, GRANTED, and the sale of the Membership Interests by Debtor to Buyer, free and clear of all liens, claims, encumbrances and interests, pursuant to section 363 of the Bankruptcy Code is approved.
2. Debtor may, pursuant to section 365 of the Bankruptcy Code, assume and assign to Buyer those certain Executory Contracts.
3. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

###

Prepared and submitted by:

/s/ Christopher W. Peer

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COUNSEL FOR DEBTORS,  
CBK FUTURES, INC.

## **EXHIBIT B**

# RESTAURANT SYSTEMS COMPANY, LLC

## LETTER OF INTENT

Re: **Proposal to purchase CBK Futures, Inc.'s membership interest in Burger King 21752**

To whom it may concern:

The purpose of this letter is to set forth a binding letter of intent between Seller and Buyer for the membership interest referenced above, on the following terms:

1. **Buyer:** Restaurant Systems Company, LLC ("RSC")
2. **Seller:** CBK Futures, Inc. ("CBK")
3. **Membership Interest:** The membership interest to be purchased ("Membership Interest") consists of CBK's twenty-five percent (25%) Membership Interest in Burger King 21752, located at 19000 Brookpark Rd, Cleveland OH. Pursuant to the Operating Agreement and Management Agreement, CBK is the Managing Member and Class B Member of Hopkins Restaurant Services, LLC.
4. **Purchase Price:** The total purchase price for the Membership Interest shall be THREE THOUSAND FIVE HUNDRED and 00/100 (\$3,500.00) DOLLARS, which shall be paid in cash.
5. **Purchase Agreement:** Upon Seller's acceptance of this offer, Seller, through its legal counsel, promptly will prepare and submit to Buyer its proposed Purchase Agreement for Buyer's review and comment. Seller and Buyer will negotiate diligently and in good faith to quickly execute a mutually agreeable Purchase Agreement.
6. **Good Faith Deposit/Escrow:** Within three (3) business days of full execution of a binding Purchase Agreement between Buyer and Seller, Buyer will open an escrow for the purchase and sale of the Membership Interest at a title company to be selected by Buyer and deliver to said title company ("Escrow Agent") Buyer's good faith deposit of THREE HUNDRED FIFTY and 00/100 (\$350.00) DOLLARS ("Good Faith Deposit"). The Good Faith Deposit, and any interest earned thereon, will be refunded to Buyer or disbursed to Seller, as the case may be, in accordance with the terms of the Purchase Agreement.
7. **Conduct of Business:** During all relevant time periods, Seller shall continue to operate the Burger King in the ordinary course consistent with previous practice.

8. **Acceptance and Offer:** Buyer's signature hereunder constitutes an offer to purchase the Membership Interest on the terms set forth herein. Unless Seller accepts said offer by executing this letter and returning it to the Buyer before 12/27/2018, Buyer's offer shall be null and void.

Please have the appropriate, authorized representative of the Seller execute both counterparts of this binding letter of intent, and return one fully executed counterpart to the undersigned's attention.

Thank you,

Buyer: Restaurant Systems Company, LLC\_\_

By: Jacqueline Graham  
Jacqueline Graham

Its: Member

Date: 12/26/2017

Agreed this 26 day of December, 2017

Seller: CBK Futures, Inc.

By: Dani Zucchi V.P.

Its: Vice President

Date: 12-26-17