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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re COLIMA BBQ, INC., Debtor.	Case No. 2:18-10888-BB Chapter 11 **TRUSTEE'S MOTION FOR ENTRY OF AN ORDER: (A) APPROVING SALE OF BUSINESS FREE AND CLEAR OF ALL LIENS OR INTERESTS; (B) APPROVING OVERBID PROCEDURES; (C) APPROVING THE ASSIGNMENT OF REAL PROPERTY LEASE; AND (D) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF TIMOTHY J. YOO IN SUPPORT THEREOF** **[Declarations Of Ryan Oh and Jeong Hye Kim and Request for Judicial Notice Filed Herewith]** DATE: October 17, 2018 TIME: 10:00 a.m. PLACE: Courtroom "1539" 255 E. Temple Street Los Angeles, California

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PLEASE TAKE NOTICE that a hearing will be held on October 17, 2018 at 10:00 a.m. before the Honorable Sheri Bluebond, United States Bankruptcy Judge, in her Courtroom "1539," located at 255 E. Temple St., Los Angeles, CA, to consider the motion filed by Timothy J. Yoo, the duly appointed Chapter 11 Trustee ("Trustee") for the bankruptcy estate ("Estate") of COLIMA BBQ, Inc., the debtor herein ("Debtor"), hereby files his motion ("Motion") for entry of an order of the Court:

(A) pursuant to 11 U.S.C. §§ 363(b) and (m), authorizing the Trustee to sell, free and clear of all liens and interests, all of the Estate's rights in and to the business being operated as "Red Castle 1," located at 18751 E. Colima Rd., Rowland Heights, CA ("Business"), as more specifically described in that certain *Business Purchase Agreement and Joint Escrow Instructions* dated September 17, 2018 and all addendums, amendments and related agreements thereto (collectively, "BPA") between the Trustee and Jeong Hye Kim or assignee ("Buyer"), true and correct copies of which are attached as **Exhibit "1"** to the Declaration of Timothy J. Yoo annexed hereto ("Yoo Declaration"), to the Buyer, or a successful overbidder, in accordance with the terms and conditions set forth in the BPA;

(B) approving the overbid procedures set forth in this Motion ("Overbid Procedures");

(C) pursuant to 11 U.S.C. § 365, (i) authorizing the Trustee to assign[1] to the Buyer, or a successful overbidder, the real property lease ("Lease") between the Debtor and Seoul Colima LLC (as successor to Colima Park Investments, LLC) ("Landlord") for the premises upon which the Business is located, a true and correct copy of which Lease is attached as **Exhibit "2"** to the Yoo Declaration;

(D) finding the Buyer (or the successful overbidder) as a good faith purchaser entitled to the protections of 11 U.S.C. § 363(m); and

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[1] The Lease has been assumed by the Trustee pursuant to an order of the Court entered on August 14, 2018 [dkt. 125].

(E) waiving the 14-day stay periods set forth in Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") to enable the sale of the Property to close as quickly as possible.

The offer from the Buyer to purchase the Estate's right, title and interest in and to the Lease and the Business, including the Estate's liquor license, all inventory, machinery, equipment, fixtures, furniture and other personal property situated at the Business (collectively, the "Property"), all in "as is, where is" condition, with no representation or warranty, but free and clear of all liens and interests, is an all-cash offer for the sum of $250,000 ("Purchase Price"). The Buyer has made a $10,000 deposit towards the Purchase Price, and the balance of the Purchase Price will be due at closing. There are no contingencies to the sale other than the entry of an order approving this Motion authorizing the sale of the Property free and clear of all liens and claims and the assignment of the Lease, and approval of the transfer of the Business liquor license from the Debtor to the Buyer (or winning overbidder) by the Alcohol and Beverage Control ("ABC"). Closing is to occur immediately upon approval of the transfer of the liquor license from the Debtor to the Buyer (or winning overbidder) by the ABC. The deposit is non-refundable and forfeited to the Estate if the Buyer (or winning overbidder) is deemed to be the winning bidder for the Property and fails to timely consummate the sale of the Property for any reason other than the dis-approval of the transfer of the liquor license from the Debtor to the Buyer (or winning overbidder) by the ABC despite good faith, best efforts by the Buyer (or winning overbidder) to obtain the transfer of the liquor license.

Pursuant to this Motion, the Trustee seeks authority to sell the Property to the Buyer, subject to overbid, and in accordance with the terms and conditions set forth in the BPA. The sale of the Property to the Buyer (or winning overbidder) will be free and clear of all liens or interests, with such liens or interests to attach to the proceeds of the sale to the same extent, scope and priority as the pre-petition liens or interests. The Trustee also seeks Court approval of the Overbid Procedures described in the Motion in connection with the proposed sale of the Property, which the Trustee believes will maximize the price ultimately obtained for the Property and still protect the Estate from parties who may wish to bid on the Property but who are ultimately unable to consummate a purchase of the Property. Since the Estate's interest in and to the Lease is a critical component of the proposed sale of the Property, pursuant to this Motion, the Trustee also seeks the entry of a Court order approving the assignment of the Lease to the Buyer or a successful overbidder. The Trustee requests a finding that the Buyer (or the successful overbidder) is a good faith purchaser entitled to the protections of 11 U.S.C. § 363(m), and that the 14-day stay periods provided by Bankruptcy Rules 6004(h) and 6006(d) be waived to facilitate the closing of the sale of the Property as soon as possible after the entry of an order granting this Motion. No disbursements of the sale proceeds will be made absent further order of this Court.

The Motion is based upon 11 U.S.C. §§ 363 and 365, Bankruptcy Rules 2002, 6004 and 6006, Local Bankruptcy Rules 2002 and 6004-1, the accompanying Memorandum of Points and Authorities, Yoo Declaration, the Declarations of Ryan Oh and Jeong Hye Kim, the entire record of the Debtor's bankruptcy case, the statements, arguments and representations of counsel to be made at the hearing on the Motion, and any other evidence properly presented to the Court at, or prior to, the hearing on the Motion.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Bankruptcy Rule 9013-1(o), any opposition or objection to the relief requested in the Motion must be submitted in writing, served on counsel for the Trustee, and filed with the Bankruptcy Court not later than fourteen (14) days prior to the scheduled hearing date.

WHEREFORE, the Trustee respectfully requests that the Court enter an Order:

1. finding that the notice given by the Trustee in connection with the sale of the Property and the hearing on the Motion is adequate, sufficient, proper and complies with all applicable provisions of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure;

2. granting the Motion in its entirety;

3. approving the Overbid Procedures;

4. authorizing the Trustee to sell the Property to the Buyer (or to a successful overbidder), free and clear of all liens and interests and pursuant to the terms and conditions set forth in the BPA;

5. approving the assignment of the Lease to the Buyer (or a successful overbidder);

6. authorizing the Trustee to execute and deliver, on behalf of the Estate, any and all documents that may be reasonably necessary to consummate the sale of the Property and the assignment of the Lease to the Buyer;

7. finding that the Buyer (or the successful overbidder) is a good-faith buyer entitled to all of the protections afforded under 11 U.S.C. § 363(m);

8. waiving the 14-day stay periods set forth in Bankruptcy Rules 6004(h) and 6006(d); and

9. granting such other and further relief as may be necessary or appropriate under the circumstances.

Dated: September 21, 2018

TIMOTHY J. YOO, CHAPTER 11 TRUSTEE

By: *<u>/s/ Monica Y. Kim</u>*
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LEVENE, NEALE, BENDER, YOO
& BRILL L.L.P.
Attorneys for Timothy J. Yoo,
Chapter 11 Trustee

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

A. Background.

1. COLIMA BBQ, INC., debtor herein ("Debtor"), commenced this case by filing a voluntary petition under chapter 11 of the Bankruptcy Code on January 26, 2018 ("Petition Date"). Following a hearing on April 6, 2018, the Court ordered the conversion of this case to Chapter 11, and the appointment of a Chapter 11 trustee.

2. The Debtor operates a Korean barbeque restaurant doing business as "Red Castle 1" located at 18751 E. Colima Rd., Rowland Heights, CA ("Business"). The Business is being operated at the premises pursuant to a Commercial Lease Agreement ("Lease") between the Debtor and Seoul Colima LLC (successor to Colima Park Investments, LLC) ("Landlord").

3. The Debtor is wholly owned by Young Keun Park ("Park") who also filed a Chapter 7 bankruptcy case on January 26, 2018. Park's case was also converted to Chapter 11 following a hearing on April 6, 2018, and Elissa Miller has been appointed to serve as the Chapter 11 trustee of Park's case. In addition to the Debtor's "Red Castle 1" restaurant, Park owns: (i) RH BBQ, Inc. ("RH") which operates a Korean barbeque restaurant doing business as "Red Castle 3" located at 18311 E. Colima Rd., Suite A, Rowland Heights, CA, and (ii) Onebada, Inc. ("Onebada") which operates a Korean barbeque restaurant doing business as "Bulgogi House" located at 6901 Walker St., La Palma, CA. Both RH and Onebada filed voluntary petitions under Chapter 11 of the Bankruptcy Code on February 9, 2018.

4. On or about April 11, 2018, the Office of the United States Trustee appointed Timothy J. Yoo ("Trustee"), to serve as the chapter 11 trustee for the cases of the Debtor, RH, and Onebada. After investigating and operating all of these businesses, the Trustee has determined that going concern sales of these restaurants would be the best means of monetizing the highest value of these estates' assets for the benefit of their creditors. In that regard, the Trustee hired Coldwell Banker Commercial Wilshire Properties ("Coldwell Banker") to assist the estate in marketing and listing the Business for sale.

B. Marketing And Proposed Sale To Buyer.

5. The Business has been operating for approximately 6 years, and consists of approximately 2500 square feet of space with 14 BBQ tables and hoods. The communities of Rowland Heights and surrounding areas have a high number and concentration of Asian residents and businesses. By early June, 2018, the Trustee and his professionals were able to produce reasonably adequate financial data and due diligence materials to place the Business into the marketplace for sale. Based on the historical financial performance of the Business and with the advice of Coldwell Banker, the Trustee listed the Business for sale at the selling price of $250,000.

6. For several months, and as evidenced by the Declaration of Ryan Oh filed herewith, Coldwell Banker undertook extensive efforts to market and sell the Business for the highest price possible, including the following:

- Creating a complete marketing package featuring property/business description, location analysis, interior and exterior photos.
- Promoting and marketing the Business through the network of known and qualified business owners (the principal of Coldwell Banker, Ryan Oh, has been a business broker, consultant and leasing professional specializing in restaurants since 1989 and he has met and has had business transactions and dealings with a significant number of restaurant owners in Los Angeles and Orange County).
- Approaching national restaurant chains and businesses specializing in Asian/fusion cuisine (*e.g.*, Korean BBQ, Japanese BBQ, shabu-shabu) and promoting and market ing the Business for possible company-store and/or franchised units.
- Promoting and marketing the Business through a network of real estate/business brokers.
- Promoting and marketing the Business through the online real estate/business engines (BizBen, Costar (member only), Loopnet) as well as Korean media outlets which are popular within the Korean community (The Korea Times, Radio Korea).

- Showing the Business to all prospective buyers, accept and review all offers, and assist the Trustee in negotiating the highest possible price.

7. In addition, Coldwell Banker sent listing and financial information to more than 15 owners of large Asian/Korean restaurants in Los Angeles/Orange County areas, and engaged in meaningful discussions and/or showings with approximately 10-15 interested parties. These discussions and showings are ongoing.

8. The estate ultimately received two (2) offers to purchase the Business for $250,000. In particular, on August 14, 2018, the Trustee received his first offer of $250,000 from Moon Kwan Joo ("Joo") to purchase all of the estate's rights in and to the Lease and the Business, including the estate's liquor license, all inventory, machinery, equipment, fixtures, furniture and other personal property situated at the Business (collectively, the "Property"), all in "as is, where is" condition, with no representation or warranty, but free and clear of all liens and interests. However, for over a month, Joo never delivered the required deposit or proof of funds to close the sale.

9. On September 17, 2018, the Trustee, received his second offer of $250,000 from Jeong Hye Kim or assignee ("Buyer") to purchase the Property, all in "as is, where is" condition, with no representation or warranty, but free and clear of all liens and interests. Buyer also promptly delivered a cashier's check for the deposit of $10,000 and proof of funds to close. The terms and conditions of the sale are set forth in the *Business Purchase Agreement and Joint Escrow Instructions*, dated September 17, 2018, and all addendums, amendments and related agreements thereto (collectively, "BPA"), true and correct copies of which are attached as **Exhibit 1** to the Declaration of Timothy J. Yoo ("Yoo Declaration") annexed hereto. A true and correct copy of the Lease is attached as **Exhibit 2** to the Yoo Declaration.

10. As aforementioned, the Buyer has made a $10,000 deposit towards the Purchase Price, and the balance of the Purchase Price will be due at closing. There are no contingencies to the sale other than the entry of an order approving this Motion authorizing the sale of the

Property free and clear of all liens and claims and the assignment of the Lease[2], and approval of the transfer of the Business liquor license from the Debtor to the Buyer (or winning overbidder) by the Alcohol and Beverage Control ("ABC"). Closing is to occur immediately upon approval of the transfer of the liquor license from the Debtor to the Buyer (or winning overbidder) by the ABC. The deposit is non-refundable and forfeited to the estate if the Buyer (or winning overbidder) is deemed to be the winning bidder for the Property and fails to timely consummate the sale of the Property for any reason other than the dis-approval of the transfer of the liquor license from the Debtor to the Buyer (or winning overbidder) by the ABC despite good faith, best efforts by the Buyer (or winning overbidder) to obtain the transfer of the liquor license.

11. The offer from the Buyer is one of the highest offers received by the estate after several months of marketing and after attempting to negotiate with the Buyer for a higher Purchase Price. As described below, the Trustee believes that the proposed sale of the Business to the Buyer (or winning overbidder) under the terms of the BPA could result in substantial net sale proceeds for the benefit of creditors.

12. Subject to Court approval, the Trustee proposes to sell the estate's right, title and interest in and to the Property, as more particularly described in the BPA, all in "as is, where is" condition, with no representation or warranty, for cash in the sum of $250,000. The sale of the Property to the Buyer (or winning overbidder) will be free and clear of all liens and interests, with such liens or interests to attach to the proceeds of the sale to the same extent, scope and priority as the pre-petition liens or interests.

13. As aforementioned, the Buyer Jeong Hye Kim has provided evidence to the Trustee that she has the funds to deliver the balance of the Purchase Price to the estate upon closing. Concurrently herewith, the Trustee has also filed a Declaration of Jeong Hye Kim which evidences adequate assurance of future performance under the Lease by the Buyer.

14. The Trustee proposes that the sale of the Property be subject to overbid, in accordance with the overbid procedures described below ("Overbid Procedures"), at an auction

[2] Pursuant to an order of this Court entered on August 14, 2018 [dkt. 125], the Lease has already been assumed by the Trustee.

of the Property (the "Auction") to be conducted by the Trustee at the time of the hearing on this Motion ("Sale Hearing"). Therefore, pursuant to this Motion, the Trustee seeks Court approval of the Overbid Procedures, which the Trustee believes will maximize the price ultimately obtained for the Property and still protect the estate from parties who may wish to bid on the Property but who are ultimately unable to consummate a purchase of the Property.

15. Further, since the estate's interest in and to the Lease is a critical component of the proposed sale of the Property, pursuant to this Motion, the Trustee also seeks the entry of a Court order approving the assignment of the Lease to the Buyer or a successful overbidder. Pursuant to an order of this Court entered on August 14, 2018 [dkt. 125], the Trustee has already assumed the Lease.

16. Also, pursuant to this Motion, the Trustee requests that the Court make a finding that the Buyer (or the successful overbidder) is a good faith purchaser entitled to all of the protections afforded under 11 U.S.C. § 363(m), and that the 14-day stay periods provided by Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") be waived to facilitate the closing of the sale of the Property as soon as possible after the entry of an order granting this Motion.

C. The Proposed Overbid Procedures.

17. While the Trustee is prepared to consummate a sale of the Property to the Buyer, the Trustee is also interested in obtaining the maximum price for the Property. Accordingly, the Trustee required that any sale of the Property be subject to better and higher bids. However, in order to have an orderly auction process and to ensure that only qualified bids are received and considered, the Trustee is requiring that certain Overbid Procedures be implemented in connection with the sale of the Property.

18. Based on the foregoing considerations, the Trustee seeks Court approval of the Overbid Procedures described below in connection with the proposed sale of the Property.

a. ***Overbid Requirements.*** Any party interested in submitting an overbid for the Property ("Overbid") must, not later than 12:00 p.m. (Pacific time) on October 12, 2018 ("Overbid Deadline"), deliver such Overbid in writing to counsel for the Trustee

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i. The purchase price for the Property in any Overbid must be in the sum of at least $255,000.00. Any Overbid must otherwise be on the same terms and conditions set forth in the BPA.

ii. Each party submitting an Overbid must, by the Overbid Deadline: (i) deliver a deposit in the sum of $10,000.00, in the form of a cashier's check to the Trustee, so that such deposit is actually received by the Overbid Deadline, (ii) deliver to counsel for the Trustee proof of committed funds available to the bidder sufficient to enable such bidder to consummate the sale of the Property, which proof shall be in the form of a letter of credit, loan commitment or other form acceptable to the Trustee in the Trustee's sole discretion, and (iii) information to demonstrate adequate assurance of future performance of the Lease by such bidder ("<u>Adequate Assurance Information</u>"), which information may include (but is not limited to) balance sheets and income statements for the last two years, federal income tax returns for the last two years, information regarding the bidder's experience in retail store operations, and identity of the management of the bidder and their qualifications. In the event that (i) the bidder fails to timely make the deposit, (ii) the bidder fails to timely provide proof of committed funds, (iii) the bidder fails to provide Adequate Assurance Information, or (iv) the Trustee determines, in his sole discretion, that the proof of funds provided to Trustee by a bidder is unacceptable, the Trustee may, at his sole discretion, disqualify such bidder from participating in Auction. In the event that the Trustee exercises his discretion and disqualifies a bidder from participating in the Auction, the Deposit made by such bidder (if any) shall be returned to the bidder.

b. <u>***Bidding At Auction.***</u> If at least one qualified bidder who has submitted an Overbid appears at the Auction, the Trustee shall designate what he determines, in his reasonable judgment, to be the best and highest Overbid received for the Property to be the leading bid at the Auction. Thereafter, the Trustee shall solicit better and higher bids for the Property, in bidding increments of at least $5,000.00, from the qualified bidders participating in the Auction (including the Buyer, if he chooses to participate) until the best and highest bid for the Property has been determined by the Trustee. The qualified bidder who submits the second best/highest bid for the Property at the Auction shall be designated as the backup bidder, if such bidder consents to act as the backup bidder.

c. ***Backup Bidder:*** In the event that Buyer or the successful overbidder cannot timely complete the purchase of the Property, the Trustee shall be authorized to proceed with the sale of the Property to the backup bidder without further notice, hearing or order of the Court.

d. ***Closing of Sale and Forfeiture of Deposits:*** If the winning bidder fails to consummate the sale of the Property immediately upon approval of the transfer of the liquor license by the ABC, the winning bidder will be deemed to have forfeited his/her/its deposit unless the Court or the Trustee agrees to provide the winning bidder with an extension of time to close the sale. If the winning bidder fails to timely close and forfeits his/her/its deposit, the backup bidder (if any) will be notified and will then have the opportunity to seek the transfer of the estate's liquor license. If the backup bidder fails to consummate the sale of the Property immediately upon approval of the transfer of the liquor license by the ABC, the backup bidder will be deemed to have forfeited his/her/its deposit unless the Court or the Trustee agrees to provide such backup bidder with an extension of time to close the sale. The deposit of the backup bidder will be retained by the Trustee following the conclusion of the Auction and will be returned to the backup bidder on the earlier to occur of (i) the closing by the winning bidder of his/her/its purchase of the Property or (ii) the failure of the backup bidder to close for any reason other than the dis-approval of the transfer of the liquor license from the Debtor to the Buyer (or winning overbidder) by the ABC despite good faith, best efforts by the Buyer (or winning overbidder) to obtain the transfer of the liquor license.

D. Liens Asserted Against Property And No Distributions Of Sale Proceeds At This Time.

19. The Court established July 31, 2018 as the bar date for creditors to file proofs of claim in this case ("Bar Date"). A review of the Court's Claim Register reveals that there are four (4) creditors which assert security interests and liens upon the Property and timely filed proofs of claim. Each of these creditors, their respective proofs of claim, and their purported security interests and liens are described briefly below.

20. The Trustee is not seeking any authority in the Motion to disburse any of the sale proceeds at this time, and the liens and interests of those creditors asserting liens and interests in and to such proceeds will attach to such proceeds to the same extent, scope and priority as the pre-petition liens or interests. The dates of the recording of these creditors' UCC-1 financing statements are highlighted in bold below.

21. Hana Small Business Lending, Inc. ("Hana"). Hana extended a secured loan to RH in the principal amount of $240,000 on or about September 5, 2012 pursuant to a Business Loan Agreement, Note, Commercial Security Agreement and related agreements.[3] The Debtor guaranteed RH's obligations to Hana, secured by substantially all of its assets through a Commercial Security Agreement dated September 5, 2012. Hana recorded a UCC-1 financing statement that covers substantially all of the Debtor's assets with the California Secretary of State's Office on **September 7, 2012**.[4] Hana also timely filed a proof of claim (Claim No. 3-1) on April 27, 2018 asserting a secured claim of $147,265.40 as of April 27, 2018 consisting of (i) principal of $131,686.81, (ii) interest of $3,005.35, (iii) late charges of $423.24, and (iv) attorney fees and costs of $12,150.[5] These amounts will be verified by the Trustee, however, based on

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[3] In the motion filed by the Trustee in the RH bankruptcy case to sell the business of RH, the Trustee incorrectly stated that Hana had also extended a small business loan to the Debtor. There was no direct loan by Hana to the Debtor. Rather, as described herein, the Debtor guaranteed the obligations of RH to Hana and secured its guaranty obligations to Hana with substantially all of its assets.

[4] Hana also filed a continuation statement on July 27, 2017.

[5] A copy of Hana's proof of claim is attached as Exhibit A to the Request for Judicial Notice ("RJN") filed concurrently herewith.

the Trustee's investigation, RH does appear to have received this loan when it opened its business. RH has filed its motion to sell its business to a stalking horse buyer for $580,000, subject to overbids, which is scheduled to be heard by this Court on October 3, 2018. Because Hana has a first priority security interest and lien upon the assets of RH, the proceeds from the sale of RH's business will be sufficient to satisfy RH's obligation to Hana, at which time the Debtor's obligations under the guarantee (and Hana's claim against this estate) will be eliminated. Based on the foregoing, the Trustee submits that there is no basis for Hana to receive any of the proceeds from the sale of the Debtor's Property at closing absent further order of this Court. However, Hana's liens, if any, will attach to the proceeds of the sale to the same extent, scope and priority as its pre-petition liens or interests.

22. Bank of Hope, successor to BBCN Bank ("Bank of Hope"). On or about September 27, 2013, Bank of Hope provided a construction loan to Onesan, LLC ("Onesan") and Onebada, as co-borrowers, in the original principal sum of $3,521,000. This loan enabled Onesan, as landlord, to purchase and/or build-out the premises upon which Onebada operates its "Bulgogi House" restaurant. The loan was secured by a first-priority mortgage upon the premises, and a first-priority security interest and lien upon the personal property of Onebada. However, the loan was also guarantied by RH and the Debtor, and their respective guarantees were secured by substantially all assets of these debtors. In that regard, Bank of Hope recorded a UCC-1 financing statement that covers substantially all of the Debtor's assets with the California Secretary of State's Office on **September 30, 2013**. Bank of Hope also timely filed a proof of claim (Claim No. 9-1) on June 26, 2018 asserting a secured claim of approximately $3.5 million.[6]

23. Park is the sole member of Onesan. The real estate owned by Onesan (which is now controlled by Elissa Miller as the Chapter 11 trustee of the Park bankruptcy estate) and the "Bulgogi House" restaurant operated by Onebada are currently listed for sale for $4.6 million (real estate), and $900,000 (restaurant), respectively. The proceeds therefrom are, therefore,

[6] A copy of Bank of Hope's proof of claim is attached as Exhibit B to the RJN filed concurrently herewith.

extremely likely to be sufficient to satisfy the obligations of Onesan and Onebada, which are the primary and co-obligors of the loan to Bank of Hope. The Trustee is also informed that Onesan is current on the payment of its mortgage obligations to Bank of Hope. Given these facts, that Bank of Hope is adequately protected by the value of the real estate and the restaurant, that Onesan and Onebada are not in default of their loan obligations to Bank of Hope, and that the Debtor is a guarantor of the loan obligations, the Trustee submits that there is no basis for Bank of Hope to receive any of the proceeds from the sale of the Debtor's Property at closing absent further order of this Court. However, Bank of Hope's liens, if any, will attach to the proceeds of the sale to the same extent, scope and priority as the pre-petition liens or interests.

24. Quentin Meats ("Quentin"). Quentin was a supplier of meats to the Debtor. Quentin recorded a UCC-1 financing statement that covers substantially all of the Debtor's assets with the California Secretary of State's Office on **March 24, 2017**. Quentin also timely filed a proof of claim (Claim No. 11-1) on June 27, 2018 asserting a secured claim of approximately $178,549.52 for "goods sold/supplied" and later an amended proof of claim (Claim No. 11-2) on August 22, 2018 asserting a secured claim of approximately $236,606.15 for "goods sold/supplied."[7] The proofs of claim also states that Quentin is entitled to 10% interest because the credit application requires the Debtor to pay interest of 10% per annum and all reasonable expenses, including attorneys' fees, of Quentin.

25. The Trustee intends to file an objection as to the amount and secured status of Quentin's proof of claim 11-2. *As to the amount*, the Trustee will need to independently verify receipt of the goods and the alleged nonpayment of the goods. The proof of claim also attaches a Holding Escrow Instructions document which purports to show that Quentin advanced $250,000 to pay for property taxes owed by Onesan and an entity known as Rapid Advance, but for which the escrow officer recorded UCC-1 financing statements against the Debtor, RH, and Onebada. It is unclear if the amount of the claim is based solely on the unpaid bills or also includes the $250,000 that was apparently advanced to pay for obligations unrelated to the Debtor. *As to the*

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[7] A copy of Quentin's amended Proof of Claim 11-2 is attached as Exhibit C to the RJN filed concurrently herewith.

lien, there is no evidence in the proof of claim that the Debtor granted to Quentin a security interest and lien upon its assets to secure any indebtedness resulting from the sale of goods to Quentin. Under California's Commercial Code, Article 9 provisions, absent any express "granting" of a security interest or lien upon the Debtor's assets, Quentin's alleged lien is defective, and the Trustee's objection to Quentin's proof of claim will fully address this point.

26. In addition to the Trustee's objection to Quentin's secured claim, any lien asserted by Quentin against this estate's assets is junior in priority to the liens asserted by Hana and Bank of Hope which are not receiving any proceeds from the sale of the Property. Therefore, any payment to Quentin on its disputed secured claim is unwarranted at this time. However, Quentin's liens, if any, will attach to the proceeds of the sale to the same extent, scope and priority as the pre-petition liens or interests.

27. Timberland Bank ("Timberland"). Timberland filed a proof of claim (Claim 4-1) on May 9, 2018 asserting a total claim of $83,959.59, claiming that $10,000 is secured and the balance unsecured.[8] Attached to this proof of claim is a supplement which states that the claim is partly secured because Timberland recorded a UCC-1 financing statement that covers substantially all of the Debtor's assets with the California Secretary of State's Office on **June 20, 2017**. Also attached to the proof of claim is a Merchant Agreement executed by the parties on or about June 19, 2017 (by Debtor) and June 20, 2017 (by Timberland) pursuant to which Timberland purportedly gave the Debtor a loan for $99,000.

28. The Trustee is investigating Timberland's proof of claim to verify, among other things, whether the proceeds of the loan were actually received and used by the Debtor. The books and records of the Debtor, Colima and Onebada, as well as other documents and information, show that Park may have transferred funds of these businesses to himself or other entities without proper reason or authorization.

29. In any event, any lien asserted by Timberland against this estate's assets is junior in priority to the liens asserted by Hana, Bank of Hope and Quentin which are not receiving any

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[8] A copy of Timberland's proof of claim is attached as Exhibit D to the RJN filed concurrently herewith.

proceeds from the sale of the Property. Therefore, any payment to Timberland on its disputed secured claim is unwarranted at this time. However, Timberland's liens, if any, will attach to the proceeds of the sale to the same extent, scope and priority as the pre-petition liens or interests.

30. Moreover, it is the Trustee's belief that Hana, Bank of Hope, Quentin Meats, nor Timberland Bank do not have perfected or enforceable liens upon the estate's leasehold rights and liquor license; therefore, in connection with the continued investigation and objection to the allowance and/or payment of the secured claims asserted by these creditors, the estate reserves its rights fully to argue that the scope of their purported liens do not extend to the proceeds of these assets.

31. In summary, the Trustee is not seeking to disburse the proceeds from the sale of the Property absent further order of the Court. All liens and interests of these creditors will attach to the proceeds of the sale to the same extent, scope and priority as the pre-petition liens or interests.

II.

GOOD CAUSE EXISTS TO APPROVE THE PROPOSED OVERBID PROCEDURES

Bankruptcy Rules 2002 and 6004 govern the scope of the notice to be provided in the event a trustee elects to sell property of the estate under 11 U.S.C. § 363; however, with respect to the procedures to be adopted in conducting a sale outside the ordinary course, Bankruptcy Rule 6004 provides only that such sale may be by private sale or public auction, and requires only that the trustee provide an itemized list of the property sold together with the prices received upon consummation of the sale. Fed. R. Bankr. Proc. 6004(f).

Neither the Bankruptcy Code nor the Bankruptcy Rules contain specific provisions with respect to the procedures to be employed by a trustee in conducting a public or private sale. Nonetheless, as one Court has stated, "[i]t is a well-established principle of bankruptcy law that the objective of bankruptcy rules and the trustee's duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate." *In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988). Additionally, courts have long recognized the need for competitive bidding at hearings on private sales; "[c]ompetitive bidding yields higher offers and thus benefits the estate. Therefore, the objective is 'to maximize bidding, not restrict it.'" *Id.*

The Trustee believes that the proposed Overbid Procedures will maximize the price ultimately obtained for the Property while still protecting the estate from parties who may wish to bid on the Property but who are ultimately unable to consummate a purchase of the Property. The Overbid Procedures serve numerous legitimate purposes. Among other things, the Overbid Procedures will (i) foster competitive bidding among any serious potential purchasers; (ii) eliminate from consideration purchasers who would waste the estate's time because they would not have the financial ability to consummate a purchase of the Property; and (iii) ensure that the highest possible price is obtained for the Property. Accordingly, the Trustee submits that approval of the proposed Overbid Procedures is in the best interests of the estate and creditors.

Local Bankruptcy Rule 6004-1 provides that a hearing on a motion to establish procedures for the sale of assets may be scheduled on not less than seven (7) days' notice. The notice must describe the proposed procedures, describe the purchase agreement, describe the prior marketing effort and provide that opposition may be filed on or before one (1) day prior to the hearing. LBR 6004-1(b)(2). A notice of this Motion ("<u>Notice</u>"), which complies with Local Bankruptcy Rule 6004-1(b)(2), is being served on the Debtor, all of the Debtor's creditors, all parties requesting special notice, and the Office of the United States Trustee, via first-class mail. Notwithstanding the provisions of Local Bankruptcy Rule 6004-1, which allow a hearing on a bidding procedures motion to be scheduled on notice of only seven (7) days, the Trustee is filing and serving the Notice and the Motion with at least twenty-one (21) days' notice before the Sale Hearing.

III.

<u>THE TRUSTEE SHOULD BE PERMITTED TO ASSIGN THE DEBTOR'S REAL PROPERTY LEASE</u>

11 U.S.C. § 365(f)(2) permits a trustee to assign an unexpired lease of the debtor, provided that the trustee first assumes such unexpired lease, in accordance with Bankruptcy

Code Section 365(b)(1), and provides adequate assurance of future performance by the assignee of such lease. As discussed in detail below, the Trustee believes that all of the requirements under 11 U.S.C. §§ 365(b)(1) and 365(f)(2) for the assumption and assignment of the Lease have been or will be satisfied in this case.

1. Lease Has Been Assumed.

Pursuant to an order of this Court entered on August 14, 2018, the Lease has been assumed by the Trustee.

2. Adequate Assurance Of Future Performance Under The Lease.

The Bankruptcy Code does not define the term "adequate assurance of future performance." "[T]he term was intended to be given a practical, pragmatic construction in light of the facts of each case. *In re Sapolin Paints, Inc.*, 5 B.R. 412, 420-21 (Bankr. E.D.N.Y. 1980). As designed by Congress, it does not mean absolute insurance that the debtor will thrive and make a profit. *In re Alipat, Inc.*, 36 B.R. 274, 278 (Bankr. E.D. Mo. 1984). Regarding a lease covenant to pay rent, the test is simply whether it appears that the rent will be paid and other obligations thereunder met. *See In re Evelyn Byrnes, Inc.*, 32 B.R. 825, 829 (Bankr. S.D.N.Y. 1983; *In re U.L. Radio Corp.*, 19 B.R. 537 (Bankr. S.D.N.Y. 1982). A guaranty is not required." *In re Natco Industries, Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985); *see also, In re Sunrise Restaurants, Inc.* 135 B.R. 149 (Bankr. M.D. Fla 1991) (mere existence of some "lingering doubts" of future performance not sufficient to prohibit assumption of lease where denying assumption motion "would certainly do nothing but visit drastic economic consequences and doom on the entire estate, the secured parties as well as the unsecured [creditors] . . . .").

The policy underlying adequate assurance of future performance is to preserve the "benefit of the bargain" reached between the parties at the time the contract or lease was executed. Section 365(b)(1) "affords no relief to a landlord simply because it might have the opportunity to rent the premises to others at a higher base or percentage rent and would otherwise seek to escape the bargain it made." *See, In re Natco Industries, Inc.*, 54 B.R. at 440. All that is required under Section 365(b)(1)(C) is assurance that the non-debtor party receives the same assurances it had when the contract was executed. *Id*. ("Section 365 gives no indication that a landlord . . . is to improve its position upon the bankruptcy of a tenant.").

Concurrently herewith, the Trustee has filed the Declaration of Jeong Hye Kim, the Buyer, which evidences adequate assurance of future performance by the Buyer under the Lease. The Trustee submits that the Landlord will be in a better (or at least equal) position with the Buyer in place as the tenant under the Lease than the Landlord was at the time it entered into the original Lease agreement with the Debtor. In contrast to the Debtor, which is now in bankruptcy, and the Debtor's owner who is also in bankruptcy and no longer in control or possession of the Business, the Buyer is a successful business person who is well funded and represents a far better credit risk than the Debtor.

In the event a successful overbidder is the prevailing purchaser of the Property, the Trustee will submit evidence to demonstrate adequate assurance of the overbidder's future performance under the Lease.

Based on the foregoing, the Trustee submits that he has complied, or will be able to comply, with the elements of 11 U.S.C. §§ 365(b)(1) and 365(f)(2) to assume the Lease and assign the Lease to the Buyer (or a successful overbidder).

IV.

THE PROPOSED SALE IS IN THE BEST INTERESTS OF THE ESTATE

A. The Trustee Has Complied With All Applicable Notice Requirements.

Section 363(b)(1) provides that 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). Section 102(1) defines "after notice and a hearing" as after such notice as is appropriate in the particular circumstances, and such opportunity for hearing as is appropriate in the particular circumstances. 11 U.S.C. § 102(1)(A).

Bankruptcy Rule 6004(a) provides, in pertinent part, that notice of a proposed sale not in the ordinary course of business must be given pursuant to Bankruptcy Rules 2002(a)(2), (c)(1), (i) and (k), and, if applicable, in accordance with section 363(b)(2) of the Bankruptcy Code. Fed. R. Bankr. P. 6004(a). Bankruptcy Rule 2002(a)(2) requires at least 21 days' notice by mail of a proposed sale of property of the estate other than in the ordinary course of business, unless the Court for cause shown shortens the time or directs another method of giving notice. Fed. R. Bankr. P. 2002(a)(2). Bankruptcy Rule 2002(c)(1) requires that the notice of a proposed sale include the date, time and place of any public sale, the terms and conditions of any private sale, and the time fixed for filing objections. It also provides that the notice of sale or property is sufficient if it generally describes the property. Fed. R. Bankr. P. 2002(c)(1). Bankruptcy Rule 2002(k) requires that the notice be given to the United States Trustee. Fed. R. Bankr. P. 2002(k).

In addition, Local Bankruptcy Rule 6004-1 requires that the Notice contain the information specified in Local Bankruptcy Rule 6004-1(c)(3) and that an additional copy of the Notice be submitted to the Clerk of the Bankruptcy Court together with a Form 6004-2 at the time of filing for purposes of publication. L.B.R. 6004-1(c)(3) and (f).

The Trustee has complied with all of the above provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules. The Trustee has complied with Bankruptcy Rules 6004(a) and 2002(a)(2), (c)(1), (i) and (k), as well as Local Bankruptcy Rule 6004-1(c)(3), because the Notice of the Motion that has been filed contemporaneously herewith includes all of the required information, including, without limitation, the date, time and place of the Auction and Sale Hearing and the deadline for objecting to this Motion, and has been served on the Office of the United States Trustee, the Debtor, all of the Debtor's known creditors, and all parties requesting special notice. The Trustee has also complied with the requirements of Local Bankruptcy Rule 6004-1(f) because the Trustee has filed the Notice and Form 6004-2 with the Clerk of the Bankruptcy Court for purposes of publication.

B. <u>The Sale Of The Property Should Be Approved Because Good Business Reasons Exist, The Purchase Price For The Property Is Fair And Reasonable, And The Proposed Sale Is In The Best Interests Of The Estate And Creditors.</u>

As a general matter, a Court considering a motion to approve a sale under Bankruptcy Code Section 363(b) should determine from the evidence presented before it that a "good business reason" exists to grant such a motion. *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir.

1983). In addition, the Court must further find it is in the best interest of the estate. To make this determination, a Court should consider whether:

(1) the sale is fair and reasonable, *i.e.*, the price to be paid is adequate;

(2) the property has been given adequate marketing;

(3) the sale is in good faith, *i.e.*, there is an absence of any lucrative deals with insiders, and

(4) adequate notice has been provided to creditors.

In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841-2 (Bankr. C.D. Cal. 1991); *In re The Landing*, 156 B.R. 246, 249 (Bankr. E.D. Mo. 1993); *In re Mama's Original Foods, Inc.*, 234 B.R. 500, 502-505 (C.D. Cal. 1999). The Trustee submits that the proposed sale of the Property, pursuant to the terms of the BPA, satisfies each of these requirements.

1. Sound Business Purpose.

The Ninth Circuit Bankruptcy Appellate Panel in *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19 (9th Cir. B.A.P. 1988) has adopted a flexible case-by-case test to determine whether the business purpose for a proposed sale justifies disposition of property of the estate under Section 363(b). The facts pertaining to the sale at issue here amply substantiate the Trustee's business decision that the contemplated sale of the Property, pursuant to the terms of the BPA, serves the best interests of the estate and merits the approval of this Court.

If the Trustee is successful in objecting to the secured claims of Quentin and Timberland, and the Hana and Bank of Hope's claims (which are both guaranty claims) are satisfied by the primary obligors, the proposed sale of the Property to the Buyer could result in net sale proceeds in excess of $200,000 (net of commissions and other costs of sale), which will result in a recovery for the Debtor's creditors. On the other hand, if the Trustee is not able to consummate a sale of the Property to the Buyer (or a successful overbidder) as proposed herein, the Trustee will be faced with the choice of having to either (i) immediately close the Business, reject the Lease which has already been assumed, and liquidate the remaining assets of the estate which his comprised primarily of minimal inventory, furniture and equipment, and a liquor license, or (ii) continue to operate the Business with the assistance of his internal and external team of managers, and propose a plan of reorganization, the recovery under which is likely to be nominal and speculative and take place over a very long period of time. Under both of these scenarios, the Trustee believes that creditors will receive far less value and recovery than what they could obtain through a going concern sale of the Property and the Trustee's pursuit of objections to the secured claims which will unencumber the proceeds of the sale. Moreover, given the administrative costs incurred by the Trustee to date to operate the Business and negotiate and seek Court approval of the proposed sale of the Property (among other required administrative tasks), without a successful sale of the Property, it is almost assured that the estate will be administratively insolvent.

Based on the foregoing, the Trustee submits that the proposed sale of the Property is in the best interests of the estate and therefore represents a sound exercise of the Trustee's business judgment.

2. <u>Fair and Reasonable Price.</u>

In order for a sale to be approved under Bankruptcy Code Section 363(b), the purchase price must be fair and reasonable. *See generally, In re Canyon Partnership*, 55 B.R. 520 (Bankr. S.D. Cal. 1985). The trustee is given substantial discretion in this regard. *Id.* In addition, Courts have broad discretion with respect to matters under section 363(b). *See Big Shanty Land Corp. v. Comer Properties, Inc.*, 61 B.R. 272, 278 (Bankr. N.D. Ga. 1985). In any sale of estate assets, the ultimate purpose is to obtain the highest price for the property sold. *Wilde Horse Enterprises, Inc.*, 136 B.R. at 841 (*citing In re Chung King, Inc.*, 753 F.2d 547 (7th Cir. 1985)), *In re Alpha Industries, Inc.*, 84 B.R. 703, 705 (Bankr. Mont. 1988).

The Trustee believes that the Purchase Price is fair and reasonable under the current circumstances and is one of the highest offers with the best terms received by the Trustee after several months of extensive marketing efforts by Coldwell Banker and after attempting to negotiate with the Buyer for a higher Purchase Price. Moreover, the Overbid Procedures and Auction process proposed to be implemented by the Trustee is specifically designed to ensure that the highest price possible is obtained for Property. Although the Trustee will not know the results of the Auction (if one is conducted) until the Auction has been completed, the Trustee submits that the highest and best bid obtained for the Property (whether it is the current bid offered by the Buyer or an overbid submitted by a successful overbidder, including potentially the Debtors) will constitute fair and reasonable value for the Property.

3. Adequate Marketing.

Coldwell Banker and its principal, Ryan Oh, were hired because of their extensive experience and success leasing retail space and selling businesses, especially businesses that cater to the Korean-American clientele. Mr. Oh has almost 30 years of experience as a business broker, consultant and leasing professional specializing in restaurants and has extensive network and experience in the business space and locations occupied by the Debtor. As detailed above, Mr. Oh undertook and launched massive efforts to market and advertise the Business through a variety of platforms. Moreover, in an effort to maximize the value obtained for the Property, the Trustee is inviting overbids for the Property, in accordance with the proposed Overbid Procedures. Therefore, the Trustee respectfully submits that the Property has been, or will be, adequately marketed.

4. Good Faith.

When a Bankruptcy Court authorizes a sale of assets pursuant to Bankruptcy Code Section 363(b)(1), it is required to make a finding with respect to the "good faith" of the purchaser. *In re Abbotts Dairies*, 788 F.2d at 149. Such a procedure ensures that Section 363(b)(1) will not be employed to circumvent creditor protections. *Id.* at 150. With respect to the Trustee's conduct in conjunction with the sale of the Property, the good faith requirement focuses principally on whether there is any evidence of "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *Abbotts Dairies*, 788 F.2d at 147; *Wilde Horse Enterprises*, 136 B.R. at 842.

The Trustee and the Buyer have negotiated the terms of the proposed sale of the Property, as set forth in the BPA, at arms' length and in good faith. The Buyer has no affiliation with the Debtor or the Trustee and is not an "insider" of either of the Debtor as that term is defined in 11 U.S.C. § 101(31). The Trustee submits that there has been no fraud or collusion in connection with the proposed sale of the Property. No offer to purchase the Property received by the Trustee has been ignored, and the Trustee has taken reasonable steps to try to obtain the highest price possible for the Property. Based on the foregoing, the Trustee submits that the good faith requirement has been satisfied.

5. Accurate and Reasonable Notice.

The purpose of the notice is to provide an opportunity for objections and hearing before the Court if there are objections. *In re Karpe*, 84 B.R. 926, 930 (Bankr. M.D.Pa. 1988). A notice is sufficient if it includes the terms and conditions of the sale and if it states the time for filing objections. *Id.*

As set forth in detail in Section IV.A of this Motion, the Trustee has complied with all of the applicable notice provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules. Thus, the Trustee submits that the notice of the Motion (and proposed sale of the Property) should be deemed adequate, accurate and reasonable by the Court.

V.

SALE OF THE PROPERTY CAN BE FREE AND CLEAR OF ANY AND ALL LIENS

Section 363(f) of the Bankruptcy Code provides, in relevant part, as follows:

> The trustee may sell property under subsection (b) . . . of this section free and clear of any interest in such property of an entity other than the estate, only if—
>
> (1) applicable non-bankruptcy law permits the sale of such property free and clear of such interest; ...
> (2) such entity consents;
> (3) 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;
> (4) Such interest is in bona fide dispute; or
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

Section 363(f) of the Bankruptcy Code was drafted in the disjunctive. Thus, the Trustee need only meet the provisions of one of the five subsections of section 363(f) in order for a sale of property to be free and clear of all liens, claims and interests. The Trustee submits that one or more of the tests of Bankruptcy Code section 363(f) are clearly satisfied with respect to his proposed sale of the Property to the Buyer free and clear of all liens, claims and interests.

1. <u>The Trustee's Proposed Sale is Permissible Pursuant to 11 U.S.C. Section 363(f)(4)</u>.

Section 363(f)(4) of the Bankruptcy Code authorizes a sale to be free and clear of an interest if such interest is in bona-fide dispute. Here, the liens of Quentin and Timberland may be invalid, or undersecured by the value of the Property. Thus, they are in serious bona-fide dispute, as described in the Motion. The Trustee will attempt to resolve these disputes before the hearing on the Motion; however, if he cannot, he anticipates filing objections to the secured claims asserted by these parties.

2. <u>The Debtors' Proposed Sale is Permissible Pursuant to 11 U.S.C. Section 363(f)(5)</u>.

Section 363(f)(5) of the bankruptcy code permits a sale of property free and clear of liens and interests if "such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." 11 U.S.C. § 363(f)(5). Pursuant to 11 U.S.C. §363(f)(5), a trustee may sell property free and clear of any interest if the holder of that interest "could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." 11 U.S.C. § 363(f)(5); *P.K.R. Convalescent Centers, Inc. v. Commonwealth of Virginia, Dep't of Medical Assistance Serv. (In re P.K.R. Convalescent Centers, Inc.)*, 189 B.R. 90 (Bankr. E.D. Va. 1995) (allowing sale of nursing home assets under section 363(f)(5) over objection of the Department of Medical Assistance Service where its interest was reducible to a claim and subject to a hypothetical money satisfaction).

Section 363(f)(5) has generally been interpreted to mean that if, under applicable law, the holder of the lien or interest could be compelled to accept payment in exchange for its interest, the trustee (or debtor-in-possession) may take advantage of that right by replacing the holder's lien or interest with a payment or other adequate protection. <u>Collier on Bankruptcy</u>, ¶ 363.06 [6] (15th ed. rev. 2003) ("<u>Collier</u>"). Applicable nonbankruptcy law may recognize a monetary satisfaction when the lien holder is to be paid in full out of the proceeds of the sale or otherwise. <u>Id.</u> Thus, for example, a sale free of a first mortgage might be approved when the proceeds are sufficient to pay in full the first mortgage and the second mortgagee has consented to the sale.

However, section 363(f)(5) does not require full payment to the lien or interest holder if the trustee can demonstrate the existence of another legal or equitable proceeding by which the holder may be compelled to accept less than full satisfaction of the secured debt. In re Grand Slam U.S.A., Inc., 178 B.R. 460, 461-62 (E.D. Mich. 1995) (holding that the "money satisfaction" language in section 363(f)(5) does not require full payment to the lien holder); In re Healthco Int'l Inc., 174 B.R. 174, 176-78 (Bankr. D. Mass. 1994) (construing "money satisfaction of such interest" to mean a payment constituting less than full payment of the underlying debt because any lien can always be discharged by full payment of the underlying debt pursuant to section 363(f)(3)); Scherer v. Federal National Mortgage Association (In re Terrace Chalet Apartments, Ltd.), 159 B.R. 821, 829 (Bankr. N.D. Ill. 1993).

Courts have held that chapter 11 cramdown is a typical "legal proceeding" by which an entity may be compelled to accept less than full money satisfaction and which will permit the sale of creditor's collateral free and clear of interest under section 363(f)(5). *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 508 (Bankr. N.D. Ala. 2002)(holding that the liens or interests identified in the sale motion could be compelled to accept a money satisfaction in a cram down plan of reorganization in a chapter 11 case); *Scherer v. Federal National Mortgage Association (In re Terrace Chalet Apartments, LTD.)*, 159 B.R. at 829 (finding that section 1129(b)(2) cram down is such a provision); *In re Perroncello*, 170 B.R. 189 (Bankr. D. Mass. 1994); *Collier* ¶ 363.06[6][a]. Thus, the trustee can sell property free and clear of a creditor's lien it if demonstrates it can cram down the creditor's interest pursuant to § 1129(b)(2).

Likewise, the holder of a tax lien that would be subordinated under section 724 can be compelled to accept less than full payment. *In re Grand Slam U.S.A., Inc.*, 178 B.R. at 461-62 (holding that § 724(b)(2) is applicable for purposes of § 363(f)(5) because it creates a mechanism by which lien creditors are compelled to receive less than full payment of their interest); *In re Healthco Int'l Inc.*, 174 B.R. 174, 176-78 (Bankr. D. Mass. 1994)(concluding that a trustee may sell property pursuant to section 363(f)(5) free of the county's tax lien lien); *Collier*, ¶ 363.06[6][a].

In addition to the legal arguments set forth above, the ability of a debtor to "cram-down" a secured creditor under 11 U.S.C. Sec. 1129(b)(1) and (2) also constitutes a "legal proceeding" pursuant to which a secured creditor could be compelled to accept a money satisfaction. *See, In re Grand Slam, U.S.A. Inc.*, 178 B.R. 460, 462 (E.D. Mich. 1995); 11 U.S.C. Sec.1129(b)(2)(A).

Section 1129(b)(2)(A) allows cram-down of a secured creditor, provided that it receives "the indubitable equivalent" of its claim. A debtor can cram down a secured creditor if it demonstrates (1) the debtor is not unfairly discriminating against the secured creditor, 11 U.S.C. § 1129(b)(1); (2) it is acting in good faith, 11 U.S.C. § 1129(a)(3)-(b)(1); and (3) the secured creditor is receiving the actual value of its claim. 11 U.S.C. § 1129(b)(2)(A)(i)(II), 11 U.S.C. § 1129(b)(2)(A)(iii), *see also In re Sandy Ridge Dev. Corp.*, 881 F.2d 1346, 1350 (5th Cir.1989) (holding that "indubitable equivalent" of a secured creditor's interest is the actual value of the claim).

In *In re Hunt Energy Co., Inc.*, 48 B.R. 472, 485 (Bankr. N.D. Ohio, 1985), the court found that a lien which attaches to the proceeds of a sale would necessarily be reduced by subsequent valuation at a hearing under section 506(a) to meet the "indubitable equivalence" requirements of section 1129(b)(2)(A). Once section 1129(b)(2)(A) is satisfied, the lienholder would be compelled through the cram-down process to accept such money satisfaction as dictated by the cram-down provisions. *Id.*

All of the above requirements for cram down are met in these cases. The sale of the Property to the Buyer (or to a successful overbidder) was negotiated and is being conducted in good faith. All of the creditors asserting liens against the Property are being treated fairly and in accordance with their respective lien priorities, so there is no unfair discrimination present in the proposed sale. Finally, any such secured creditors will receive the actual value of their secured claim as measured by section 506(a).

Based upon all of the foregoing, all creditors of the estate, including all secured creditors of the estate, could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of their interest. The Trustee's proposed sale of the Property to the Buyer (or to a successful overbidder) should therefore be free and clear of all liens, claims and interests pursuant to section 363(f)(5) of the Bankruptcy Code.

VI.

REQUEST FOR WAIVER OF 14-DAY STAY PERIODS SET FORTH IN BANKRUPTCY RULES 6004(h) AND 6006(d)

Bankruptcy Rule 6004(h) provides, among other things, that an order authorizing the use, sale or lease of property . . . is stayed until the expiration of fourteen days after entry of the Court order, unless the Court orders otherwise. Bankruptcy Rule 6006(d) has a similar provision with respect to an order approving of the assumption and assignment of unexpired leases and executory contracts.

The estate continues to incur administrative expenses for post-petition rent due and payable under the Lease. To prevent the increase of such administrative expenses and maximize the potential recovery to creditors of the estate, the Trustee and the Buyer (or a successful overbidder) must be permitted to consummate the sale of the Property as soon as possible after entry of an order granting this Motion. To facilitate the most expeditious sale closing possible, the Trustee requests that the order granting this Motion be effective immediately upon entry by providing that the fourteen-day stay periods provided by Bankruptcy Rule 6004(h) and 6006(d) are waived.

VII.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court enter an Order:

1. finding that the notice given by the Trustee in connection with the sale of the Property and the hearing on the Motion is adequate, sufficient, proper and complies with all applicable provisions of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure;

2. granting the Motion in its entirety;

3. approving the Overbid Procedures;

4. authorizing the Trustee to sell the Property to the Buyer (or to a successful overbidder), pursuant to the terms and conditions set forth in the BPA;

5. approving the assignment of the Lease to the Buyer (or a successful overbidder);

6. authorizing the Trustee to execute and deliver, on behalf of the estate, any and all documents that may be reasonably necessary to consummate the sale of the Property and the assignment of the Lease to the Buyer;

7. finding that the Buyer (or the successful overbidder) is a good faith purchaser entitled to all of the protections of 11 U.S.C. § 363(m);

8. waiving the 14-day stay periods set forth in Bankruptcy Rules 6004(h) and 6006(d); and

9. granting such other and further relief as may be necessary or appropriate under the circumstances.

Dated: September 21, 2018

TIMOTHY J. YOO, CHAPTER 11 TRUSTEE

By: */s/ Monica Y. Kim*
MONICA Y. KIM
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
Attorneys for Timothy J. Yoo, Chapter 11 Trustee

DECLARATION OF TIMOTHY J. YOO

I, Timothy J. Yoo, hereby declare as follows:

1. I am the duly appointed Chapter 11 Trustee of the bankruptcy estate of COLIMA BBQ, Inc., the debtor herein ("Debtor"). I have personal knowledge of the facts set forth below and, if called to testify, I would and could competently testify thereto.

2. I submit this declaration in support of that certain *Trustee's Motion For Entry Of An Order: (A) Approving Sale Of Buisness Free And Clear Of All Liens And Interests; (B) Approving Overbid Procedures; (C) Approving The Assignment Of Real Property Lease; And (D) Granting Related Relief* ("Motion"), to which this declaration is attached. All capitalized terms not specifically defined herein shall have the meanings ascribed to them in the Motion.

3. The Debtor commenced this case by filing a voluntary petition under chapter 11 of the Bankruptcy Code on January 26, 2018 ("Petition Date"). Following a hearing on April 6, 2018, the Court ordered the conversion of this case to Chapter 11, and the appointment of a Chapter 11 trustee.

4. The Debtor operates a Korean barbeque restaurant doing business as "Red Castle 1" located at 18751 E. Colima Rd., Rowland Heights, CA ("Business"). The Business is being operated at the premises pursuant to a Commercial Lease Agreement ("Lease") between the Debtor and Seoul Colima LLC (successor to Colima Park Investments, LLC) ("Landlord").

5. The Debtor is wholly owned by Young Keun Park ("Park") who also filed a Chapter 7 bankruptcy case on January 26, 2018. Park's case was also converted to Chapter 11 following a hearing on April 6, 2018, and Elissa Miller has been appointed to serve as the Chapter 11 trustee of Park's case. In addition to the Debtor's "Red Castle 1" restaurant, Park owns: (i) RH BBQ, Inc. ("RH") which operates a Korean barbeque restaurant doing business as "Red Castle 3" located at 18311 E. Colima Rd., Suite A, Rowland Heights, CA, and (ii) Onebada, Inc. ("Onebada") which operates a Korean barbeque restaurant doing business as "Bulgogi House" located at 6901 Walker St., La Palma, CA. Both RH and Onebada filed voluntary petitions under Chapter 11 of the Bankruptcy Code on February 9, 2018.

6. On or about April 11, 2018, the Office of the United States Trustee appointed me to serve as the chapter 11 trustee for the cases of the Debtor, RH, and Onebada. After investigating and operating all of these businesses, I have determined that going concern sales of these restaurants would be the best means of monetizing the highest value of these estates' assets for the benefit of their creditors. In that regard, I hired Coldwell Banker Commercial Wilshire Properties ("Coldwell Banker") to assist the estate in marketing and listing the Business for sale.

7. The Business has been operating for approximately 6 years, and consists of approximately 2500 square feet of space with 14 BBQ tables and hoods. The communities of Rowland Heights and surrounding areas have a high number and concentration of Asian residents and businesses. By early June, 2018, my professionals and I were able to produce reasonably adequate financial data and due diligence materials to place the Business into the marketplace for sale. Based on the historical financial performance of the Business and with the advice of Coldwell Banker, the estate listed the Business for sale at the selling price of $250,000.

8. For several months, and as evidenced by the Declaration of Ryan Oh filed herewith, Coldwell Banker undertook extensive efforts to market and sell the Business for the highest price possible.

9. The estate ultimately received two (2) offers to purchase the Business for $250,000. In particular, on August 14, 2018, the estate received his first offer of $250,000 from Moon Kwan Joo ("Joo") to purchase all of the estate's rights in and to the Lease and the Business, including the estate's liquor license, all inventory, machinery, equipment, fixtures, furniture and other personal property situated at the Business (collectively, the "Property"), all in "as is, where is" condition, with no representation or warranty, but free and clear of all liens and interests. However, for over a month, Joo never delivered the required deposit or proof of funds to close the sale.

10. On September 17, 2018, the estate received the second offer of $250,000 from Jeong Hye Kim or assignee ("Buyer") to purchase the Property, all in "as is, where is" condition, with no representation or warranty, but free and clear of all liens and interests. Buyer also promptly delivered a cashier's check for the deposit of $10,000 and proof of funds to close. The

terms and conditions of the sale are set forth in the *Business Purchase Agreement and Joint Escrow Instructions*, dated September 17, 2018, and all addendums, amendments and related agreements thereto (collectively, "BPA"), true and correct copies of which are attached hereto as **Exhibit 1**. A true and correct copy of the Lease is attached hereto as **Exhibit 2**.

11. As aforementioned, the Buyer has made a $10,000 deposit towards the Purchase Price, and the balance of the Purchase Price will be due at closing. There are no contingencies to the sale other than the entry of an order approving this Motion authorizing the sale of the Property free and clear of all liens and claims and the assignment of the Lease[9], and approval of the transfer of the Business liquor license from the Debtor to the Buyer (or winning overbidder) by the Alcohol and Beverage Control ("ABC"). Closing is to occur immediately upon approval of the transfer of the liquor license from the Debtor to the Buyer (or winning overbidder) by the ABC. The deposit is non-refundable and forfeited to the estate if the Buyer (or winning overbidder) is deemed to be the winning bidder for the Property and fails to timely consummate the sale of the Property for any reason other than the dis-approval of the transfer of the liquor license from the Debtor to the Buyer (or winning overbidder) by the ABC despite good faith, best efforts by the Buyer (or winning overbidder) to obtain the transfer of the liquor license.

12. The offer from the Buyer is one of the highest offers received by the estate after several months of marketing and after attempting to negotiate with the Buyer for a higher Purchase Price. I believe that the proposed sale of the Business to the Buyer (or winning overbidder) under the terms of the BPA could result in substantial net sale proceeds for the benefit of creditors.

13. Subject to Court approval, I propose to sell the estate's right, title and interest in and to the Property, as more particularly described in the BPA, all in "as is, where is" condition, with no representation or warranty, for cash in the sum of $250,000. The sale of the Property to the Buyer (or winning overbidder) will be free and clear of all liens and interests, with such liens

[9] Pursuant to an order of this Court entered on August 14, 2018 [dkt. 125], the Lease has already been assumed by the Trustee.

or interests to attach to the proceeds of the sale to the same extent, scope and priority as the pre-petition liens or interests.

14. As aforementioned, the Buyer Jeong Hye Kim has provided evidence to me that she has the funds to deliver the balance of the Purchase Price to the estate upon closing.

15. I am also proposing that the sale of the Property be subject to overbid, in accordance with the overbid procedures described in the Motion ("Overbid Procedures"), at an auction of the Property (the "Auction") to be conducted by me at the time of the hearing on this Motion ("Sale Hearing"). Therefore, pursuant to this Motion, I am seeking Court approval of the Overbid Procedures, which I believe will maximize the price ultimately obtained for the Property and still protect the estate from parties who may wish to bid on the Property but who are ultimately unable to consummate a purchase of the Property.

16. Further, since the estate's interest in and to the Lease is a critical component of the proposed sale of the Property, pursuant to the Motion, I am also seeking the entry of a Court order approving the assignment of the Lease to the Buyer or a successful overbidder. Pursuant to an order of this Court entered on August 14, 2018 [dkt. 125], the estate has already assumed the Lease.

17. Also, pursuant to the Motion, I request that the Court make a finding that the Buyer (or the successful overbidder) is a good faith purchaser entitled to all of the protections afforded under 11 U.S.C. § 363(m), and that the 14-day stay periods provided by Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") be waived to facilitate the closing of the sale of the Property as soon as possible after the entry of an order granting the Motion.

18. As discussed in the Motion, while there are at least 4 creditors asserting liens and interests in the Property and the proceeds therefrom, I am not seeking to disburse the proceeds from the sale of the Property absent further order of the Court. All liens and interests of these creditors will attach to the proceeds of the sale to the same extent, scope and priority as the pre-petition liens or interests.

19. If I am successful in objecting to the secured claims of Quentin and Timberland, and the Hana and Bank of Hope's claims (which are both guaranty claims) are satisfied by the primary obligors, the proposed sale of the Property to the Buyer could result in net sale proceeds in excess of $200,000 (net of commissions and other costs of sale), which will result in a recovery for the Debtor's creditors. On the other hand, if I am not able to consummate a sale of the Property to the Buyer (or a successful overbidder) as proposed herein, I will be faced with the choice of having to either (i) immediately close the Business, reject the Lease which has already been assumed, and liquidate the remaining assets of the estate which his comprised primarily of minimal inventory, furniture and equipment, and a liquor license, or (ii) continue to operate the Business with the assistance of his internal and external team of managers, and propose a plan of reorganization, the recovery under which is likely to be nominal and speculative and take place over a very long period of time. Under both of these scenarios, I believe that creditors will receive far less value and recovery than what they could obtain through a going concern sale of the Property and the estate's pursuit of objections to the secured claims which will unencumber the proceeds of the sale. Moreover, given the administrative costs incurred by the estate to date to operate the Business and negotiate and seek Court approval of the proposed sale of the Property (among other required administrative tasks), without a successful sale of the Property, it is almost assured that the estate will be administratively insolvent.

20. The Buyer and I have negotiated the terms of the proposed sale of the Property, as set forth in the BPA, at arms' length and in good faith. The Buyer has no affiliation with the Debtor or with me and is not an "insider" of either of the Debtor as that term is defined in 11 U.S.C. § 101(31). I submit that there has been no fraud or collusion in connection with the proposed sale of the Property. No offer to purchase the Property received by the estate has been ignored, and I have taken reasonable steps to try to obtain the highest price possible for the

Property. Based on the foregoing, I submit that the good faith requirement has been satisfied.

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

Executed this 20th day of September, 2018, at Los Angeles, California.

T. J. Yoo

Timothy J. Yoo

EXHIBIT "1"

[Business Purchase Agreement]

COLDWELL BANKER COMMERCIAL
WILSHIRE PROPERTIES

COLDWELL BANKER COMMERCIAL
WILSHIRE PROPERTIES
3731 Wilshire Blvd., Suite 820, Los Angeles, CA 90010 / TEL: (213) 637-1112 • FAX: (213) 637-1113

Business Purchase Agreement and Joint Escrow Instructions.

Date September 17, 2018, at ______ California.

1 Offer

A. This is an offer from Jeong Hye Kim or assignee Buyer.

☐ Individual ☐ Partnership ☐ A Corporation ☐ LLC ☐ LLP ☐ Other

B. The business to be acquired is known as Red Castle BBQ 1 located at 18751 E Colima Road, in city of Rowland Heights county of Los Angeles, California.

C. THE PURCHASE PRICE offered is Two Hundred Fifty Thousand, Dollars $ 250,000.00

D. Inventory valued at approximately $ to be determind is included, or (X) not included in the purchase price.

2 Payment of Purchase Price

A. Initial deposit : Buyer has given a deposit in the amount of ______ $ 10,000.00
to the agent submitting the offer(or ☐ to ______), made payable to ______
which shall be held uncashed until acceptance and then deposited within 3 business days after acceptance.
(or ☐ ______), with Escrow Holder (or ☐ Broker's trust account).

B. Increased deposit : Buyer shall deposit with Escrow Holder an Increased deposit in the amount of ______ $ ______
within ______ days after acceptance (or ☐ ______).

C. Balance of purchase money to be deposited with Escrow Holder in the amount of ______ $ 240,000.00
within sufficient time to close Escrow.

D. First loan to be obtained by Buyer in the amount of ______ $ ______
within ( ) days after acceptance.

E. Buyer to execute New Note in favor of seller in the amount of ______ $ ______
to be secured by Security Agreement & UCC-1.

3 Conditions and Agreement

A. Buyer shall approve the sales volume / records showing monthly Gross of $______ which shall be the said sales volume within ( ) days after acceptance of this offer.

B. Buyer shall have the right of physical observation on the premises during the said period.

C. Seller shall provide last ( ) years of business financial statement and income tax return within ( ) days after acceptance of this offer.

D. Seller shall covenant that seller shall not compete within ( ) miles for ( ) years after the close of Escrow.

E. Seller shall warrant that there are no pending violations from any Governmental Agency having Jurisdiction over the subject business which would prevent a normal transfer.

F. All fixtures and equipments should be in working order at the time of possession of the buyer.

G. Value of Fixtures and Equipment established by parties shall be notified to Escrow ______ $ ______

H. Seller to train Buyer without compensation for 2 weeks before, and ____ weeks after the close of escrow.

4 Lease

A. (X) seller shall obtain the consent from Landlord to assign this existing Lease.
Current Lease Term ______

B. ( ) buyer shall provide the seller with financial statements and any other documents needed for the consent from Landlords to assume the existing lease.

C. ( ) if buyer wants new lease, terms shall be ______

5 Escrow Company shall be Prima Escrow

6 Escrow shall close on or before ______ / ______ / ______

7 For release from Board of Equalization and Employment Development Dept., the Amount of ______ $ ______
(or ☐ ( ) % of total Selling price) shall be deposited into Escrow by seller prior to the final disbursement to seller.

8 Possession shall be taken by Buyer as of close of Escrow.

9 Personal property Tax shall be pro-rated as of possession date.

10 Other Conditions: Successful Transfer of ABC License

11 This Deposit Receipt constitutes as offer on the part of Buyer to purchase the above described property for the price and upon the terms herein contained. Should Seller not accept this offer by ( ) o'clock A.M./P.M. ______ / ______ / ______ the deposit will be returned by Broker to Buyer. If the offer is accepted a business sale escrow shall be opened within ( ) days.
UPON APPROVAL OF SALES VOLUME, for the purpose of completing this transaction with the California Commercial Code. Subject to the approval of Buyer and Seller, Broker and Escrow Holder are authorized to draw the necessary escrow instructions for the consummation of the transaction, and to fill In the customary printed forms used in such transaction, including, but not limited to leases, lease assignments, assumption agreements, consents to assignments, promissory notes, security agreements, notices of Intent to engage in the sale of alcohol beverages, notices of intended transfer of licenses, security agreement and restrictive covenants on printed forms of general use in the area, California Commercial Code Forms such as UCC-1,UCC-2, UCC-3, and UCC-T Forms, and Wolcotts and Title insurance forms in general use.

12 Buyer and Seller acknowledge that the business was first introduced to Buyer by Coldwell Banker Commercial Wilshire Properties. ("BROKER"), and that Broker is entitled to receive a commission for services rendered for the sale of the business. In the event the sale of the business by Seller to Buyer pursuant to this offer should not close under circumstances under which Broker is not entitled to immediate payment of Broker's commission from Seller, then Buyer and Seller agree that, if the business is purchased by Buyer from Seller within one (1) year from the date of this offer, that Buyer and Seller will be obligated to pay Broker compensation in the amount of ten percent (10%) of the actual purchase price, or ten percent (10%) of the price set forth herein, whichever is greater, whether or not said purchase is arranged through Broker.

THE PARTIES READ AND UNDERSTAND ABOVE TERMS AND AGREEMENT. FURTHER, PARTIES HERETO ACKNOWLEDGE RECEIPT OF COPIES OF THIS AGREEMENT. THIS DOCUMENT IS MORE THAN A RECEIPT FOR MONEY. IT IS BINDING OFFER TO PURCHASE THE BUSINESS ON THE TERMS SET FORTH HEREIN, AND SUPERSEDES ANY AND ALL PRIOR STATEMENTS OR DISCUSSIONS. NO WARRANTIES OR REPRESENTATIONS ARE MADE BY SELLER OR BROKER, EXCEPT AS EXPRESSLY SET FORTH HEREIN.

LICENSED BROKER : Coldwell Banker Commercial Wilshire Properties BY: ______

I / WE hereby agree to purchase the above described business and property upon the conditions and agreements herein above stated IN THE OFFER continued and set forth.

BUYER [signature] SS#______ BUYER______ SS#______

Dated this 17 day of Sep, 2018 Address: ______

I / WE, the undersigned Seller(s) hereby accept the offer set above and agree to sell the property and/or business described above on the terms and conditions set forth. I / WE further expressly agree to pay Coldwell Banker Commercial Wilshire Properties the sum of $ ______ as a Broker(s) Commission.

( ) ATTACHED SEPARATE COMMISSION AGREEMENT ( ) ATTACHED COUNTER OFFER

SELLER______ SS#______ SELLER______ SS#______

Dated this______day of______, 200______ Address: ______

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ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. *1*

The following terms and conditions are hereby incorporated in and made a part of the: ☐ Purchase Agreement, ☐ Residential Lease or Month-to-Month Rental Agreement, ☐ Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), *X* Other *Business Purchase Agreement and Joint Escrow Instructions*,
dated *September 17, 2018*, on property known as *Red Castle 1 at 18751 E Colima Rd Rowland Heights, CA 91748*
in which *Jeong Hye Kim or his/her assignee* is referred to as ("Buyer/Tenant")
and ______ is referred to as ("Seller/Landlord").

1. Buyer and Seller agree to extend the duration of offer until the bankruptcy court order approving the sale.
2. Both parties agree there are no conditions or contingencies to closing other than:
(1) Entry of bankruptcy court order approving the sale, subject to overbids, and assigning the lease without any modification, and
(2) Approval of the transfer of the liquor license to Buyer. The business is being sold in "as-is, where-is" condition, with no representation or warranty. The balance of the purchase price is due at closing which shall occur immediately upon approval of the transfer of the liquor license. Buyer agrees to use best efforts and act in good faith to obtain the transfer of the liquor license. The deposit is non-refundable and forfeited if Buyer fails to timely close.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date 9/17/18   Date ______

Buyer/Tenant ______   Seller/Landlord ______
Jeong Hye Kim or his/her assignee

Buyer/Tenant ______   Seller/Landlord ______

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EXHIBIT "2"

[Lease]

GIM
Grace Investments
Building Management
Richard Park
Business (858) 565-8074
Cell (858) 204-1975
7750 Dagget St., Suite 212
San Diego, CA 92111

To : COLIMA BBQ INC Tenant Number 18751 E Date 5 /1 2015

Description: SECURITY DEPOSIT INCREASE $4000.00
TOTAL SECURITY DEPOSIT $14000.00

Please make check payable to : **Colima Seoul Center**.

Thank you.

Date	Description	Charges	Total Balance
	SECURITY DEPOSIT		$4000.00

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X

COMMERCIAL LEASE AGREEMENT

Business name: COLIMA BBQ INC

Business address: 18751 **Colima Rd** ROWLAND HEIGHTS CA

Business telephone: 213 -814-4933

1) PARTIES: Colima Park Investments, LLC ("Landlord") and COLIMA BBQ INC ("Tenant") agree as follows: On (Date) MAY 1.2015, Landlord rents to Tenant and Tenant rents from Landlord, the real property and improvements described as: 18751 E. Colima Road having dimensions if approximately 2528 square feet of floor area. The address of said premises is 18751 E. Colima Road, City of Rowland Heights, County of
Los Angeles, State of California. This lease is subject to the terms, covenants and conditions herein set forth and the Tenant covenants as a material part of the consideration for this lease to keep and perform each and all of the said terms, covenants and conditions by it to be kept and performed.

2) TERM: The term shall be for 4% increase and _N/A_ months, beginning on (date) AUG 1.2016

A. Lease shall terminate on (date) APR 30.2020

Any holding over after the term of this agreement expires, with Landlord's consent, shall create a month-to-month tenancy. Rent shall be at a rate equal to the rent for the immediately preceding month, payable in advance. All other terms and conditions of this agreement shall remain in full force and effect.

Tenant has one – 5 year option to exercise with 4% annual increase

3) BASE RENT: Monthly Gross Rent shall be fixed as follows. Tenant agrees to pay to Landlord as minimum rent, without notice or demand, the monthly sum of
Base rent.

$6322.50 FROM AUG 1.2016

4) SECURITY DEPOSIT: Concurrently with Tenant's execution of this lease, Tenant has deposited with Landlord a sum of $14000.0 Said sum shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by tenant during the term hereof. If tenant defaults with respect to any provisions relating to the payment of rent, Landlord may use, apply or retain all or any part of this security deposit for the payment of any rent or any other sum in default, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of tenant's default. If any portion of

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said deposit is so used or applied, tenant shall within (5) days after written demand therefore, deposit cash with the Landlord in an amount sufficient to restore the security deposit to its original amount and tenant 's failure to do so shall be a default under this lease. Landlord shall not be required to keep this security deposit separate from its general funds, and tenant shall not be entitled to interest on such deposit. If tenant shall fully and faithfully perform every provision of this lease to performed by it, the security deposit or any balance thereof shall be returned to tenant within (10) days following expiration of the lease term. In the event of termination of Landlord's interest in this lease, Landlord shall transfer said deposit to Landlord's successor in interest. Tenant may not use this security deposit as rent during the last month or months of the lease, but shall pay rent in full up to the expiration date.

5) USES PROHIBITED: Tenant shall not do or permit anything to be done in or about the premises nor bring or keep anything therein which is not within the permitted use of the premises which will in any way increase the existing rate of or affect any fire or other insurance upon the building or any of its contents, or cause a cancellation of any insurance policy covering said building or any part thereof or any of its contents. Tenants shall not do or permit anything to be done in or about the premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the building or injure or annoy them or use or allow the premises to be used for any improper, immoral, unlawful or objectionable purpose; nor shall Tenant cause, maintain or permit any nuisance in, on or about the premises. Tenant shall not commit or allow to be committed any waste in or upon the premises.

6) ENTIRE CONTRACT: All prior agreements between Landlord and Tenant are incorporated in this agreement, which constitutes the entire contract. It is intended as a final expression of the parties' agreement, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this agreement constitutes the complete and exclusive statement of its terms, and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding, if any, involving this agreement. Any provision of this agreement that is held to be invalid shall not affect the validity or enforceability of any other provision in this agreement. This agreement shall be binding upon, and inure to the benefit of, the heirs, assignees and successors to the parties.

7) COMPLIANCE WITH THE LAW : Tenant shall not use the premises, or permit anything to be done in or about the premises, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules or requirements now in force. The judgment of any court of competent jurisdiction or the admission of tenant in any action against tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between the Landlord and Tenant.

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8) ALTERATIONS AND ADDITIONS : Tenant shall not make or allow to be made any alterations, additions or improvements to or of the premises or any part thereof without first obtaining the written consent of Landlord and any alterations, additions or improvement to or of said premises, including, but not limited to, wall covering, paneling and built-in cabinet work, but excepting movable furniture and trade fixtures, shall at once become a part of the realty and belong to the Landlord and shall be surrendered with the premises. In the event Landlord consents to the making of any alterations, additions or improvements to the premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense. Upon the expiration or sooner termination of the term hereof, Tenant shall, upon written demand by Landlord, given at least thirty (30) days prior to the end of the term, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant, designated by Landlord to be removed, and Tenant shall, forthwith and with all due diligence, at its sole cost and expense, repair any damage to the premises caused by such removal.

9) LATE CHARGE; NSF(non sufficient fund) CHECKS : Tenant acknowledges that either late payment of rent or issuance of a NSF check may cause Landlord to incur costs and expenses, the exact amount of which are extremely difficult and impractical to determine. These costs may include, but are not limited to processing, enforcement and accounting expenses, and late charges imposed on Landlord. If any installment of rent due from Tenant is not received by Landlord within 5 calendar days after date due, or if a check is returned NSF, Tenant shall pay to the Landlord, respectively, $25 as a NSF fee and 10% of rent amount. Any late charge, or NSF fee due shall be paid with the current installment of rent

10) REPAIRS : By entry hereunder, Tenant shall be deemed to have accepted the premises as being in good, sanitary order, condition and repair. Tenant shall at tenant's sole cost and expense, keep the premises and every part thereof in good condition and repair (except as hereinafter provided with respect to Landlord's obligations) including without limitation , the maintenance, replacement and repair of any storefront door, window casements, glazing, heating and air conditioning system. Tenant shall be responsible for the cost of a service contract for repairs and maintenance of said system, said maintenance contract to conform to the requirements under the warranty, if any, on said system), plumbing, pipes, electrical wiring and conduits. Tenant shall upon the expiration or sooner termination of this lease hereof, surrender the premises to the Landlord in good condition, broom clean, ordinary wear and tear and damage from causes beyond the reasonable control of tenant excepted. Any damage to adjacent premises caused by tenant's use of the premises shall be repaired at the sole cost and expense of the Tenant.

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11) LIENS: Tenant shall keep the premises and the property in which the premises are situated free from any liens arising out of any work performed, material furnished or obligations incurred by or on behalf of the tenant. Landlord may require, at Landlord's sole option, that Tenant shall provide to Landlord, at Tenant's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of any improvements, additions, or alterations in the premises which the Tenant desires to make, to insure Landlord against any liability for mechanics' and materialmen's liens and to insure completion of the work.

12) ASSIGNMENTS AND SUBLETTING: Tenant shall not sublet or encumber all or any part of premises, or assign or transfer this agreement or any interest in it, without the prior written consent of Landlord, which shall not be unreasonably withheld. Unless such consent is obtained, any subletting, assignment, transfer, or encumbrance of the premises, agreement or tenancy, by voluntary act of Tenant, operation of Law, or otherwise, shall be null and void, and at the option of Landlord, terminate this agreement. Any proposed sublessee, assignee, or transferee shall submit to Landlord an application and credit information for Landlord's approval, and, if approved, sign a separate written agreement with Landlord and Tenant. Landlord's consent to any one sublease, assignment, or transfer, shall not be construed as consent to any subsequent sublease, assignment, or transfer, and does not release Tenant of Tenant's obligation under this agreement.

13) HOLD HARMLESS: Tenant shall indemnify and hold harmless Landlord against and from any and all claims arising from Tenant's use of the premises or from the conduct of its business or from any activity, work or other things done; permitted or suffered by the Tenant in or about the premises, and shall further indemnify and hold harmless Landlord against and from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of the Tenant, or any officer, agent, employee, guest of invitee of Tenant, and from all costs, attorney fees , and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon and in case any action or proceeding be brought against Landlord by reason of such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant as material part of the consideration on to Landlord, hereby assumes all risk of damage to property or injury to person in, upon or about the premises, from any cause other than Landlord's negligence; and Tenant herby waives all claims in respect thereof against Landlord. Tenant shall give prompt notice to Landlord in case of casualty or accidents in the premises. Landlord or its agents shall not be liable for any loss or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the building or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligence of Landlord, its agents, servants or employees. Landlord or its agents shall not be liable for interference with the light, air or for any latent defect in the premises.

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14) SUBROGATION: As long as their respective insurers so permit, Landlord and Tenant hereby mutually **waive** their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies existing for the benefit of the respective parties. Each party shall apply to their insurers to obtain said waivers. Each party shall obtain any special endorsements, if required by their insurer to evidence compliance with the aforementioned waiver.

15) LIABILITY INSURANCE: Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease, a policy of comprehensive public liability insurance insuring Landlord and Tenant against any liability arising out of the ownership, use, occupancy, or maintenance of the premises and all areas appurtenant thereto. Such insurance shall be in the amount of not less than $1,000,000.00 for injury or death of one person in any one accident or occurrence and in the amount of not less than $1,000,000.00 for injury or death of more than one in any one accident or occurrence, or $1,000,000.00 combined single limits of liability. Such insurance shall further insure Landlord and Tenant against liability for property damage of at least $1,000,000.00. The limit of such insurance shall not, however, limit the liability of the Tenant hereunder. Tenant may provide this insurance under a blanket policy, provided that said insurance shall have a Landlord's protective liability endorsed attached thereto. If tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be required to procure and maintain same, but at the expense of the Tenant. Insurance required hereunder shall be in companies rated A+AAA or better in "Best Insurance Guide". Tenant shall deliver to Landlord, prior to right of entry, copies of policies of liability insurance required herein
or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord. No policy shall be cancelled or subject to reduction of coverage. All such policies shall be written as primary policies not contributing with and not in excess of coverage which Landlord may carry.

16) UTILITIES : Tenant shall pay for all water, gas, hear, light, power, sewer charges, telephone service and all other services and utilities supplied to the premises, together with any taxes thereon. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proportion to be determined by Landlord of all charges jointly metered with other premises.

17) PERSONAL PROPERTY TAXES: Tenant shall pay, or cause to be paid before delinquency any and all taxes levied or assessed and which become payable during the term of hereof upon all Tenant's leasehold improvements, equipment, furniture, fixtures, and any other personal property located in the premises. In the event any or all of the Tenant's leasehold improvements, equipment, furniture, fixtures, and other personal property shall be assessed and taxed with the real property, Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

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18) HOLDING OVER: If Tenant remains in possession of the premises or any part thereof after the expiration of the term hereof with the express written consent of Landlord, such occupancy shall be a tenancy from month to month at a rental in the amount of the last monthly minimum rent, plus all other charges payable hereunder, and upon all the terms hereof applicable to a month to month tenancy.

19) ENTRY BY LANDLORD: Landlord reserves, and shall at any and all times have the right to enter the premises to inspect the same, to submit said premises to any prospective purchasers or tenants, to post notices of non-responsibility, to repair the premises and any portion of the building of which the premises are a part that Landlord may deem necessary or desirable, without abatement of rent, any may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that the entrance to the premises shall not be unreasonably blocked thereby, and further providing that the business of the Tenant shall be interfered with unreasonably. Tenant hereby waives any claim for damages or 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 thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors, upon and about the premises, excluding Tenant's vaults, safes, and files, and Landlord shall have the right to use any and all means which Landlord may deep proper to open said doors in an emergency, in order to obtain entry to the premises without liability to Tenant except for any failure to exercise due care for the Tenant's property and any entry to the premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of , the premises, or an eviction of Tenant form the premises or any portion thereof.

20) TENANT'S DEFAULT: The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant.

A. The vacating or abandonment of the premises by Tenant.
B. The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for period of three(3) after written notice thereof by Landlord to Tenant.
C. The making by Tenant of any general assignment or federal arrangement for the benefit of creditors; or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in case of a petition filed against Tenant, the same is dismissed within sixty (60) days; or the appointment of a trustee or a receiver to take possession of substantially all of Tenant's assets located at the premises or of Tenant's interest in this lease, where possession is not restored to Tenant within thirty (30) days; or the attachment execution or other judicial seizure of substantially all of Tenant's assets located at the

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premises or of Tenant's interest in this lease, where such seizure is not discharged in thirty (30) days.

21) REMEDIES IN DEFAULT: In the event of any such default or breach to Tenant, Landlord may at any time thereafter, in his sole discretion , with or without notice or demand and without limiting Landlord in the exercise of a right or remedy which may have be reason of such default or breach:

A. Terminate Tenant's right to possession of the premises by any lawful means, in which case this lease shall terminate and Tenant shall immediately surrender possession of the premises of Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to, the cost of recovering possession of the premises; reasonable attorney's fee; the worth at the time of sward by the court having jurisdiction thereof of the amount by which the unpaid rent and other charges and adjustments called for herein for the balance of the term after the time of such award exceeds the amount of such loss for the same period that Tenant proves could be reasonably avoided; and that portion of any leasing commission paid by Landlord and applicable to the unexpired term of this lease. Unpaid installments of rent or other sums shall bear interest from the date due at the maximum legal rate; or
B. Maintain Tenant's right to possession, in which case this lease shall continue in effect whether or not Tenant shall have abandoned the premises. In such event Landlord shall be entitled to enforce all of Landlord's right and remedies under this lease, including the right to recover the rent and any other charges and adjustments as may become due hereunder; or
C. Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State in which the premises are located.

22) DEFAULT BY LANDLORD: Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the premises whose name and address shall have theretofore been refurbished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event shall Tenant have the right to terminate this lease as a result of Landlord's default and Tenant's remedies shall be limited to damages and/or an injunction.

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B. Maintain Tenant's right to possession, in which case this lease shall continue in effect whether or not Tenant shall have abandoned the premises. In such event Landlord shall be entitled to enforce all of Landlord's right and remedies under this lease, including the right to recover the rent and any other charges and adjustments as may become due hereunder; or
C. Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State in which the premises are located.

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23) RECONSTRUCTION: In the event the premises are damaged by fire or other perils covered by extended coverage insurance, Landlord agrees to forthwith repair same, and this lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the minimum rent from the date of damages and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall reasonably interfere with the business carried on by the Tenant in the premises. If the damage is due to the fault or neglect of Tenant or its employees, there shall be no abatement of rent.
In the event the premises are damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, then Landlord shall forthwith repair the same, provided the extent of the destruction be less than ten (10%) percent of the then full replacement cost of the premises. In the event the destruction of the premises is to an extent of ten (10%) percent or more of the full replacement cost then Landlord shall have the option: to repair or restore such damage, this lease in full force and effect, but the minimum rent to be proportionately reduced as hereinabove in this article provided; or give notice to Tenant at any time within 60 days after such damage, terminating this lease as of the date specified in such notice, which date shall be no more than thirty (30) days after the giving of such notice. In the event of giving such notice, this lease shall expire and all interest of the Tenant in the premise shall terminate on the date so specified in such notice and the minimum rent, reduced by a proportionate reduction, based upon the extend, if any, to which such damage interfered with the business carried on by the Tenant in the premises, shall be paid up to date of said such termination.
Notwithstanding anything to the contrary contained in this article, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the premises when the damage resulting from any casualty covered under this article occurs during the last twenty-four months of the term of this lease or any extension thereof, Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any leasehold improvements, fixtures, or other personal property of Tenant.

24) EMINENT DOMAIN: If more than twenty five (25%) percent of the premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, either party hereto shall have the right, at its option, within sixty (60) days after said taking, to terminate this lease upon thirty (30) days written notice. If either less than or more than 25% of the premises are taken (and neither party elects to terminate as herein provided), the minimum rent thereafter to be paid shall be equitably reduced. If any part of the shopping center other than the premises may be so taken or appropriated, Landlord shall within sixty (60) days of said taking have the right at its option to terminate this lease upon written notice to Tenant. In the event of any taking or appropriation whatsoever, Landlord shall be entitled to any and all awards and/or settlements which may be given and Tenant shall have no claim against Landlord for the value of any unexpired term of this lease.

25) PARKING AND COMMON AREAS: The Landlord shall keep said automobile parking and common areas in a neat, clean and orderly condition and shall repair any damage to the facilities thereof, but all expenses in connection with said automobile parking and common areas shall be charged and pro-rated in the manner as set forth in Article 7 hereof. Tenant, for the use and benefit of Tenant, its agents, employees, customers, licensees and sub-tenants, shall have the non-exclusive right in common with Landlord, and other present and future owners, tenants and their agents, employees,

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customers, licensees and subtenants, to use said common and parking areas during the entire term of the Lease, or any extension thereof, for ingress and egress, and automobile parking. Landlord reserves the right to charge the entrances, exits, traffic lanes and the boundaries and locations of parking area or areas, as well as construct additional structures on the parking lot. The Tenant, in the use of said common and parking areas, agrees to comply with such reasonable rules, regulations and charges for parking as the Landlord may adopt from time to time for the orderly and proper operation of said common and parking areas. Such rules may include but shall not be limited to the following: (1) The restricting of employee parking to a limited, designated area or areas; and (2) The regulation of the removal, storage and disposal of Tenant's refuse and other rubbish at the sole cost and expense of Tenant.

26) SIGNS: The Tenant may affix and maintain upon the glass panes and supports of the show windows and within twelve (12) inches of any window and upon the exterior walls of the Premises only such signs, advertising placards, names, insignia, trademarks and descriptive material as shall have first received the written approval of the Landlord as to type, size, color, location, copy nature and display qualities. Anything to the contrary in this Lease notwithstanding, Tenant shall not affix any sign to the roof. Tenant shall, however, erect one sign on the front of the Premises not later than fifteen (15) days from the day Tenant opens for business, in accordance with a design to be prepared by Tenant and approved in writing by Landlord. Tenant shall be responsible for one (1) sign to be mount on the front of the business, plus two (2) signs to be mount on the Shopping Center Marquee all within conformity as the Landlord and existing style dictate. Center Marquee all within conformity as the Landlord and existing style dictate. Tenant shall submit to Landlord prior to having any sign made, a color drawing of the proposed sign(s) to be approved in writing and made a part of this Lease.

27) AUCTIONS: Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other insolvency proceeding.

28) HOURS OF BUSINESS: Subject to the provisions of Article 23 hereof, Tenant shall continuously during the entire term hereof conduct and carry on Tenant's business in the Premises and shall keep the Premises open for business and cause Tenant's business to be conducted therein during usual business hours of each and every business day as is customary for businesses of like character in the city in which the Premises are located to be open for business; provided, however, that this provision shall not apply if the Premises should be closed and the business of Tenant temporarily discontinued therein on account of strikes, lockouts or similar causes beyond the reasonable control of Tenant. Tenant shall keep the Premises adequately stocked with merchandise, and with sufficient sales personnel to care for the patronage, and to conduct said business in accordance with sound business practice. In the event of breach by the Tenant of any of the conditions contained in this Articles, the Landlord shall have, in addition to any and all remedies herein provided, the right at its option to collect not only the Minimum Rent herein provided, but additional rent at the rate of one-thirtieth(1/30) of the Minimum Rent herein

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provided for each and every day that the Tenant shall fail to conduct its business as herein provided; said additional rent shall be deemed to be in lieu of any percentage rent that might have been earned during such period of the Tenant's failure to conduct its business as herein provided.

29) GENERAL PROVISIONS:

(i) Plats and Riders. Clauses, plats, riders and addendum, if any, affixed to this Lease are a part hereof.

(ii) Waiver. The waiver by Landlord of any term covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding default at the time of the acceptance of such rent.

(iii) Joint Obligation. If there be more than one Tenant the obligations hereunder imposed shall be joint and several.

(iv) Marginal Headings. The marginal headings and articles titles to the articles of this Lease are not a part of the Lease and shall have no effect upon the construction or interpretation of any part hereof.

(v) Time. Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

(vi) Successors and Assigns. The covenants and conditions herein contained, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

(vii) Recordation. Neither Landlord nor Tenant shall record this Lease, but a short form memorandum hereof may be recorded at the request of Landlord.

(viii) Quiet Possession. Upon Tenant paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Lease.

(ix) Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent or other sums due hereunder will cause Landlord to

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incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after that said amount is past due, then Tenant shall pay to Landlord a late charge equal to the maximum amount permitted by law (and in the absence of any governing law, ten percent of such overdue amount), plus any attorney's fees incurred by Landlord by reason of Tenant's failure to pay rent and/or other charges when due hereunder. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Landlord will incur by reason of the late payment by Tenant. Acceptance of such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

(x) Inability to perform: This lease and the obligation of the Tenant hereunder shall not be affected or impaired because the Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of the Landlord.

(xi) Partial Invalidity. Any provision of this lease which shall prove to be invalid, void, or illegal, shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.

(xii) Choice of Law. This lease shall be governed by the laws of the state in which the premises are located.

(xiii) Attorney fees. In the event of any action proceeding brought by either party against the other under this lease the prevailing party shall be entitled to recover for the fees of its attorneys in such action or proceeding, including costs of appeal, if any in such amount as the court may adjudge reasonable as attorney fees. In addition, should it be necessary for Landlord to employ legal counsel to enforce any of the provisions herein contained, Tenant agrees to pay all attorneys' fees and court costs reasonably incurred.

(xiv) Sale of premises by Landlord. In the event or any sale of the premises by the Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in or derived from this lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry our any and all of the covenants and obligations of the Landlord under this lease.

Subordination, attornment. Upon request of the Landlord, Tenant will in writing subordinate its rights hereunder to the lien of any mortgage or deed of trust, to any bank, insurance company or other lending institution,

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now or hereafter in force against the premises, and to all advances made or hereafter to be made upon the security hereof. In the event of any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by the Landlord covering the premises, the Landlord shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this lease.

The provisions of this article to the contrary notwithstanding, and so long as Tenant is not in default hereunder, this lease shall remain in full force and effect for the full term hereof.

(xv) Authority of Tenant. If Tenant is a corporation, each individual executing this lease on behalf of said corporation represents and warrants that he duly authorized to execute and deliver this lease on behalf of said corporation, in accordance with the by laws of said corporation, and that this lease is binding upon said corporation.

(xvi) For each lease year after the base lease year, Lessee shall pay to Lessor as rental for the lease premises during each lease year of the term of this lease. The base rent shall be increased by 4% annually.

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30) TENACY STATEMENT(ESTOPPEL CERTIFICATE): Tenant shall execute and return a tenancy statement (estoppel certificate), delivered to Tenants by Landlord, within 3 days after its receipt. The tenancy statement shall acknowledge that this agreement is unmodified and in full force, or in full force as modified, and state the modifications. Failure to comply with this requirement: (i) shall be deemed Tenant's acknowledgement that the tenancy statement is true and correct, and may be relied upon by a prospective lender or purchaser; and (ii) may be treated by Landlord as a material breach of this agreement. Tenant shall also prepare, execute, and deliver to Landlord any financial statement (which will be held in confidence) reasonably requested by a prospective lender or buyer.

31) RENTAL SCHEDULE

~~5/1 2015 — 4/30 2016 $6322.50~~
~~5/1 2016 — 4/30 2017 $6575.40~~
~~5/1 2017 — 4/30 2018 $6838.40~~
~~5/1 2018 — 4/30 2019 $7111.95~~
~~5/1 2019 — 4/30 2020 $7396.45~~

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5/1 2015 - 7/31 2016 6118.00
8/1 2016 - 7/31 2017 6322.50
8/1 2017 - 7/31 2018 6575.40
8/1 2018 - 7/31 2019 6838.40
8/1 2019 - 4/30 2020 7111.95

Tenant COLIMA BBQ INC Date MAY 1.2015

X Young keun Park
(Print name)

Address X 18751 Colima Rd. City Rowland Heights State CA Zip 91748

Landlord COLIMA PARK INVESTMENTS .LLC Date MAY 1/2015
(Owner or agent with authority to enter into this agreement)

Landlord JONG NAM PARK Date 5/1 2015
(Owner or agent with authority to enter into this agreement)

Agency relationships are confirmed as above.

TENANT ESTOPPEL CERTIFICATE

Escrow No.: 001021-LM

DATE: September 21, 2017, at Rowland Heights, California

FACTS:

This certificate pertains to conditions under the following agreement:

(✓) Lease

( ) Month-to-month rental

( ) Other: ______

Dated 8/1, 2016, at Rowland Heights, California
Entered into by:
Landlord: Colima Park Investments, LLC
Tenant: Red Castle I, Sang Ho Nam & Amy Eunyoung Kim

Recorded ______ as Document No. ______, 20___, Records of
Los Angeles County, California
Regarding Real Estate Premises located at:
18751 Colima Road, Rowland Heights, CA 91748

STATEMENT;

Tenant certifies as follows:

1. The lease or rental agreement is (✓) Unmodified and in effect.
   ( ) Modified and in effect under agreement dated ______, 20___
2. Tenant is in possession of the premises.
3. If the agreement is a lease, the current term is for 9 years, ending 4/30, 2025
4. The amount of monthly rent is $ 6,322.50.
   - 4.1 No incentives, bonuses, free rent, discounts or refunds on the rental amount were give Tenant, except: ______
   - 4.2 Rent is paid through the period ending December, 2017.
   - 4.3 Tenant has not prepaid future rent, except the amount of $______ for the period of ______
   - 4.4 No tenant liens, claims, offsets or charges exist against the landlord, except ______
5. A security deposit of $ 14,800 is held by the landlord to cover any expenses or losses caused by the Tenant's breach of the agreement.
6. Any improvements required to have been made by the landlord or Tenant have been satisfactorily completed.
7. No breach of the agreement by landlord or Tenant presently exists.
8. Tenant holds no contract or option to buy any interest in the real estate.
9. Tenant understands this certificate will be relied on by a buyer of the property or a lender secured by the real estate.

TENANT:

I certify the above is true and correct.

Date: Dec - 5 - 2017

Name: YOUNG KEUN PARK

Phone No: (213) 814-9833

Signature: [signature]

Broker's Approval: ______ __/__/__

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled TRUSTEE'S MOTION FOR ENTRY OF AN ORDER: (A) APPROVING SALE OF BUSINESS FREE AND CLEAR OF ALL LIENS OR INTERESTS; (B) APPROVING OVERBID PROCEDURES; (C) APPROVING THE ASSIGNMENT OF REAL PROPERTY LEASE; AND (D) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF TIMOTHY J. YOO IN SUPPORT THEREOF will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) September 25, 2018, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On September 25, 2018 I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on September 25, 2018, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Attorney Service
The Honorable Sheri Bluebond
U.S. Bankruptcy Court
255 E. Temple St.
Los Angeles, CA 90012

☐ Service information continued on attached page

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

September 25, 2018	Jason Klassi	/s/ Jason Klassi
Date	*Printed Name*	*Signature*

2:18-bk-10888-BB Notice will be electronically mailed to:

Joseph Caceres on behalf of Creditor Chris Kang LB Global, Inc.
jec@locs.com, generalbox@locs.com

Jaenam J Coe on behalf of Debtor Colima BBQ, Inc
coelaw@gmail.com

Raffi Khatchadourian on behalf of Interested Party Courtesy NEF
raffi@hemar-rousso.com

Monica Y Kim on behalf of Attorney Timothy J. Yoo
myk@lnbrb.com, myk@ecf.inforuptcy.com

Monica Y Kim on behalf of Interested Party Courtesy NEF
myk@lnbrb.com, myk@ecf.inforuptcy.com

Monica Y Kim on behalf of Trustee Timothy Yoo (TR)
myk@lnbrb.com, myk@ecf.inforuptcy.com

Andy Kong on behalf of Interested Party Courtesy NEF
Kong.Andy@ArentFox.com

Dare Law on behalf of U.S. Trustee United States Trustee (LA)
dare.law@usdoj.gov

Ron Maroko on behalf of U.S. Trustee United States Trustee (LA)
ron.maroko@usdoj.gov

Elissa Miller on behalf of Interested Party Courtesy NEF
emiller@sulmeyerlaw.com, asokolowski@sulmeyerlaw.com;emillersk@ecf.inforuptcy.com;dwalker@sulmeyerlaw.com

Lan Nguyen on behalf of Creditor Quentin Meats, Inc.
LPN@EsqConsulting.com

Scott H Noskin on behalf of Interested Party Courtesy NEF
snoskin@mbnlawyers.com, aacosta@mbnlawyers.com

Juliet Y Oh on behalf of Trustee Timothy Yoo (TR)
jyo@lnbrb.com, jyo@lnbrb.com

Aram Ordubegian on behalf of Interested Party Courtesy NEF
ordubegian.aram@arentfox.com

Carmela Pagay on behalf of Attorney Timothy J. Yoo
ctp@lnbyb.com

Carmela Pagay on behalf of Interested Party Courtesy NEF
ctp@lnbyb.com

Carmela Pagay on behalf of Trustee Timothy Yoo (TR)
ctp@lnbyb.com

Charles Shamash on behalf of Creditor Chris Kang LB Global, Inc.
cs@locs.com, generalbox@locs.com

Joon W Song on behalf of Creditor Bank of Hope, c/o The Song Law Group, APLC jsong@thesonglawgroup.com

Annie Y Stoops on behalf of Interested Party Courtesy NEF
annie.stoops@arentfox.com

United States Trustee (LA)
ustpregion16.la.ecf@usdoj.gov

Timothy J Yoo on behalf of Attorney Timothy J. Yoo
tjy@lnbyb.com

Timothy Yoo (TR)
tjytrustee@lnbyb.com, tyoo@ecf.epiqsystems.com;tjy@trustesolutions.net

Colima BBQ
Service list for Sale Motion, etc..

Dare Law and Ron Moroko
Office of the United States Trustee
915 Wilshire Blvd.
Suite 1850
Los Angeles, CA 90017

Jaenam J Coe
Law Offices of Jaenam Coe PC
3731 Wilshire Bl Ste 910
Los Angeles, CA 90010

Landlord
Seoul Colima LLC
3700 Wilshire Blvd. #1008
Los Angeles, CA 90010
Attention: James Seo

Debtor
Colima BBQ, Inc
18751 Colima Road
Rowland Heights, CA 91748
LOS ANGELES-CA

HANA SMALL BUSINESS LENDING INC (POC 3)
Howard Kim, AVP & SpecialAssets Officer
1000 Wilshire Boulevard 20th Floor
Los Angeles, CA 90017

Bank of Hope, Successor to BBCN Bank (POC 9)
Joon W. Song, Esq., The Song Law Group
145 S. Fairfax Avenue, Suite 200
Los Angeles, CA 90036

Quentin Meats, Inc. (POC 11)
c/o Mirman, Bubman & Nahmias LLP
21860 Burbank Blvd., Suite 360
Woodland Hills, CA 91367

Timberland Bank (POC 4)
c/o Turnbull & Born, PLLC
950 Pacific Ave., Suite 1050
Tacoma, WA 98402