

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE:

PICCADILLY RESTAURANTS, LLC,
ET AL.,

DEBTORS

* CASE NO. 12-51127
*
* (JOINT ADMINISTRATION)¹
*
* CHAPTER 11
*
* JUDGE ROBERT SUMMERHAYS

MOTION FOR A FINAL ORDER (I) APPROVING AND AUTHORIZING THE DEBTOR'S EXECUTION OF THE MASTER AGREEMENT GOVERNING THE RESTRUCTURING OF CERTAIN MASTER LEASES WITH CIRCUS PROPERTY I, LLC AND CIRCUS PROPERTY II, LLC, (II) SUBJECT TO THE CONDITIONS CONTAINED THEREIN BEING SATISFIED, APPROVING AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS CONTEMPLATED IN THE MASTER AGREEMENT, AND THE IMPLEMENTATION OF THE TRANSACTIONS CONTEMPLATED THEREIN, (III) SUBJECT TO AND EFFECTIVE AS OF THE CLOSING OF THE TRANSACTIONS CONTEMPLATED IN THE MASTER AGREEMENT, AUTHORIZING AND APPROVING THE ASSUMPTION OF THE CIRCUS I MASTER LEASE, AS AMENDED, AND THE REJECTION OF THE CIRCUS II MASTER LEASE, AS AMENDED, AND (IV) GRANTING RELATED RELIEF

NOW IN COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) including Piccadilly Restaurants, LLC (“Restaurants”),² who submit this Motion for a Final Order, in a form substantially similar to **Exhibit 1**, (I) Approving and Authorizing the Debtor’s Execution of the Master Agreement, in a form substantially similar to **Exhibit 2**, Governing the Restructuring of Certain Master Leases with Circus Property I, LLC (“Circus I”) and Circus Properties II, LLC (“Circus II”), (II) Subject to the Conditions Contained therein being Satisfied, Approving and Authorizing the Execution of All Documents Contemplated in the Master Agreement, and the Implementation of the

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

² The debtors in these Chapter 11 cases include Restaurants, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC.

Transactions Contemplated Therein, (III) Subject to and Effective as of the Closing of the Transactions Contemplated in the Master Agreement, Authorizing and Approving the Assumption of the Circus I Master Lease, as amended (the “Circus I Master Lease, as Amended”), and the Rejection of the Circus II Master Lease, as amended (the “Circus II Master Lease, as Amended”), and (IV) Granting Related Relief (the “Motion”). In support of this Motion, the Debtors state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

BANKRUPTCY BACKGROUND

2. On September 11, 2012 (the “Petition Date”), the Debtors filed a petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. No trustee or examiner has been appointed. An Official Committee of Unsecured Creditors was appointed in these Chapter 11 cases on October 23, 2012 (the “Unsecured Creditors’ Committee”).

4. The Debtors are jointly administrated pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b). The statutory predicates for the relief requested herein are §§ 105(a), 363(f), 365, 1107(a), and 1108 of the Bankruptcy Code, and Bankruptcy Rule 9019.

RELIEF REQUESTED

5. By this Motion, the Debtors seek a Final Order in a form substantially similar to **Exhibit 1** (the “Proposed Final Order”) that (a) approves, authorizes, and directs Restaurants’

execution, delivery and performance of the Master Agreement, in a form substantially similar to **Exhibit 2** to this Motion, (b) approves and authorizes Restaurants' execution and delivery of all documents contemplated in the Master Agreement, and directs Restaurants to implement the transactions contemplated in the Master Agreement, subject to the satisfaction of the conditions contained therein, including but not limited to (i) an Amendment to the Circus I Master Lease, in a form substantially similar to **Exhibit 3** (the "Circus I Lease Amendment"), and (ii) an Amendment to the Circus II Master Lease, also in a form substantially similar to **Exhibit 3** (the "Circus II Lease Amendment"), and (c) waives the 14-day stay to the effectiveness of the entered Final Order, to the fullest extent authorized by the Bankruptcy Rules, including, but not limited to, Bankruptcy Rule 6004(h).

6. Without limiting the provisions of the Proposed Final Order, which are incorporated herein by reference, subject to and effective as of the closing of the transactions contemplated in the Master Agreement (the "Closing Date"), and without the necessity of any further motion, notice or hearing, the Debtors' further seek a Final Order that (a) authorizes and approves the assumption of the Circus I Master Lease, as Amended, (b) authorizes and approves the rejection of Circus II Master Lease, as Amended, and (c) requires Restaurants, within thirty (30) days of the Closing Date, or such other date as the parties may otherwise agree, to pay the appropriate cure amount with respect to the assumption of the Circus I Master Lease, as Amended.

**BACKGROUND REGARDING THE CIRCUS I MASTER LEASE
AND THE CIRCUS II MASTER LEASE**

A. THE CIRCUS I MASTER LEASE

(i) The Circus I Lease Documents

7. Effective as of March 30, 2001, Circus I, Three Ring Remainder I, LLC

(“Remainder I”), and Piccadilly Cafeterias, Inc. (“Piccadilly”)³, entered into a sale and leaseback transaction (the “Circus I Sale/Leaseback Transaction”), pursuant to which: (a) Circus I acquired an estate for years from Piccadilly in the land and fee title to the buildings and improvements situated thereon constituting a portfolio of twelve (12) Piccadilly restaurant properties (each an “Original Circus I Property” and collectively, the “Original Circus I Properties”); (b) Remainder I acquired a remainder fee interest from Piccadilly in the land constituting such portfolio of Original Circus I Properties; and (c) Circus I leased the Original Circus I Properties back to Piccadilly (now Restaurants) pursuant to a master lease (the “Circus I Master Lease”). Piccadilly’s (now Restaurants’) leasehold interest in the Original Circus I Properties is evidenced by a memorandum of master lease recorded in the applicable real property records for each Original Circus I Property (each a “Circus I Master Lease Memorandum” and collectively the “Circus I Master Lease Memoranda”). Simultaneously with the closing of the Circus I Sale/Leaseback Transaction, Circus I, Remainder I and Piccadilly entered into a tripartite agreement with respect to each of the Original Circus I Properties (each a “Circus I Tripartite Agreement” and collectively the “Circus I Tripartite Agreements”), and an option and subordination agreement for each of the Original Circus I Properties (each a “Circus I Option and Subordination” and collectively the “Circus I Options and Subordinations”). The agreements evidencing the Circus I Sale/Leaseback Transaction, including the Circus I Master Lease, the “Circus I Master Lease Memoranda, the Circus I Tripartite Agreements, the Circus I Options and Subordinations, and the Circus I Disposition Agreement dated June 28, 2007 (individually, the “Circus I Disposition Agreement” and collectively, the “Circus I Disposition Agreements”) are referred to in this Motion collectively as the “Circus I Lease Documents.”

³ Restaurants is the successor-by-assignment to Piccadilly by virtue of that certain Assignment and Assumption Agreement, dated March 16, 2004.

(ii) The Circus I Loan Documents

8. Concurrently with the consummation of the Circus I Sale/Leaseback Transaction, Circus I (a) entered into that certain Loan Agreement (the “Circus I Loan Agreement”), dated as of March 30, 2001, with FFCA Acquisition Corporation (the “Original Circus Lender”), and (b) executed and delivered to the Original Circus Lender those certain Promissory Notes, each dated as of March 30, 2001 (collectively, the “Circus I Notes”), payable to the order of the Original Circus Lender, which Circus I Notes collectively evidence a loan (the “Circus I Loan”) made by Original Circus Lender to Circus I.

9. The Circus I Notes were secured by, among other things, those certain twelve (12) mortgages, deeds of trust or deeds to secure debt dated as of the date of the Circus I Notes (collectively, together with any other security agreement or document evidencing the grant of a lien or security interest by Circus I or Remainder I to Lender to secure the Circus I Loan obligations, the “Circus I Security Instruments”), executed by Circus I and Remainder I for the benefit of the Original Circus Lender and encumbering the Original Circus I Properties. The Original Circus Lender, Circus I, Remainder I and Piccadilly executed and delivered an Acknowledgement of Master Lease Assignment and Subordination, Nondisturbance and Attornment with respect to each Circus I Property (each, a “Circus I Acknowledgement” and collectively, the “Circus I Acknowledgements”). The Circus I Loan Agreement, Circus I Notes, Circus I Security Instruments, Circus I Acknowledgements, and all of the other written agreements evidencing, securing, or otherwise relating to the Circus I Loan are referred to collectively as the “Circus I Loan Documents.”

10. All of the Original Circus Lender’s right, title and interest in and the Circus I Loan Documents were assigned and transferred to CEF Funding II, L.L.C. (the “Circus Lender”).

As such, the Circus Lender is the successor-in-interest to the Original Circus Lender, and the current holder of the Circus I Loan Documents. Pursuant to the Circus I Loan Documents, the Circus Lender receives rents under the Circus I Master Lease directly for application to the debt service on the Circus I Loan.

(iii) The Current Circus I Properties and the Circus I Exchange Properties

11. Pursuant to and in accordance with those certain letter agreements dated November 17, 2009 and August, 2011, three of the Original Circus I Properties were sold. The nine (9) remaining properties covered by the Circus I Master Lease, as described on Exhibit A to the Master Agreement, are located in the states of Louisiana, Kansas, Alabama, Tennessee, Texas, Virginia and Missouri (collectively, "Current Circus I Properties").

12. As described more fully below, pursuant to the Proposed Transaction, as of the Closing Date, among other things, (a) three (3) of the Current Circus I Properties will be transferred to Circus II (collectively, the "Circus I Exchange Properties"), (b) Restaurants will execute Circus I Lease Amendment that will, among other things, delete the Circus I Exchange Properties from the Circus I Master Lease and add the Circus II Exchange Properties (defined herein) to the Circus I Master Lease, and (c) Restaurants will assume Circus I Master Lease, as Amended, pursuant to section 365 of the Bankruptcy Code. The properties that will be subject to the Circus I Master Lease, as Amended (collectively, the "Amended Circus I Properties") are listed on **Exhibit 4**.

B. THE CIRCUS II MASTER LEASE

(i) The Circus II Lease Documents

13. Effective as of July 31, 2001, Circus II, Three Ring Remainder II, LLC ("Remainder II") and Piccadilly entered into a sale and leaseback transaction (the "Circus II")

Sale/Leaseback Transaction”) pursuant to which: (a) Circus II acquired an estate for years from Piccadilly in the land and fee title to the buildings and improvements situated thereon constituting a portfolio of six (6) Piccadilly restaurant properties (each a “Circus II Property” and collectively, the “Circus II Properties”); (b) Remainder II acquired a remainder fee interest from Piccadilly in the land constituting such portfolio of Circus II Properties; and (c) Circus II leased the Circus II Properties back to Piccadilly pursuant to a certain master lease (the “Circus II Master Lease”). Piccadilly’s (now Restaurants’) leasehold interest in the Circus II Properties was evidenced by a memorandum of master lease recorded in the applicable real property records for each Circus II Property (the “Circus II Master Lease Memorandum” and collectively, the “Circus II Master Lease Memoranda”). Simultaneously with the closing of the Circus II Sale/Leaseback Transaction, Circus II, Remainder II and Piccadilly entered into a tripartite agreement with respect to each of the Circus II Properties (each a “Circus II Tripartite Agreement” and collectively the “Circus II Tripartite Agreements”), and an option and subordination agreement with respect to each of the Circus II Properties (each a “Circus II Option and Subordination” and collectively the “Circus II Options and Subordinations”). The agreements evidencing the Circus II Sale/Leaseback Transaction, including the Circus II Master Lease, Circus II Master Lease Memoranda, the Circus II Tripartite Agreements, the Circus II Options and Subordinations, and the Circus II Disposition Agreement for each of the Circus II Properties (individually, the “Circus II Disposition Agreement” and collectively, the “Circus II Disposition Agreements”) are referred to in this Motion collectively as the “Circus II Lease Documents” (the Circus I Lease Documents and the Circus II Lease Documents are referred to in this Motion collectively as the “Lease Documents”).

(ii) The Circus II Loan Documents

14. Concurrently with the consummation of the Circus II Sale/Leaseback Transaction, Circus II (a) entered into that certain Loan Agreement (the “Circus II Loan Agreement”), dated as of July 31, 2001, with the Original Circus Lender and (b) executed and delivered to the Original Circus Lender those certain Promissory Notes, each dated as of July 31, 2001 (collectively, the “Circus II Notes”), payable to the order of the Original Circus Lender, which Circus II Notes collectively evidence a loan (the “Circus II Loan”) made by the Original Lender to Circus II.

15. The Circus II Notes were secured by, among other things, those certain six (6) mortgages, deeds of trust or deeds to secure debt dated as of the date of the Circus II Notes (collectively, together with any other security agreement or document evidencing the grant of a lien or security interest by Circus II or Remainder II to Lender to secure the Circus II Loan obligations, the “Circus II Security Instruments”), executed by Circus II and Remainder II for the benefit of the Original Circus Lender and encumbering the Circus II Properties. The Original Circus Lender, Circus II, Remainder II and Piccadilly executed and delivered an Acknowledgement of Master Lease Assignment and Subordination, Nondisturbance and Attornment with respect to each Circus II Property (each, a “Circus II Acknowledgement” and collectively, the “Circus II Acknowledgements”). The Circus II Loan Agreement, Circus II Notes, Circus II Security Instruments, Circus II Acknowledgements and all of the other written agreements evidencing, securing, or otherwise relating to the Circus II Loan are referred to collectively as the “Circus II Loan Documents” (the Circus I Loan Documents and the Circus II Loan Documents are referred to in this Motion collectively as the “Loan Documents”).

16. All of the Original Circus Lender’s right, title and interest in and the Circus II Loan Documents were assigned and transferred to the Circus Lender. As such, the Circus

Lender is the successor-in-interest to the Original Circus Lender, and the current holder of the Circus II Loan Documents. Pursuant to the Circus II Loan Documents, the Circus Lender receives rents under the Circus II Master Lease directly for application to the debt service on the Circus II Loan.

(iii) The Current Circus II Properties and the Circus II Exchange Properties

17. The properties covered by the Circus II Master Lease include six (6) properties that are described on Exhibit B to the Master Agreement, each located in the state of Georgia (collectively, the “Current Circus II Properties”).

18. As described more fully below, pursuant to the Proposed Transaction, as of the Closing Date, (a) three (3) of the Current Circus II Properties will be transferred to Circus I (collectively, the “Circus II Exchange Properties”), (b) Restaurants will execute the Circus II Lease Amendment that will, among other things, delete the Circus II Exchange Properties from the Circus II Master Lease and add the Circus I Exchange Properties (defined herein) to the Circus II Master Lease and (c) the Debtors will reject the Circus II Master Lease, as Amended, pursuant to section 365 of the Bankruptcy Code. The properties that will be covered by the Circus II Master Lease, as Amended (collectively, the “Amended Circus II Properties”) are listed on **Exhibit 5**.

THE PROPOSED TRANSACTION

A. Identifying the Problem

19. Since the Petition Date, as part of its ongoing restructuring efforts, Restaurants has worked diligently to identify those nonresidential real properties that are not necessary to its ongoing business operations or beneficial to its estate.

20. Among other factors, Restaurants considered: (a) the suitability of each cafeteria property to Restaurants' anticipated future business needs; (b) the rent and other material terms of each lease; (c) the market rent for similar properties; and (d) other miscellaneous consideration.

21. The Circus I Exchange Properties are highly unprofitable cafeteria locations. Correspondingly, Circus II Exchange Properties are highly profitable cafeteria locations.

22. In fact, two locations covered by Circus II Master Lease are so unprofitable⁴ that, by letter dated April 30, 2013, Circus II, through its property manager, waived the requirement in the Circus II Master Lease that required Restaurants to maintain business operations at those two locations. In May 2013, the Debtor ceased operations at one of those locations.

23. Restaurants has the option of rejecting both Circus I Master Lease and Circus II Master Lease (collectively, the "Circus Master Leases"), or one of the Circus Master Leases. The obvious drawback to either rejection scenario is that profitable cafeterias locations would be lost.⁵

24. For this reason, the transfers of the Circus I Exchange Properties and the Circus II Exchange Properties would be far more beneficial to Restaurants, as the respective property

⁴ Those two locations are 1265 Mt. Zion Road, Morrow, Ga. (the "Morrow Road location") and 5664 Memorial Drive, Stone Mountain, GA (the "Stone Mountain location"). For obvious reasons, under the Proposed Transaction, the Morrow Road location and the Stone Mountain location would not be transferred, and would be included one of the Amended Circus II Leased Properties covered by the Circus II Lease, as Amended. As of the Closing Date, the Circus II Lease, as Amended, would be rejected. The Debtors calculate that the Morrow Road location is projected to lose \$350,000 on an annual basis for 2013, and that the Stone Mountain location is projected to lose \$205,000 on an annual basis.

⁵ By way of example, 1536 Highway 138, Conyers, Georgia (the "Conyers location"), covered by the Circus II Master Lease, is a profitable location for Restaurants, and is projected to be \$174,000 in positive cash flow on an annual basis for 2013. For obvious reasons, under the Proposed Transaction, the Conyers location would be transferred to Circus I, and would become one of the Amended Circus I Leased Properties to be covered by the Circus I Master Lease, as Amended. As of the Closing Date, the Circus I Master Lease, as Amended, would be assumed.

exchanges will result in the Circus Master Lease I, as Amended, containing more profitable restaurant locations (such lease to be assumed) and the Circus II Master Lease, as Amended, containing all unprofitable restaurant locations (such lease to be rejected) Although the best result has been clear to Restaurants from the beginning, the negotiation process has been far more challenging. These negotiations are briefly discussed below.

B. Arms' Length, Good Faith Negotiations

25. In order to address the significant economic and operational issues related to restructuring the Circus Master Leases, Restaurants has engaged in protracted, arms-length negotiations with the parties to the Lease Documents and Loan Documents. These negotiations have been difficult because (among other reasons) Restaurants has two landlords (Circus I and Circus II),⁶ and different owners of the remainder fee interests in the properties (Remainder I and Remainder II).⁷

26. Additionally, as outlined earlier, the Circus Lender holds mortgages on each of the Current Circus I Properties and Current Circus II Properties, and directly collects the rent that Restaurants pays on the Circus Master Leases.⁸ The Circus Lender, therefore, will need to amend its Loan Documents as part of the Proposed Transaction, and the total rent it collects will be reduced after the Closing Date. For these reasons, the Circus Lender has been directly involved in the negotiations.

27. Based on the diverse interests of the parties to the Master Agreement, the negotiations have been at arms' length, and have been conducted in good faith.

⁶ See Paragraphs 7 and 14 of this Motion.

⁷ *Id.*

⁸ See Paragraphs 10 and 16 of this Motion.

28. In agreeing to the Proposed Transaction, each of the parties to the Proposed Transaction, including Circus I and Circus II, Remainder I and Remainder II and the Circus Lenders, have made substantial economic concessions.

29. As discussed more fully in Paragraph 33 below, Restaurants believes that adequate consideration exists to support the release of the Circus Lender and its affiliates that is contained in the Master Agreement.

30. As discussed more fully in Paragraph 34 below, Restaurants also believes that adequate consideration exists to support the limited indemnity provision that is contained in the Master Agreement.

C. Benefits and Summary the Proposed Transaction

31. The Proposed Transaction will have substantial and quantifiable benefits for Restaurants and its estate. Currently, the annual cumulative EBITDA for all restaurants associated with the Circus I Properties and Circus II Properties is \$500,000. Following the Closing of the Proposed Transaction, Restaurants projects that the annual EBITDA for the restaurants associated with the Circus I Master Lease, as Amended, will range from \$1.6 to 1.8 million. Thus, the projected overall annual benefit to EBITDA resulting from the Proposed Transaction is in the range of \$1.1 to \$1.3 million.

32. Subject to the conditions to closing that are listed in the Master Agreement, the following will occur:

- (a) The Circus II Exchange Properties will be transferred from Circus II to Circus I, and the Circus I Lease Amendment will be executed, to (i) add the Circus II Exchange Properties as properties leased under the Circus I Master Lease and delete the Circus I Exchange Properties from the Circus I Master Lease, and (ii) modify the amount of base rent due and owing under the Circus I Master Lease to the amounts set forth on Schedule 1 to the Master Agreement.

(b) The Circus I Exchange Properties will be transferred to Circus II, and the Circus II Lease Amendment will be executed, to (i) add the Circus I Exchange Properties as properties leased under the Circus II Master Lease and delete the Circus II Exchange Properties from the Circus II Master Lease, and (ii) modify the amount of base rent due and owing under the Circus II Master Lease to the amounts set forth on Schedule 2 to the Master Agreement.

(c) Subject to and effective as of the Closing Date, the Circus I Master Lease, as Amended, will be assumed by Restaurants, and any applicable cure amount will be paid within thirty (30) days of the Closing Date, or such other date as the parties may otherwise agree. No rental payments are due in connection with the cure, and, therefore, the only outstanding cure amounts relate to (i) outstanding real property and personal property taxes for 2012, which are estimated to total approximately \$145,000, and (ii) the payment and satisfaction of a judgment lien in the approximate amount of \$18,030. The Proposed Order provides that the obligation to pay such cure amount shall be accorded status, as an allowed administrative expense claim with priority as provided in 11 U.S.C. §§ 503(b)(1) and 507(a)(2).

(d) Subject to and effective as of the Closing Date, the Circus II Master Lease, as Amended, will be rejected by Restaurants.

(e) In connection with the Proposed Transaction, and as a condition to the Closing Date occurring Restaurants will pay all actual out-of-pocket costs and expenses incurred by Circus I, Circus II, Remainder I, Remainder II, and the Circus Lender in connection with the Proposed Transaction, including, transfer taxes, reasonable legal fees, recording fees, title insurance costs, escrow charges, and residual value insurance endorsement fees. Master Agreement, Section 3(J) (Condition to Effective Date.) (See also Section 4 of the Master Agreement.) At Closing, Restaurants will also pay the outstanding taxes due with respect to the Circus II Master Lease, as Amended (the “Delinquent Taxes”). The Delinquent Taxes with respect to Circus II Master Lease, as Amended, are approximately \$104,000. The Proposed Order provides that the obligation to pay the Delinquent Taxes shall be hereby accorded status as an allowed administrative expense claim with priority, as provided in 11 U.S.C. §§ 503(b)(1) and 507(a)(2).

33. The Master Agreement requires that Restaurants execute a release in favor of the Circus Lender and its affiliates (the “Restaurants’ Release”). That Restaurants’ Release is limited to claims and liabilities, now existing or arising in the future, that are related to “(a) the Circus I Loan, the Circus II Loan, the Loan Documents or the actions or omissions of [Circus] Lender or any of [Circus] Lender’s Affiliates in respect of the Circus I Loan, the Circus II Loan or the Loan Documents and arising from events occurring prior to the execution and delivery of the [Master]

Agreement; or (b) relating to the making, validity, or enforceability of the Loan Documents.”⁹

Restaurants’ execution of the Restaurants’ Release is a necessary part of the Proposed Transaction. Restaurants believes that, under the circumstances, it is fair and equitable and in the best interests of the estate. See Paragraphs 29 and 54 of this Motion.

34. The Master Agreement also contains a limited indemnity at Section 9 (the “Indemnity”), as follows:

Indemnity. Tenant [Restaurants] agrees to indemnify, hold harmless and defend [the Circus] Lender, Borrowers, Remainder I and Remainder II and their respective directors, officers, shareholders, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, affiliates, lessees, servicers, mortgagees, trustees and invitees, as applicable (collectively, the “**Indemnified Parties**”), for, from and against any and all losses, costs, claims, liabilities, damages and expenses arising as a result of a breach of any of the representations, warranties, covenants, agreements or conditions of Tenant set forth in this Agreement (excluding any such losses, costs, claims, liabilities, damages and expenses arising out of such Indemnified Parties’ gross negligence or willful misconduct); **provided, however**, that, unless otherwise required by applicable law, the term “gross negligence” shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Lender’s security interest in the Circus I Properties or the Circus II Properties, Borrowers’, Remainder I’s and Remainder II’s ownership interest in the Circus I Properties or the Circus II Properties or Lender’s failure to act in respect of matters which are or were the obligation of Borrowers, Remainder I or Remainder II under the Loan Documents), including, without limitation, reasonable attorneys’ fees.

Restaurants’ execution of the Indemnity is a necessary part of the Proposed Transaction. Restaurants believes that, under the circumstances, the Indemnity is fair and equitable and in the best interests of the estate. See Paragraphs 30 and 54 of this Motion.

D. Final Court Order Necessary Before the Properties are Exchanged

35. The parties to the Master Agreement have informed Restaurants that the Proposed Order, substantially similar to **Exhibit 1**, must become final before they will close the Proposed

⁹ Exhibit 1, at Section 8. The Loan Documents, as defined in the Master Agreement and in this Motion, is defined to include documents that were executed by Piccadilly: the Circus I Acknowledgement (see Paragraph 8) and the Circus II Acknowledgement (see Paragraph 15.)

Transaction.

36. The primary concern involves the exchange of properties between different owners. The parties have informed Restaurants that they will not complete the exchange of the Circus I Exchange Properties and the Circus II Exchange Properties without absolute certainty that, subject to and as of the Closing Date, Restaurants will assume the Circus I Master Lease, as Amended, and reject the Circus II Master Lease, as Amended.

37. For these reasons, subject to and effective as of the Closing Date, Restaurants seeks authority, without the necessity of any further motion, notice or hearing, to assume the Circus I Master Lease, as Amended, within the meaning of section 365 of the Bankruptcy Court.

38. As to the Circus II Master Lease, subject to and effective as of the Closing Date, Restaurants seeks authority, without the necessity of any further motion, notice or hearing, to reject the Circus II Master Lease, as Amended, within the meaning of section 365 of the Bankruptcy Court.

E. Notice of Closing Date

39. Restaurants will file a Notice of Master Agreement Closing Date (the “Notice of Closing Date”), within one day after the Closing Date, so that the Court, creditors, and the parties in interest are informed that the Closing Date has occurred. The Notice of Closing Date, however, must not constitute an Order of this Court or any other pleading that gives rise to any right of appeal or right to a rehearing of the Final Order approving this Motion.

LEGAL STANDARD

A. Ordinary Course of Business, under Section 363(c)(1); Execution of the Amendments to the Circus Master Leases and Related Lease Documents

40. Pursuant to section 363(c)(1) of the Bankruptcy Code, “[i]f the business of the debtor is authorized to be operated under section . . . 1108 of this title and unless the court orders

otherwise, the trustee [or debtor in possession] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing . . .” Generally, transactions in the ordinary course of business “embrace the reasonable expectations of interested parties of the nature of transactions that the debtor would likely enter in the course of its normal, daily business.” *Medical Malpractice Ins. Ass'n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997).

41. Courts have developed two commonly used joint tests for determining whether a transaction is in the ordinary course of business: (a) the horizontal dimension test; and (b) the vertical dimension (also known as the reasonable expectations) test. *See, e.g., In re Roth American, Inc.*, 975 F.2d 949 (3d Cir. 1992); *In re Dant & Russell, Inc.*, 853 F.2d 700 (9th Cir. 1988).

42. The horizontal test focuses on “whether, from an industry-wide perspective, the transaction is the sort commonly undertaken by companies in that industry.” *Roth American*, 975 F.2d at 953. “In effect, this test is aimed at determining whether the transaction is abnormal or unusual, in which case it is probably not in the ordinary course of business, or whether it is a reasonably common type of transaction. Significantly, a transaction may be considered reasonably common even if it does not occur frequently, provided that it is an ordinary type of transaction within the business and the industry.” 3 COLLIER ON BANKRUPTCY ¶ 363.03 (2012). *See also Dant & Russell*, 853 F.2d at 704-05 (postpetition renewal of leases of property that debtor had leased for eleven years and that its predecessor (in the same industry) had leased for the previous thirty years were ordinary transactions in the industry).

43. Here, like other restaurant chains, Restaurants routinely enters into real property leases for its many cafeterias. Therefore, entering into the Circus I Lease Amendment, the Circus

II Lease Amendment, as well as any related Lease Documents (collectively, the “Circus Lease Amendments”) are normal transactions under the horizontal test for ordinariness. Out of an abundance of caution, however, Restaurants seeks authority to enter into the respective Amendments to Master Lease.

44. The vertical, or creditor expectation test, “analyzes the transactions from the vantage point of a hypothetical creditor and [the inquiry is] whether the transaction subjects a creditor to economic risk of a nature different from those he accepted when he decided to extend credit.” *Roth American*, 975 F.2d at 953 (internal quotations and citations omitted). “For example, it might be unusual for a relatively small business to undertake a particularly large transaction, even if other larger businesses in the same industry might do so as a matter of course. On the other hand, transactions of a type that the debtor commonly engaged in, or which the debtor might have reasonably been expected to engage in prepetition, are likely to be within the ordinary course of business after the commencement of a case, whether or not common in the debtor's industry.” 3 COLLIER ON BANKRUPTCY at ¶ 363.03. “The primary focus, thus, is on the debtor’s pre-petition business practices and conduct, although a court must also consider the changing circumstances inherent in the hypothetical creditor’s expectations.” *Roth American*, 975 F.2d at 953 (internal quotations and citations omitted).

45. Restaurants submits that it also satisfies the vertical dimension test of ordinariness with regard to the Circus Lease Amendments. Here, in comparison to the overall business, the Circus Lease Amendments are not a particularly large transaction. In addition, the Circus Lease Amendments are the type of transaction that Restaurants commonly engaged in, or which the Restaurants might have reasonably been expected to engage in prepetition.

46. For these reasons, Restaurants submits that the Circus Lease Amendments fall

within the vertical test for ordinariness. Out of an abundance of caution, however, Restaurants seeks authority to enter into the Circus Lease Amendments.

B. Assumption and Rejection Standard

47. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. §365(a). *See also NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 521 (1984). This permits a debtor to “maximize the value of the debtors’ estate” by assuming executory contracts and unexpired leases that “benefit the estate” and by rejecting those that do not. *Cinicola v. Scharffenberger*, 248 F.3d 110, 119 (3d Cir. 2001) (citation omitted); *see also Stewart Title Guar. Co. v. Old Republic Nat’l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (section 365 “allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed”).

48. The standard in approving the debtor’s assumption or rejection of executory contracts and unexpired leases is whether such assumption or rejection (a) is a sound exercise of the debtor’s business judgment, and (b) provides a benefit to the debtor’s estate. *See Bildisco & Bildisco*, 465 U.S. at 523 (recognizing the business judgment standard used to approve rejection of executory contracts). Thus, a court must examine Restaurants’ decision to assume or reject under the business judgment test to determine if assumption or rejection would be beneficial to the estates. *In re Food City, Inc.*, 94 B.R. 91, 93 (Bankr. W.D. Tex. 1988); *In re Transamerican Natural Gas Corp.*, 79 B.R. 663, 667 (Bankr. S.D. Tex. 1987).

49. To determine if a debtor has satisfied the business judgment standard, a court “is required to examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006).

Specifically, a court should find the decision to assume was made on “an informed basis, in good faith, and with the honest belief that the assumption . . . [i]s in the best interests of [the debtor] and the estate.” *In re Network Access Solutions*, 330 B.R. 67, 75 (Bankr. D. Del 2005). Under this standard, a court should approve a debtor’s business decision unless the decision is the product of bad faith or a gross abuse of discretion. *See Lubrizol Enters v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985).

50. Based on its review, in an exercise of its sound business judgment, Restaurants has determined that the Circus I Master Lease, as Amended, is beneficial to its business and reorganization efforts and is necessary to sustain ongoing business operations, while the Circus II Master Lease, as Amended, is not. As previously stated, Restaurants projects that, after rejecting the Circus II Master Lease, as Amended, its projected overall annual benefit to EBITDA is in the range of \$1.1 to \$1.3 million. See Paragraph 31.

C. Restaurants’ Release and the Indemnity: Standard for Relief under Bankruptcy Rule 9019

51. Bankruptcy Rule 9019(a) provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Pursuant to Bankruptcy Rule 9019(a), approval of a compromise or settlement is within the sound discretion of this Court. *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mort. Corp.)*, 68 F.3d 914, 917 (5th Cir. 1994); *In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986). The standard for approval of a compromise is whether the proposed settlement is “fair and equitable” and “in the best interest of the estate.” *Protective Comm. For Indep. Stockholders of TNT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Energy Co-Op., Inc.*, 886 F.2d 921, 927 (7th Cir. 1989).

52. In *In re Apex Oil Co.*, 92 B. R. 847, 867 (Bankr. E.D. Mo. 1988), the court explained the meaning of the “fair and equitable” and “best interests of the estate” standards in connection with a proposed release of claims and causes of action:

This Court need not conclusively determine claims subject to compromise, nor find that the settlement constitutes the best result obtainable. Instead, this Court need only canvass the issues to determine that the settlement does not fall “below the lowest point in the range of reasonableness.”

In re Apex Oil, 699 F. 2d at 613.

53. In considering the fairness, reasonableness, and adequacy of a settlement, courts have considered the following factors:

- (a) the probability of success in the litigation;
- (b) the difficulties to be encountered in collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
- (d) the paramount interest of the creditors.

Official Unsecured Creditors’ Comm. of Pa. Truck Lines, Inc. v. Pa. Truck Lines, Inc. (In re Pa. Truck Lines, Inc.), 150 B. R. 595, 598 (E. D. Pa. 1992).

54. As previously discussed, the Proposed Transaction will have substantial and quantifiable benefits for Restaurants and its estate. The Master Agreement contains both the Restaurants’ Release in favor of the Circus Lender and the Indemnity in favor of the other parties to the Master Agreement.¹⁰ Because of the limited nature of the Restaurants’ Release and the Indemnity, and because Restaurants’ execution of the Restaurants’ Release and the Indemnity are necessary parts of the Proposed Transaction, Restaurants believes that each of these provisions are fair and equitable and meet the best interests of creditors test. Therefore, to the

¹⁰ See Paragraphs 28, 29, 32 and 33 of this Motion.

extent required, Restaurant requests authority pursuant to Bankruptcy Rule 9019 to execute the Restaurants' Release and the Indemnity.

REQUEST FOR WAIVER OF THE 14-DAY DELAY

55. As part of this Motion, the Debtors request a waiver of the 14-day stay of the effectiveness of the entered Final Order (Exhibit 1), to the fullest extent authorized by the Bankruptcy Rules, including, but not limited to, Bankruptcy Rule 6004(h).¹¹ For all the reasons previously noted, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay.

NOTICE

56. Notice of this Motion has been given to (a) the secured creditor, through Atalaya Administrative, LLC, and its counsel of record, Brent R. McIlwain and David F. Waguespack, (b) the 30 largest unsecured creditors, the identity of which may be amended from time to time, (c) the twenty (20) additional random unsecured creditors, (d) all parties who have requested special notice pursuant to Bankruptcy Rule 2002, (e) counsel for the Unsecured Creditors' Committee, and (f) the Office of the United States Trustee. The Debtors submit that no further notice is necessary for this Court to enter an Order granting the relief requested herein.

WHEREFORE, the Debtors pray that the Court enter a Final Order, in a form substantially similar to **Exhibit 1**, (a) granting this Motion, (b) approving and authorizing Restaurants' execution, delivery and performance of the Master Agreement, in a form substantially similar to **Exhibit 2** to this Motion, (c) subject to the satisfaction of the conditions contained therein, directing Restaurants to perform, implement and carry out each of the transactions and obligations contemplated in the Master Agreement, and further approving and

¹¹ Pursuant to Rule 6004(h) of the Bankruptcy Rules, "an order authorizing the use, sale or lease of property other than cash collateral is stayed until expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h).

authorizing Restaurants' execution and delivery of all documents contemplated by the Master Agreement, (d) subject to and effective as of the Closing Date, authorizing and approving the assumption of the Circus I Master Lease, as Amended, (e) subject to and effective as of the Closing Date, authorizing and approving the rejection of the Circus II Master Lease, as Amended, (f) waiver of the 14-day stay to the effectiveness of the Final Order, to the fullest extent authorized by the Bankruptcy Rules, including, but not limited to, Bankruptcy Rule 6004(h), and (g) granting such other general and equitable relief as is just and proper.

Respectfully submitted,

/s/ Elizabeth J. Futrell

R. PATRICK VANCE (#13008)

ELIZABETH J. FUTRELL (#05863)

MARK A. MINTZ (#31878)

TYLER J. RENCH (#34049)

Jones Walker LLP

201 St. Charles Avenue, 51st Floor

New Orleans, Louisiana 70170

Telephone: (504) 582-8000

Direct Facsimile: (504) 589-8194

Email: pvance@joneswalker.com

Email: efutrell@joneswalker.com

Email: mmintz@joneswalker.com

Email: trench@joneswalker.com

AND

PATRICK L. McCUNE (#31863)

Jones Walker LLP

Four United Plaza

8555 United Plaza Blvd.

Baton Rouge, Louisiana 70809

Telephone: (225) 248-2150

Facsimile: (225) 248-3350

Email: pmccune@joneswalker.com

**Attorneys for Piccadilly Restaurants, LLC,
Piccadilly Food Service, LLC, and
Piccadilly Investments, LLC**

Exhibit 1

PROPOSED FINAL ORDER; EXHIBIT 1

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:

**PICCADILLY RESTAURANTS, LLC,
ET AL.,**

DEBTORS

* CASE NO. 12-51127
*
* (JOINT ADMINISTRATION)¹
*
* CHAPTER 11
*
* JUDGE ROBERT SUMMERHAYS

FINAL ORDER (I) APPROVING AND AUTHORIZING THE DEBTOR'S EXECUTION OF THE MASTER AGREEMENT GOVERNING THE RESTRUCTURING OF CERTAIN MASTER LEASES WITH CIRCUS PROPERTY I, LLC AND CIRCUS PROPERTY II, LLC, (II) SUBJECT TO THE CONDITIONS CONTAINED THEREIN BEING SATISFIED, APPROVING AND AUTHORIZING THE EXECUTION OF ALL DOCUMENTS CONTEMPLATED IN THE MASTER AGREEMENT, AND THE IMPLEMENTATION OF THE TRANSACTIONS CONTEMPLATED THEREIN, (III) SUBJECT TO AND EFFECTIVE AS OF THE CLOSING OF THE TRANSACTIONS CONTEMPLATED IN THE MASTER AGREEMENT, AUTHORIZING AND APPROVING THE ASSUMPTION OF THE CIRCUS I LEASE, AS AMENDED, AND THE REJECTION OF THE CIRCUS II LEASE, AS AMENDED, AND (IV) GRANTING RELATED RELIEF

Considering the *Motion for (I) Final Order Approving and Authorizing the Debtor's Execution of the Master Agreement Governing the Restructuring of Certain Master Leases with*

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

Circus Property I, LLC and Circus Property II, LLC, (II) Subject to the Conditions Contained Therein Being Satisfied, Approving and Authorizing the Execution of All Documents Contemplated in the Master Agreement, and the Implementation of the Transactions Contemplated Therein, (III) Subject to and Effective as of the Closing of the Transactions Contemplated in the Master Agreement, Authorizing and Approving the Assumption of the Circus I Lease, as Amended, and the Rejection of the Circus II Lease, as Amended, and (IV) Granting Related Relief (the “Motion”) (Docket #___),² filed on August 12, 2013, the Court having subject matter jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and considering the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and no trustee or examiner having been appointed in these Chapter 11 cases; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the “Hearing”); and upon the record of the Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor; and the Debtors having represented to the Court that the Motion was filed and served in conformity with the Local Rules of this Court;

IT IS ORDERED that that the Motion is hereby **GRANTED**.

² The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC.

IT IS FURTHER ORDERED that the Debtor, Piccadilly Restaurants, LLC, is hereby authorized to execute and deliver that (a) certain Master Agreement (the “Master Agreement”), dated as of August 20, 2013, in a form substantially similar to **Exhibit A** to this final order (this “Final Order”), by and among CEF Funding II, L.L.C., Circus Property I, LLC (“Circus I”), Circus Property II, LLC (“Circus II”), Three Ring Remainder I, LLC, Three Ring Remainder II, LLC and Restaurants (collectively, the “Parties”), and (b) all documents contemplated by the Master Agreement, subject to the satisfaction of the conditions set forth in the Master Agreement, including but not limited to (i) the Circus I Lease Amendment,³ in a form substantially similar to **Exhibit B** to this Final Order, and (ii) the Circus I Lease Amendment, also in a form substantially similar to **Exhibit B** to this Final Order.

IT IS FURTHER ORDERED that, subject to the satisfaction of the conditions set forth in the Master Agreement, without the necessity of any further motion, notice or hearing, Restaurants is further authorized and directed to perform, implement and carry out each of the transactions and obligations contemplated in the Master Agreement.

IT IS FURTHER ORDERED that, no less than one (1) day from the occurrence of the closing of the transactions contemplated by the Master Agreement (the “Closing Date”), Restaurants will file on the docket of this Bankruptcy Case a Notice of Master Agreement Closing Date (the “Notice of Closing Date”). The Notice of Closing Date shall not constitute an Order of this Court or any other pleading that gives rise to any right of appeal or right to a rehearing of this Final Order.

IT IS FURTHER ORDERED that, upon Restaurants’ execution of the Circus I Lease Amendment, the Circus I Master Lease, as Amended, (a) shall be treated in all respects as a

³ If not otherwise defined herein, capitalized terms used in this Final Order shall have the meanings ascribed to them in the Motion.

single, unitary, unseverable instrument pertaining to all, but not less than all, of the properties covered thereby, subject to assumption or rejection in its entirety under section 365 of the Bankruptcy Code, and (b) shall not alter, amend or discharge Restaurants' obligations to pay any accrued but unpaid amounts owed to Circus I.

IT IS FURTHER ORDERED that, subject to and effective as of the Closing Date, and without the necessity of any further motion, notice or hearing, the Circus I Master Lease, as Amended, shall be assumed, within the meaning of section 365 of the Bankruptcy Court, by Restaurants.

IT IS FURTHER ORDERED that, without the necessity of any further motion, notice or hearing, Restaurants shall pay the appropriate cure amount with respect to the assumption of the Circus I Master Lease, as Amended, within thirty (30) days of the Closing Date, or such other date as the parties thereto may otherwise agree. Such cure amount is hereby accorded status as an allowed administrative expense claim with priority as provided in 11 U.S.C. §§ 503(b)(1) and 507(a)(2).

IT IS FURTHER ORDERED that, upon Restaurants' execution of the Circus II Lease Amendment, the Circus II Master Lease, as Amended, (a) shall be treated in all respects as a single, unitary, unseverable instrument pertaining to all, but not less than all, of the properties covered thereby, subject to assumption or rejection in its entirety under section 365 of the Bankruptcy Code, and (b) shall not alter, amend or discharge Restaurants' obligations to pay any accrued but unpaid amounts owed to Circus II.

IT IS FURTHER ORDERED that, subject to and effective as of the Closing Date, and without the necessity of any further motion, notice or hearing, Restaurants shall pay the Delinquent Taxes with respect to the Circus II Master Lease, as Amended, on or before the Closing Date. The Delinquent Taxes are hereby accorded status as an allowed administrative expense claim with priority as provided in 11 U.S.C. §§ 503(b)(1) and 507(a)(2).

IT IS FURTHER ORDERED that, subject to and effective as of the Closing Date, and without the necessity of any further motion, notice or hearing, the Circus II Master Lease, as Amended, shall be rejected, within the meaning of section 365 of the Bankruptcy Court, by Restaurants.

IT IS FURTHER ORDERED that Restaurants will have fifteen (15) days from the Closing Date, or such other date as the parties thereto may otherwise agree, to remove any personal property from the properties covered by the Circus II Master Lease, as Amended (the “Circus II Rejected Properties”); thereafter, any personal property remaining on the Circus II Rejected Properties will be deemed abandoned by Restaurants pursuant to 11 U.S.C. §554, and the landlord, Circus II, or its designee, shall be entitled to immediately remove and dispose of the same as it deems appropriate, without any liability whatsoever on the part of Circus II to Restaurants for such disposal, without any party waiving any damage claims against Restaurants, and without the necessity of any further motion, notice or hearing to remove or dispose of such personal property.

IT IS FURTHER ORDERED that the 14-day stay to the effectiveness of this Final Order is hereby waived, to the fullest extent authorized by the Bankruptcy Rules, including, but not limited to, Bankruptcy Rule 6004(h).

IT IS FURTHER ORDERED that this Final Order shall be binding upon and shall inure to the benefit of the Debtors, the Parties and their respective successors and assigns, as well as any subsequently appointed Chapter 11 or Chapter 7 trustee.

#

This Final Order was prepared and is being submitted by:

R. PATRICK VANCE (#13008)

ELIZABETH J. FUTRELL (#05863)

MARK A. MINTZ (#31878)

Jones Walker LLP

201 St. Charles Avenue, 51st Floor

New Orleans, Louisiana 70170

Telephone: (504) 582-8000

Direct Facsimile: (504) 589-8194

Email: pvance@joneswalker.com

Email: efutrell@joneswalker.com

Email: mmintz@joneswalker.com

Attorneys for Piccadilly Restaurants, LLC

Piccadilly Food Service, LLC and

Piccadilly Investments, LLC

Exhibit 2

MASTER AGREEMENT

THIS MASTER AGREEMENT ("*Agreement*") is made as of August 13, 2013, by and among CEF FUNDING II, L.L.C., a Delaware limited liability company ("*Lender*"), CIRCUS PROPERTY I, LLC, a Delaware limited liability company ("*Circus I*"), CIRCUS PROPERTY II, LLC, a Delaware limited liability company ("*Circus II*"); Circus I and Circus II are collectively defined as the "*Borrowers*", THREE RING REMAINDER I, LLC, a Delaware limited liability company ("*Remainder I*"), THREE RING REMAINDER II, LLC, a Delaware limited liability company ("*Remainder II*"), and PICCADILLY RESTAURANTS, LLC, a Delaware limited liability company, in its capacity as debtor and debtor-in-possession ("*Tenant*"), successor-by-assignment to Piccadilly Cafeterias, Inc. ("*Piccadilly*").

RECITALS:

A. Effective as of March 30, 2001, Circus I, Remainder I and Piccadilly entered into a sale and leaseback transaction (the "*Circus I Sale/Leaseback Transaction*") pursuant to which: (i) Circus I acquired from Piccadilly an estate for years in the land and fee title to the buildings and improvements situated thereon constituting a portfolio of twelve (12) Piccadilly restaurant properties (each an "*Original Circus I Property*" and collectively, the "*Original Circus I Properties*"), (ii) Remainder I acquired from Piccadilly a remainder fee interest in the land constituting such portfolio of Original Circus I Properties, and (iii) Circus I leased the Original Circus I Properties back to Piccadilly pursuant to a master lease (the "*Circus I Master Lease*"), and Tenant has succeeded as tenant under the Circus I Master Lease. The leasehold interest of Piccadilly, as assigned to Tenant, in the Original Circus I Properties was evidenced by a memorandum of master lease recorded in the applicable real property records for each Original Circus I Property (each, a "*Circus I Memorandum of Master Lease*" and collectively, the "*Circus I Memoranda of Master Lease*"). Simultaneously with the closing of the Circus I Sale/Leaseback Transaction, (X) Circus I, Remainder I and Piccadilly entered into a tripartite agreement with respect to each of the Original Circus I Properties (each a "*Circus I Tripartite Agreement*" and collectively the "*Circus I Tripartite Agreements*"), which Circus I Tripartite Agreements were assigned by Piccadilly to Tenant; and (Y) Circus I and Remainder I entered into an option and subordination agreement for each of the Original Circus I Properties (each a "*Circus I Option and Subordination*" and collectively the "*Circus I Options and Subordinations*"). The agreements evidencing the Circus I Sale/Leaseback Transaction, including the Circus I Master Lease, the Circus I Memoranda of Master Lease, the Circus I Tripartite Agreements, the Circus I Options and Subordinations, and the Disposition Agreement dated June 28, 2007 between Circus I and Remainder I for each of the Circus I Properties (individually, the "*Circus I Disposition Agreement*" and collectively, the "*Circus I Disposition Agreements*") are defined collectively as the "*Circus I Lease Documents*".

B. Concurrently with the consummation of the Circus I Sale/Leaseback Transaction, Circus I (i) entered into that certain Loan Agreement (the "*Circus I Loan Agreement*"), dated as of March 30, 2001, with FFCA Acquisition Corporation (the "*Original Lender*") and (ii) executed and delivered to Original Lender those certain twelve (12) Promissory Notes, each dated as of March 30, 2001 (collectively, the "*Circus I Notes*"), payable to the order of Original Lender, which Circus I Notes collectively evidence a loan (the "*Circus I Loan*") made by Original Lender to Circus I.

C. The Circus I Notes were secured by, among other things, those certain twelve (12) mortgages, deeds of trust or deeds to secure debt dated as of the date of the Circus I Notes (collectively, together with any other security agreement or document evidencing the grant of a lien or security interest by Circus I or Remainder I to Lender to secure the Circus I Loan obligations, the "*Circus I Security Instruments*"), executed by Circus I and Remainder I for the benefit of Original Lender and encumbering the Original Circus I Properties. Original Lender, Circus I, Remainder I and Piccadilly executed and delivered an Acknowledgement of Master Lease Assignment and Subordination, Nondisturbance and Attornment with respect to each Original Circus I Property (each, a "*Circus I Acknowledgement*" and collectively, the "*Circus I Acknowledgements*"), which Circus I Acknowledgements were assigned by Piccadilly to Tenant. The Circus I Loan Agreement, Circus I Notes, Circus I Security Instruments, Circus I Acknowledgements and all of the other written agreements evidencing, securing, or otherwise relating to the Circus I Loan are referred to collectively as the "*Circus I Loan Documents*".

D. All of Original Lender's right, title and interest in and the Circus I Loan Documents were assigned and transferred to Lender, and Lender is the successor-in-interest to the Original Lender and Lender is the current holder of the Circus I Loan Documents. Pursuant to the Circus I Loan Documents, Lender receives rents under the Circus I Master Lease directly for application to the debt service on the Circus I Loan.

E. Pursuant to and in accordance with those certain letter agreements dated November 17, 2009 and August, 2011, by and among Lender, Borrowers, Remainder I, Remainder II and Tenant, three of the Circus I Properties were sold (the "**Removed Properties**"). For purposes of this Agreement, the term "**Circus I Properties**" means the nine properties described on the attached **Exhibit A**, which Circus I Properties are leased under the Circus I Master Lease and encumbered by the Circus I Loan Documents. Except to the extent included in the definition of Original Circus I Properties in Recitals A through C above for purposes of describing the original Circus I Loan Documents and Circus I Lease Documents, the definitions of Circus I Loan Documents, Circus I Lease Documents and the defined terms used in such definitions exclude the Removed Properties.

F. **Exhibit A** sets forth the principal amount outstanding under the Circus I Loan Documents as of August 1, 2013, after giving effect to the application of the scheduled payments due on August 1, 2013.

G. Effective as of July 31, 2001, Circus II, Remainder II and Piccadilly entered into a sale and leaseback transaction (the "**Circus II Sale/Leaseback Transaction**") pursuant to which: (i) Circus II acquired from Piccadilly an estate for years in the land and fee title to the buildings and improvements situated thereon constituting a portfolio of six (6) Piccadilly restaurant properties (each a "**Circus II Property**" and collectively, the "**Circus II Properties**"), (ii) Remainder II acquired from Piccadilly a remainder fee interest in the land constituting such portfolio of Circus II Properties, and (iii) Circus II leased the Circus II Properties back to Piccadilly pursuant to a certain master lease (the "**Circus II Master Lease**"), and Tenant has succeeded as tenant under the Circus II Master Lease. The leasehold interest of Piccadilly, as assigned to Tenant, in the Circus II Properties was evidenced by a memorandum of master lease recorded in the applicable real property records for each Circus I Property (each, a "**Circus II Memorandum of Master Lease**" and collectively, the "**Circus II Memoranda of Master Lease**"). Simultaneously with the closing of the Circus II Sale/Leaseback Transaction, (X) Circus II, Remainder II and Piccadilly entered into a tripartite agreement with respect to each of the original Circus II Properties (each a "**Circus II Tripartite Agreement**" and collectively the "**Circus II Tripartite Agreements**"), which Circus II Tripartite Agreements were assigned by Piccadilly to Tenant; and (Y) Circus II and Remainder II entered into an option and subordination agreement for each of the original Circus II Properties (each a "**Circus II Option and Subordination**" and collectively the "**Circus II Options and Subordinations**"). The agreements evidencing the Circus II Sale/Leaseback Transaction, including the Circus II Master Lease, the Circus II Memoranda of Master Lease, the Circus II Tripartite Agreements, the Circus II Options and Subordinations, and the Disposition Agreement dated June 28, 2007 between Circus II and Remainder II for each of the Circus II Properties (individually, the "**Circus II Disposition Agreement**" and collectively, the "**Circus II Disposition Agreements**") are defined collectively as the "**Circus II Lease Documents**" (the Circus I Lease Documents and the Circus II Lease Documents are defined collectively as the "**Lease Documents**").

H. Concurrently with the consummation of the Circus II Sale/Leaseback Transaction, Circus II (i) entered into that certain Loan Agreement (the "**Circus II Loan Agreement**"), dated as of July 31, 2001, with Original Lender and (ii) executed and delivered to Original Lender those certain six (6) Promissory Notes, each dated as of July 31, 2001 (collectively, the "**Circus II Notes**"), payable to the order of Original Lender, which Circus II Notes collectively evidence a loan (the "**Circus II Loan**") made by Original Lender to Circus II.

I. The Circus II Notes were secured by, among other things, those certain six (6) mortgages, deeds of trust or deeds to secure debt dated as of the date of the Circus II Notes (collectively, together with any other security agreement or document evidencing the grant of a lien or security interest by Circus II or Remainder II to Lender to secure the Circus II Loan obligations, the "**Circus II Security Instruments**"), executed by Circus II and Remainder II for the benefit of Original Lender and encumbering the Circus II Properties. Original Lender, Circus II, Remainder II and Piccadilly executed and delivered an Acknowledgement of Master Lease Assignment and Subordination, Nondisturbance and Attornment with respect to each Circus II Property (each, a "**Circus II Acknowledgement**" and collectively, the "**Circus II Acknowledgements**"), which Circus II Acknowledgements were assigned by Piccadilly to Tenant. The Circus II Loan Agreement, Circus II Notes, Circus II Security Instruments, Circus II Acknowledgements and all of the other written agreements evidencing, securing, or otherwise

relating to the Circus II Loan are referred to collectively as the “**Circus II Loan Documents**” (the Circus I Loan Documents and the Circus II Loan Documents are defined collectively as the “**Loan Documents**”).

J. All of Original Lender’s right, title and interest in and the Circus II Loan Documents were assigned and transferred to Lender, and Lender is the successor-in-interest to the Original Lender and Lender is the current holder of the Circus II Loan Documents. Pursuant to the Circus II Loan Documents, Lender receives rents under the Circus II Master Lease directly for application to the debt service on the Circus II Loan.

K. The attached **Exhibit B** sets forth (i) the six properties constituting the Circus II Properties as of the date of this Agreement, and (ii) the principal amount outstanding under the Circus II Loan Documents as of August 1, 2013, after giving effect to the application of the scheduled payments due on August 1, 2013.

L. Tenant filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Petition**”) with the United States Bankruptcy Court for the Western District of Louisiana, Lafayette Division (the “**Bankruptcy Court**”), which filing is styled as *In Re: Piccadilly Restaurants, LLC*, Case No. 12-51127 (the “**Bankruptcy Case**”).

M. Subject to satisfaction or waiver of the conditions precedent set forth in **Section 3**, the parties are entering into this Agreement to, among other things: (i) provide for the conveyance of three of the Circus I Properties from Circus I to Circus II, the assignment of the Circus I Loan Documents corresponding to the three Circus I Properties being conveyed to Circus II, and the assumption by Circus II of such Circus I Loan Documents; (ii) provide for the conveyance of three of the Circus II Properties from Circus II to Circus I, the assignment of the Circus II Loan Documents corresponding to the three Circus II Properties being conveyed to Circus I, and the assumption by Circus I of such Circus II Loan Documents; (iii) provide for the modification of the Circus I Master Lease and the Circus II Master Lease to evidence the conveyances described in the preceding **subitem (i)** and **subitem (ii)** of this Recital M, including modifying the rent payable under the Circus I Master Lease and the Circus II Master Lease; (iv) provide for the amendment and restatement of the Circus I Notes and the Circus II Notes into single notes for each reconstituted pool, and modifications to the Circus I Loan Documents and the Circus II Loan Documents to reflect such amendment and restatements of the promissory notes secured by the Circus I Loan Documents and the Circus II Loan Documents, respectively; and (v) giving effect to the matters described in the preceding **subitem (i)** through **subitem (iv)** of this Recital M, to (x) ratify and confirm the Circus I Lease Documents and Circus I Loan Documents; (y) provide for Tenant’s rejection of the Circus II Master Lease.

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and adequacy of which is hereby mutually acknowledged, the parties agree as follows:

AGREEMENT

1. **Affirmation of Recitals.** The recitals set forth above are true and correct and are incorporated herein by this reference.

2. **Transaction.** Subject to the satisfaction or waiver of the conditions precedent set forth in **Section 3**, the parties hereby agree as follows (collectively, the “**Transaction**”):

A. *Conveyances; Assignment and Assumption of Loan Documents; Modification of Loan Documents.*

(i) *Conveyances.* The respective interests of each of Circus I and Remainder I in the Circus I Properties designated as a Circus I Exchange Property on the attached **Exhibit A** and described as Lender Asset Nos. 019663, 019666 and 019668 (the “**Circus I Exchange Properties**”) will be conveyed by general warranty deed (or the state law equivalent conveyance instrument) by Circus I and Remainder I to Circus II and Remainder II, pursuant to the directions provided in **subitem (iv)** of this **Section 2A**. The respective interests of each of Circus II and Remainder II in each of the Circus II Properties designated as a Circus II Exchange Property on the attached **Exhibit B** and described as Lender Asset Nos. 019652, 019653 and 019656 (the

“**Circus II Exchange Properties**”) will be conveyed by general warranty deed (or the state law equivalent conveyance instrument) by Circus II and Remainder II to Circus I and Remainder I, pursuant to the directions provided in *subitem (iv)* of this **Section 2A**. The conveyance documents to be executed pursuant to this *subitem (i)* shall be in form and substance reasonably satisfactory to the parties. For purposes of this Agreement, the conveyances described in this *subitem (i)* are defined as the “**Conveyances**”. Immediately after the Conveyances, the definition of the Circus I Properties shall be deemed automatically modified to consist of the properties as set forth on the attached **Exhibit C-1**, and the pool of the Circus II Properties shall be deemed automatically modified to consist of the properties as set forth on the attached **Exhibit C-2**. Lender consents to the Conveyances.

(ii) *Assignment and Assumption.* Circus I and Remainder I, as applicable, shall assign their respective interests in and obligations under the Circus I Loan Documents corresponding to the Circus I Exchange Properties to Circus II and Remainder II, as applicable, and arising or accruing from and after such assignment, and Circus II and Remainder II shall assume such interests and obligations. Circus II and Remainder II, as applicable, shall assign their respective interests in and obligations under the Circus II Loan Documents corresponding to the Circus II Exchange Properties to Circus I and Remainder I, as applicable, and arising or accruing from and after such assignment, and Circus I and Remainder I shall assume such interests and obligations. Lender consents to the assignments and assumptions of the applicable Loan Documents described in this *subitem (ii)*. The assignment and assumption agreements to be executed pursuant to this *subitem (ii)* shall be in form and substance reasonably satisfactory to the parties.

(iii) *Amendment and Restatement of Promissory Notes.* After giving effect to the Conveyances and the assignment and assumption of the Circus I Loan Documents and Circus II Loan Documents contemplated by the preceding **Section 2.A(ii)**, (1) each of the Circus I Notes relating to the respective Circus I Properties, including the Circus II Exchange Properties, will be amended and restated into a single note payable by Circus I to Lender in the principal amount of \$11,743,901.00, with an interest rate equal to 9.6%, a maturity date of April 1, 2021, an amortization period of 92 months commencing on September 1, 2013, and with scheduled monthly payments of principal and interest as set forth on **Schedule 3** (the “**Circus I Amended and Restated Promissory Note**”); and (2) each of the Circus II Notes relating to the respective Circus II Properties, including the Circus I Exchange Properties, will be amended and restated into a single note payable by Circus II to Lender in the principal amount of \$6,792,377.00, an interest rate equal to 9.705%, and a maturity date of April 1, 2021 (the “**Circus II Amended and Restated Promissory Note**”). The Circus II Amended and Restated Promissory Note shall not provide for the payment of scheduled monthly payments of principal and interest. Interest shall accrue monthly under the Circus II Amended and Restated Promissory Note and such accrued interest shall be added to the outstanding principal balance of the Circus II Amended and Restated Promissory Note payable on the earlier of the scheduled maturity date of the Circus II Amended and Restated Promissory Note and the date of the acceleration of the outstanding principal balance of the Circus II Amended and Restated Promissory Note in accordance with the Circus II Loan Documents. The Circus I Amended and Restated Promissory Note and the Circus II Amended and Restated Promissory Note shall otherwise be in form and substance reasonably satisfactory to Lender and Borrowers. Promptly following the Closing (as defined in **Section 3**), Lender will return the original Circus I Notes and Circus II Notes to Borrowers, each marked to indicate that they have been cancelled and replaced by the Circus I Amended and Restated Promissory Note and the Circus II Amended and Restated Promissory Note, as applicable.

(iv) *Loan Document Modifications.* Each of the Circus I Loan Documents corresponding to the Circus I Exchange Properties and the Circus II Loan Documents corresponding to the Circus II Exchange Properties will be modified to reflect (1) the assignment and assumption of the Circus I Loan Documents and the Circus II Loan Documents as described in the preceding *subitem (ii)* of this **Section 2.A**, (2) that such Circus I Loan Documents secure the Circus II Amended and Restated Promissory Note and the other obligations set forth in the Circus

II Loan Documents, and such Circus II Loan Documents secure the Circus I Amended and Restated Promissory Note and the other obligations set forth in the Circus I Loan Documents, and (3) such other modifications as are reasonably necessary to carry out the intentions of the parties as set forth in this Agreement. Each of the Circus I Loan Documents and the Circus II Loan Documents, other than those contemplated by the preceding sentence, will be modified to reflect (X) that the Circus I Loan Documents secure the Circus I Amended and Restated Promissory Note and the other obligations set forth in the Circus I Loan Documents, and the Circus II Loan Documents secure the Circus II Amended and Restated Promissory Note and the other obligations set forth in the Circus II Loan Documents, and (Y) such other modifications as are reasonably necessary to carry out the intentions of the parties as set forth in this Agreement. The modifications to be executed pursuant to this *subitem* shall be in form and substance reasonably satisfactory to the parties.

(v) *Distribution of Interests.* The parties acknowledge that the Conveyances of the Circus I Exchange Properties constitute a distribution of the interests of Circus I and Remainder I in such properties to their members and, in turn, by such members to their members, and in the case of the Circus I interests, to the members thereof (the ultimate indirect owners of Circus I and Remainder I are collectively, the “**Owners**”), and immediately thereafter a contribution by the Owners of their respective interests in the Circus I Exchange Properties to the members of Circus II and Remainder II (in the case of Circus II, through the member of such member) and, in turn, by such members to Circus II and Remainder II, and that for convenience the Owners and the direct and indirect members of Circus I, Remainder I, Circus II and Remainder II have directed that the Conveyances of the Circus I Exchange Properties be made directly from Circus I to Circus II and from Remainder I to Remainder II. Similarly, the parties acknowledge that the Conveyances of the Circus II Exchange Properties constitute a distribution of the interests of Circus II and Remainder II in such properties to their members and, in turn, by such members (and, in the case of the Circus II interests, by the members thereof) to the Owners, and immediately thereafter a contribution by the Owners of their respective interests in the Circus II Exchange Properties to the members of Circus I and Remainder I (in the case of Circus I, through the members of such member) and, in turn, by such members to Circus I and Remainder I, and that for convenience the Owners and the direct and indirect members of Circus I, Remainder I, Circus II and Remainder II have directed that the Conveyances of the Circus II Exchange Properties be made directly from Circus II to Circus I and from Remainder II to Remainder I. Notwithstanding the acknowledgement by Lender and Tenant of the distributions and contributions described in this subsection, Lender and Tenant are not making any representation or warranty (express or implied) as to any matter whatsoever regarding such distributions and contributions, including the tax consequences of such distributions and contributions.

B. *Master Lease Amendments and Modifications of Tripartite Agreements, Options and Subordination Agreements, and Memoranda of Lease.*

(i) *Circus I Lease Amendment.* The Circus I Master Lease will be amended (the “**Circus I Lease Amendment**”) to (1) add the Circus II Exchange Properties as properties leased under the Circus I Master Lease and release the Circus I Exchange Properties from the Circus I Master Lease, and (2) modify the amount of Base Rent due and owing under the Circus I Master Lease to the amounts set forth on the attached **Schedule 1**.

(ii) *Circus II Lease Amendment.* The Circus II Master Lease will be amended (the “**Circus II Lease Amendment**”) to (1) add the Circus I Exchange Properties as properties leased under the Circus II Master Lease and release the Circus II Exchange Properties from the Circus II Master Lease, and (2) modify the amount of Base Rent due and owing under the Circus II Master Lease to the amounts set forth on the attached **Schedule 2**.

(iii) *Memoranda of Lease, Tripartite Agreements, Options and Subordinations and Disposition Agreements.* In addition to the Circus I Lease Amendment and the Circus II Lease Amendment, each of Circus I, Circus II, Remainder I, Remainder II, Lender and Tenant, as

applicable, will execute and deliver amendments to the Circus I Lease Documents and Circus II Lease Documents to which they are a party to reflect the Conveyances and the Circus I Lease Amendment and the Circus II Lease Amendment, including amendments to the Circus I Memoranda of Lease, the Circus II Memoranda of Lease, the Circus I Tripartite Agreements, the Circus II Tripartite Agreements, the Circus I Options and Subordinations, the Circus II Options and Subordinations, the Circus I Disposition Agreements, and the Circus II Disposition Agreements. The amendments to be executed pursuant to this *subitem* shall be in form and substance reasonably satisfactory to the parties.

C. *Assumption of Circus I Master Lease; Rejection of Circus II Master Lease.*

(i) *Pool I.* The Circus I Master Lease shall be assumed and ratified and confirmed by Tenant as modified in accordance with the preceding **Section 2.B(i)**, including payment of the Base Rent in the amounts as set forth on the attached **Schedule 1**, with no additional amendments, changes or modifications. All Base Rent, together with all amounts of additional rent due and owing under the Circus I Master Lease, including real estate taxes, and all other amounts payable by Tenant in accordance with the Circus I Master Lease, shall be paid through the date of the Closing of the Transaction. After the Closing, Tenant covenants and agrees to pay all Base Rent, additional rents and other amounts due and owing under the Circus I Master Lease as the Circus I Master Lease is to be amended in accordance with this Agreement. Tenant covenants and agrees that the Circus I Master Lease, both on the date of this Agreement and upon the Closing of the Transaction, will be, a single master lease of all, but not less than all, of the Circus I Properties then included in the Circus I Master Lease (whether as they exist as of the date hereof or after the Transaction), and that Circus I and Tenant have executed and delivered the Circus I Master Lease, any amendments thereto and this Agreement, and will execute the Circus I Lease Amendment, with the understanding that the Circus I Lease at all times has constituted, continues to constitute and will constitute a unitary, unseverable instrument pertaining to all, but not less than all, of such Circus I Properties, and that neither the Circus I Master Lease nor the duties, obligations or rights of Tenant may be allocated or otherwise divided among the Circus I Properties by Tenant.

(ii) *Pool II.* The Circus II Master Lease, as modified pursuant to the preceding **Section 2 B(ii)**, will be deemed rejected by Tenant. Upon such rejection, Tenant will promptly vacate the Circus II Properties, subject to:

(1) the short term lease for the Druid Hills Road property described in the last sentence of this subitem;

(2) Tenant having the right to maintain the restaurant equipment at the Circus II Property located in St. Ann, Missouri until consummation of the proposed sale of such Circus II Property to Mid-East Area Agency on Aging Foundation; provided, however, Tenant agrees to promptly remove such restaurant equipment at Tenant's expense upon the request of Circus II prior to the consummation of such proposed sale; and

(3) Circus II, Lender and Tenant reasonably cooperating with respect to allowing the restaurant equipment at the other Circus II Properties to remain at such Circus II Properties pending the sale of such Circus II Properties; provided, however, Tenant agrees to promptly remove such restaurant equipment at Tenant's expense upon the request of Circus II.

All Base Rent payable under the Circus II Master Lease, together with all amounts of additional rent due and owing under the Circus II Master Lease, including real estate taxes, and all other amounts payable by Tenant in accordance with the Circus II Master Lease, shall be paid through the Closing of the Transaction. It is contemplated by the parties to this Agreement that upon rejection of the Circus II Master Lease, Circus II and Tenant will enter into a short term lease for the Circus II Property located at 2226 N. Druid Hills Road NE, Atlanta, Georgia on terms to be

negotiated by Circus II and Tenant and that are mutually satisfactory to Circus II, Tenant and Lender.

3. Conditions Precedent to the Transaction. The obligation of Lender, Borrowers, Remainder I, Remainder II and Tenant to consummate the Transaction is subject to the fulfillment or waiver of each of the following conditions (and consummation of the Closing (as defined below) shall be deemed evidence that such conditions have been fulfilled and/or waived):

A. *Title Insurance.* With respect to each of the Circus I Properties and the Circus II Properties, Lender shall have received a modification endorsement in form and substance reasonably satisfactory to Lender issued by Commonwealth Land Title Insurance Company ("**Title Company**") giving effect to the consummation of the Transaction (or if a modification endorsement is not available in any jurisdiction for any such property, a new title insurance policy satisfying the obligations set forth in the following sentence, in an insured amount reasonably satisfactory to Lender and otherwise in form and substance reasonably satisfactory to Lender (the "**Policies**"). Any Policies to be issued to Lender shall be ALTA 2006 Loan Title Insurance Policies, or their equivalent, in the event such forms are not issued in the jurisdiction where such properties are located, insuring Lender's first priority lien in the applicable Circus I Exchange Properties and the Circus II Exchange Properties, subject only to such Schedule B exceptions as Lender shall reasonably approve, and including such endorsements as Lender shall reasonably require.

B. *UCC Liens.* Lender shall have received such UCC search results as Lender shall reasonably require evidencing the continuing first priority of all of Lender's liens in the personal property encumbered by the Circus I Security Instruments, the Circus II Security Instruments and the Master Lease Documents.

C. *Good Standing; Authority.* Borrowers, Remainder I, Remainder II and Tenant shall have provided Lender with evidence that such entities are in good standing under the laws of their state of formation and in each state in which any collateral for the Circus I Loan and the Circus II Loan are located and that the persons executing this Agreement and the other documents or instruments contemplated hereby on behalf of Borrowers, Remainder I, Remainder II and Tenant are duly authorized to do so.

D. *Opinions.* Tenant shall deliver, or cause to be delivered, with respect to Tenant and the Transaction, opinions of counsel acceptable to Borrowers and Lender and in form and substance comparable to those received on behalf of Tenant at the closing of the Sale Leaseback Transaction. Borrowers, Remainder I and Remainder II shall deliver, or cause to be delivered, with respect to Borrowers, Remainder I and Remainder II, opinions of counsel acceptable to Lender and in form and substance comparable to those received on behalf of Borrowers, Remainder I and Remainder II at the closing of the Circus I Loan and the Circus II Loan.

E. *Absence of Defaults; Satisfaction of Augusta Lien and Judgment.* Except as a result of (collectively, the "**Existing Defaults**");

- (i) the filing of the Bankruptcy Case,
- (ii) any non-compliance by Tenant of the financial covenants set forth in the Lease Documents;
- (iii) real property taxes with respect to the Circus I Properties and the Circus II Properties that are delinquent as of the date of this Agreement (individually and collectively, the "**Tax Delinquencies**"); and
- (iv) the filing of a mechanics' lien against the Original Circus II Property located in Augusta, Georgia and the subsequent entry of a judgment in favor of the holder of such lien (the "**Augusta Lien and Judgment**"),

no Event of Default shall have occurred and be continuing under any of the Lease Documents or the Loan Documents. Tenant shall have satisfied the obligations evidenced by the Augusta Lien and Judgment to the reasonable satisfaction of Lender, Circus I and Circus II.

F. *Representations and Warranties.* The representations and warranties set forth in this Agreement, the Lease Documents and the Loan Documents, after giving effect to the consummation of the Transaction, as applicable, shall be true and correct in all material respects as of the Closing.

G. *Insurance.* Lenders shall have received evidence satisfactory to Lender that all insurance required by the Loan Documents and the Lease Documents is in full force and effect.

H. *Residual Value Insurance.* Unless waived by Circus I, Circus II and Lender, Circus I and Circus II shall have obtained endorsements to the policies of residual value insurance issued to Circus I, Circus II and Lender in connection with the Circus I Loan and the Circus II Loan, which endorsement shall evidence the Transaction and be in form and substance reasonably satisfactory to Circus I, Circus II and Lender.

I. *Bankruptcy Court Order.* A final, non-appealable order shall have been entered by the Bankruptcy Court (the "**Bankruptcy Court Order**") authorizing and directing: (i) the execution, delivery and performance by Tenant of this Agreement and the other documents evidencing the Transaction (the "**Transaction Documents**"), (ii) the assumption of the Circus I Master Lease, as modified pursuant to **Section 2B(i)**, effective upon the Closing of the Transaction, and (iii) the rejection of the Circus II Master Lease, as modified pursuant to **Section 2B(ii)**, effective upon the Closing of the Transaction. Tenant agrees to diligently seek such order.

J. *Costs and Expenses.* Tenant shall have paid all reasonable out-of-pocket costs and expenses incurred by Borrowers, Remainder I, Remainder II, Lender and Tenant in connection with the Transaction as contemplated by **Section 4**, including, transfer taxes, legal fees (including reasonable legal fees incurred prior to June 4, 2013), recording fees, title insurance costs, escrow charges, and residual value insurance endorsement fees.

K. *Transaction Documents.* At or prior to the Closing (as defined below), the parties, as may be appropriate, shall execute and deliver or cause to be executed and delivered to Title Company, Lender or Borrowers, as may be appropriate, all documents required to be delivered by this Agreement, and such other documents, payments, instruments and certificates, as Lender and/or Borrowers may reasonably require in form reasonably acceptable to Lender, Borrowers, Remainder I and/or Remainder II. Borrowers, Remainder I, Remainder II and Tenant authorize Lender to file such UCC-1 Financing Statements as may be necessary for Lender to perfect or evidence the security interests granted in the Lease Documents and the Loan Documents.

Upon satisfaction (or waiver by the applicable party for whose benefit such condition is intended) of all of the above conditions, the Transaction will be deemed consummated, and such consummation shall be referred to as the "**Closing**". The Closing must occur on or before September 16, 2013 (the "**Outside Closing Date**"), and if the Closing has not occurred on or before such date, Lender, Borrowers, Remainder I and Remainder II are not obligated to consummate the Transaction and this Agreement shall terminate and be of no further force and effect except the obligation of Tenant to pay the costs and expenses as set forth in **Section 4** and the indemnification and hold harmless provision in **Section 9** shall survive such termination. Lender, Borrowers, Remainder I and Remainder II may extend the Outside Closing Date in their sole and absolute discretion. Any extension of the Outside Closing Date must be in writing to be valid.

4. Costs and Expenses: Closing Effective Date.

(a) *Transaction Costs.* Tenant agrees to pay (or reimburse Lender, Borrowers, Remainder I and Remainder II, as applicable, for), at or prior to Closing, all reasonable out-of-pocket costs and expenses incurred by or on behalf of Lender, Borrowers, Remainder I and Remainder II in connection with the Transaction (collectively,

“Transaction Costs”), including (i) the reasonable fees, costs, and expenses of outside legal counsel to Lender, Borrowers, Remainder I and Remainder II (including reasonable legal fees incurred prior to June 4, 2013); (ii) costs and expenses of UCC search reports, title searches, and title insurance; (iii) escrow costs; (iv) recording and filing costs and expenses; (v) transfer fees and taxes, including all mortgage taxes; and (vi) residual value insurance fees.

(b) **Closing Effective Date.** The parties agree that, upon the Closing: (i) the date on which the Closing occurs will be deemed to be as of September 1, 2013; (ii) the Circus I Amended and Restated Promissory Note and the Circus II Amended and Restated Promissory Note shall be dated effective as of August 1, 2013, provided the first scheduled payment under the Circus I Amended and Restated Promissory Note due on September 1, 2013 shall be paid at the Closing; and (iii) the Circus Lease I Amendment and the Circus Lease II Amendment shall be dated effective as of September 1, 2013, provided the scheduled rent payment due on September 1, 2013 under the Circus I Master Lease shall be paid at the Closing. The parties agree to cooperate in good faith in connection with the preparation and execution of a settlement statement to be prepared by Title Company setting forth applicable debits and credits of the Transaction, including the Transaction Costs, and the payment of the debt service and rents payable at Closing as provided for in this subsection.

5. **Disposition of the Circus II Properties.** Following the Closing of the Transaction and the rejection of the Circus II Master Lease:

A. Circus II, Remainder II and Lender shall reasonably cooperate with the marketing and sale by Circus II and Remainder II of each of the Circus II Properties (each a **“Sale”**). Each Sale shall be made to a third party purchaser unrelated to Circus II, Remainder II or Lender (each a **“Purchaser”**), in an arms length transaction for all cash payable at closing. All Sales will be **“as is”** with no representations or warranties from Circus II or Remainder II. Upon receipt of a bona fide offer from a Purchaser approved by Circus II, Remainder II and Lender, which approval shall not unreasonably be withheld, conditioned or delayed (an **“Approved Offer”**), Circus II and Remainder II shall enter into a purchase and sale contract with the Purchaser (a **“Purchase Contract”**) to effect the sale of the applicable Property to the Purchaser upon the terms of the Approved Offer. The transfer shall be made by Circus II and Remainder II and each shall convey its interest in each Property to the applicable Purchaser free and clear of the Circus II Master Lease and the lien of the applicable Circus II Security Instrument and all other documents relating to the Circus II Master Lease and the relationship between Circus II and Remainder II. Subject to the payments being made in accordance with **subsection B** below, Lender shall release all Circus II Security Instruments encumbering the Circus II Property subject to such Sale, and Lender, Circus II, Remainder II and Tenant shall cooperate to release any other documents evidencing the Circus II Loan or Circus II Master Lease encumbering such Circus II Property.

B. The proceeds from each Sale of a Circus II Property shall, at the closing of each such Sale, be distributed in the following order and priority: (1) FIRST, in payment of all Closing Costs (as defined in **subsection C** below) of such Sale, (2) SECOND, in payment to Lender of all protective advances made by Lender under the Circus II Security Instruments, (3) THIRD, in payment to Lender of all amounts outstanding under the Circus II Amended and Restated Promissory Note (other than interest payments at the Default Rate (as defined in the Circus II Amended and Restated Promissory Note) and the Yield Maintenance Payment and any other prepayment penalty or premium due and payable under the Circus II Amended and Restated Promissory Note as a result of a prepayment), which payment shall be applied first toward all accrued but unpaid interest, and then toward principal in the inverse order of maturity, (4) FOURTH, in payment of the outstanding principal balance of the Circus I Amended and Restated Promissory Note in the inverse order of maturity (provided that no Yield Maintenance Payment or any other prepayment penalty or premium shall be due and payable in connection with such payment (but nothing in this subitem is intended to otherwise limit any Yield Maintenance Payment or prepayment premium obligation payable under the Circus I Amended and Restated Note with respect to any other prepayment)), and then toward all accrued but unpaid interest due under the Circus I Amended and Restated Promissory Note, and (5) FIFTH, with any remaining balance to be remitted to Circus II and Remainder II, to be allocated between them as they shall determine. To the extent any Closing Costs permitted to be paid hereunder are not otherwise expressly permitted to be paid out of the purchase price for a disposition of property under the applicable Circus II Amended and Restated Promissory Note or Circus II Security Instrument prior to payment to Lender of all amounts outstanding under the Circus II

Amended and Restated Promissory Note and Circus II Security Instrument, then the payment hereunder of such Closing Costs shall constitute and be deemed to be advances made by Lender under the Circus II Amended and Restated Promissory Note and Circus II Security Instrument, and shall be included in payment to Lender of principal outstanding in the manner and priority provided above. The parties acknowledge that the distribution provided in subitem (4) above is based on directions hereby given by the Owners and the direct and indirect members of Circus II and Remainder II, and that in substance such proceeds are deemed to have been distributed by Circus II and Remainder II to their members (and by such members to their members) and then to the Owners, who immediately thereafter are deemed to have contributed such proceeds to the members of Circus I and Remainder I (in the case of Circus I, through the members of such members) and then by such members to Circus I and Remainder I, which in turn have directed that such proceeds be paid to Lender for application as provided in subitem (4). Notwithstanding the acknowledgement by Lender and Tenant of the distributions and contributions described in the preceding sentence, Lender and Tenant are not making any representation or warranty (express or implied) as to any matter whatsoever regarding such distributions and contributions, including the tax consequences of such distributions and contributions.

C. The term “**Closing Costs**” shall mean any and all third-party out-of-pocket costs and expenses actually incurred by Circus II, Remainder II and Lender in connection with each Sale, including, without limitation, closing prorations and payments required to be paid by Circus II and Remainder II under the Purchase Contract (including if necessary real estate taxes constituting a lien against the Property from and after the date the Circus II Master Lease is rejected and other charges payable under the Purchase Contract by Circus II and/or Remainder II constituting a lien on title to the Property, such as (by way of example) common area maintenance charges, brokerage commissions payable by Circus II and Remainder II, transfer or documentary stamp taxes, title fees and premiums, survey charges, costs to provide environmental and engineering reports required to be delivered by the seller to a Purchaser under the terms of the Approved Offer, closing and escrow fees, attorneys’ fees of Circus II, Remainder II and Lender to review the Approved Offer and negotiate and prepare the Purchase Contract for the Approved Offer and transfer documents required to close the Sale and release the applicable Circus II Security Instrument and other Security II Loan Documents and any other documents relating to the Circus II Master Lease and the relationship between Circus II and Remainder II and to close the transaction, and such other similar third-party costs actually incurred in connection with such Sale. “Closing Costs” shall not include any income taxes incurred or payable by Circus II or Remainder II. Circus II and Remainder II shall provide an accounting of Closing Costs incurred by Circus II and Remainder II which may be in the form of a settlement statement prepared by the title insurance company, together with invoices and other documentary evidence as reasonably required by Lender, to Lender for Lender’s review and approval in accordance herewith not less than two (2) business days in advance of the scheduled closing of each Sale of Property, together with copies of closing statements prepared in connection with such Sale (and Lender’s approval thereof shall not be unreasonably withheld or delayed). Circus II and Remainder II shall instruct the escrow agent or title agent distributing the purchase price from each Sale to make payments directly to the parties entitled to payment under **subsection B** above and this **subsection C**, and Circus II and Remainder II may not accept any funds payable to Lender or any third party on behalf of Lender or such third party.

6. Representations and Warranties. Each of Lender, Circus I, Circus II, Remainder I, Remainder II and Tenant represents and warrants to the others as follows: (i) neither execution nor delivery of this Agreement nor fulfillment of or compliance with the terms and provisions hereof will conflict with, or result in a breach of the terms or conditions of, or constitute a default under, any agreement or instrument to which such entity is a party or by which such entity may be bound; except for the Bankruptcy Court Order, no consents, approvals or authorizations are required for the execution and delivery of this Agreement by such entity or for compliance by such entity with its terms and provisions (other than by other parties to this Agreement whose consent is given); (ii) this Agreement is the legal, valid and binding obligation of such entity, enforceable against such entity in accordance with its terms; (iii) such entity validly exists under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement; (iv) the execution and delivery of this Agreement has been duly authorized by all requisite action by or on behalf of such entity; and (v) this Agreement has been duly executed and delivered on behalf of such entity. Subject to the Existing Defaults, Circus I, Circus II, Remainder I, Remainder II and Tenant each reaffirms the representations and

warranties made by such parties in the Lease Documents and the Loan Documents, as applicable, both immediately before the consummation of the Transaction and, with respect to the representations and warranties applicable to the Circus I Exchange Properties and the Circus II Exchange Properties, as such representations and warranties shall be deemed modified to give effect to the consummation of the Transaction.

7. Ratification of Loan Documents and Lease Documents. Except as otherwise expressly provided in this Agreement, the Loan Documents and the Lease Documents are ratified and affirmed by the parties to such Loan Documents and Lease Documents and remain in full force and effect. Tenant ratifies and affirms that it succeeded to Piccadilly as tenant under the Circus I Master Lease and the Circus II Master Lease; **provided, however**, such ratification and affirmation shall not limit the rejection of the Circus II Master Lease by Tenant as provided for in **Section 2C(ii)**. Except to the extent, if any, specifically provided for herein: (a) the liens created by the Circus I Security Instruments and the Circus II Security Instruments and the liens in the collateral described in such instruments shall continue in full force and effect and none of such collateral is or shall be released from such liens; and (b) this Agreement shall not constitute a waiver of any rights or remedies of Lender in respect of the Loan Documents or of Borrowers in the Lease Documents; **provided, however**, upon consummation of the Closing, Lender waives the Existing Defaults, but such waiver shall not limit any obligation of Tenant to satisfy the financial covenants in the Lease Documents from and after the Closing and such waiver shall not limit Tenant's obligation to pay the Tax Delinquencies with respect to the Circus II Master Lease no later than the Closing. Lender and Borrowers agree to forbear from enforcing their respective rights and remedies under the Loan Documents and the Lease Documents as a result of the Tax Delinquencies with respect to the Circus I Master Lease unless Tenant fails to pay the Tax Delinquencies with respect to each of the Circus I Properties (as such term is deemed modified as of the Closing), no later than thirty days after the Closing. If Tenant fails to pay such Tax Delinquencies as required by the preceding sentence, Lender and Borrowers shall be entitled to immediately exercise their rights and remedies under the Lease Documents without any notice or demand or grace or cure period.

8. Release. Each of Borrowers, Remainder I, Remainder II and Tenant fully, finally and forever releases and discharges Lender and its Affiliates (as defined in the Loan Documents) from, waives, and agrees not to sue, or otherwise assert against, Lender or any of its Affiliates, any and all claims, liabilities, obligations, actions, causes of action, debts, demands, suits, judgments, losses, fines, penalties, sanctions, costs, fees, taxes, charges, disbursements, expenses, defenses, challenges, contests, or other opposition, of whatever kind or nature and however characterized, at law, in equity or otherwise, that any of Borrowers, Remainder I, Remainder II and Tenant now has or in the future may have, whether known or unknown, foreseen or unforeseen, now existing or arising in the future, against Lender or its Affiliates arising out of or relating to: (a) the Circus I Loan, the Circus II Loan, the Loan Documents or the actions or omissions of Lender or any of Lender's Affiliates in respect of the Circus I Loan, the Circus II Loan or the Loan Documents and arising from events occurring prior to the execution and delivery of this Agreement; or (b) relating to the making, validity, or enforceability of the Loan Documents. **FURTHER, EACH OF BORROWERS, REMAINDER I, REMAINDER II AND TENANT EXPRESSLY WAIVES ANY PROVISION OF STATUTORY OR DECISIONAL LAW TO THE EFFECT THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN SUCH PARTY'S FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY SUCH PARTY, MUST HAVE MATERIALLY AFFECTED SUCH PARTY'S SETTLEMENT WITH THE RELEASED PARTIES, INCLUDING PROVISIONS SIMILAR TO SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."**

9. Indemnity. Tenant agrees to indemnify, hold harmless and defend Lender, Borrowers, Remainder I and Remainder II and their respective directors, officers, shareholders, employees, successors, assigns, agents, contractors, subcontractors, experts, licensees, affiliates, lessees, servicers, mortgagees, trustees and invitees, as applicable (collectively, the "**Indemnified Parties**"), for, from and against any and all losses, costs, claims, liabilities, damages and expenses arising as a result of a breach of any of the representations, warranties, covenants, agreements or conditions of Tenant set forth in this Agreement (excluding any such losses, costs, claims, liabilities, damages and expenses arising out of such Indemnified Parties' gross negligence or willful misconduct; **provided, however**, that, unless otherwise required by applicable law, the term "gross negligence" shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Lender's security

interest in the Circus I Properties or the Circus II Properties, Borrowers', Remainder I's and Remainder II's ownership interest in the Circus I Properties or the Circus II Properties or failure to act in respect of matters that are or were the obligation of Tenant under the Lease Documents or Lender's failure to act in respect of matters which are or were the obligation of Borrowers, Remainder I or Remainder II under the Loan Documents), including, without limitation, reasonable attorneys' fees.

10. Miscellaneous Provisions.

A. *Notices.* All notices, consents, approvals or other instruments required or permitted to be given by either party pursuant to this Agreement shall be in writing and given by (i) hand delivery, (ii) express overnight delivery service or (iii) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) the next business day, if delivered by express overnight delivery service, or (c) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses specified in the attached *Exhibit D*.

B. *Real Estate Commission.* Each of the parties represent and warrant to each other that they have dealt with no real estate or mortgage broker, agent, finder or other intermediary in connection with the Transactions. Each of the parties shall indemnify and hold each other harmless for, from and against any costs, claims or expenses, including attorneys' fees, arising out of the breach of their respective representations and warranties contained within this subsection.

C. *Waiver and Amendment.* No provisions of this Agreement shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.

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

E. *Subitems.* All references to subitems in this Agreement will be to the subitems contained in the section or subsection containing such subitem reference unless noted otherwise.

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

G. *Construction Generally.* This is an agreement among parties who are experienced in sophisticated and complex matters similar to the transaction contemplated by this Agreement and is entered into by all parties in reliance upon the economic and legal bargains contained herein and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument, the relative bargaining powers of the parties or the domicile of any party. Each of the parties was represented by legal counsel competent in advising them of their obligations and liabilities hereunder.

H. *Other Documents.* Each of the parties agrees to sign such other and further documents as may be reasonably necessary to carry out the intentions expressed in this Agreement.

I. *Attorneys' Fees.* In the event of any judicial or other adversarial proceeding between the parties concerning this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and other costs in addition to any other relief to which it may be entitled.

J. *Entire Agreement.* This Agreement and the other Transaction Documents, together with any other certificates, instruments or agreements to be delivered in connection therewith, constitute the entire agreement

between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements, written or oral, between or among the parties with respect to the subject matter of this Agreement.

K. *Forum Selection; Jurisdiction; Venue; Choice of Law.* Borrowers, Remainder I, Remainder II and Tenant each acknowledges that this Agreement was substantially negotiated in the State of Arizona, the Agreement was signed by Lender in the State of Arizona and delivered by Borrowers, Remainder I, Remainder II and Tenant in the State of Arizona, all payments under the Loan Documents and the Lease Documents will be delivered in the State of Arizona and there are substantial contacts between the parties and the transactions contemplated herein and the State of Arizona. For purposes of any action or proceeding arising out of this Agreement, the parties hereto hereby expressly submit to the jurisdiction of all federal and state courts located in the State of Arizona and Borrowers, Remainder I, Remainder II and Tenant each consents that they may be served with any process or paper by registered mail or by personal service within or without the State of Arizona in accordance with applicable law. Furthermore, Borrowers, Remainder I, Remainder II and Tenant each waives and agrees not to assert in any such action, suit or proceeding that they are not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. It is the intent of the parties hereto that all provisions of this Agreement shall be governed by and construed under the laws of the State of Arizona, without giving effect to its principles of conflicts of law. To the extent that a court of competent jurisdiction finds Arizona law inapplicable with respect to any provisions hereof, then, as to those provisions only, the laws of the states where the Circus I Properties and the Circus II Properties are located, as applicable, shall be deemed to apply. Nothing in this Section shall limit or restrict the right of Lender to commence any proceeding in the federal or state courts located in the states in which the Circus I Properties and the Circus II Properties are located, as applicable, to the extent Lender deems such proceeding necessary or advisable to exercise remedies available under this Agreement or the other Transaction Documents, and if such is the case, counterclaims can be prosecuted in such proceeding. Nothing in this Section shall limit or restrict the right of Tenant or Borrowers to commence any proceeding against each other (but not against Lender) in the federal or state courts located in the states in which the Circus I Properties and the Circus II Properties are located, as applicable, to the extent Tenant or Borrowers deems such proceeding necessary or advisable to exercise remedies available under this Agreement or the other Transaction Documents against the other (but not against Lender), and if such is the case, counterclaims can be prosecuted in such proceeding.

L. *Counterparts.* It is understood and agreed that this Agreement may be executed in several counterparts, each of which shall, for all purposes, be deemed an original and all of such counterparts, taken together, shall constitute one and the same Agreement, even though all of the parties hereto may not have executed the same counterpart of this Agreement. Any counterpart may be executed and delivered in pdf format via e-mail delivery.

M. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective successors and permitted assigns, including, without limitation, any United States trustee, any debtor in possession or any trustee appointed from a private panel.

N. *Survival.* Except for the conditions of Closing set forth in **Section 3**, which shall be satisfied or waived as of the Closing, all representations, warranties, agreements, obligations and indemnities of the parties set forth in this Agreement shall survive the Closing.

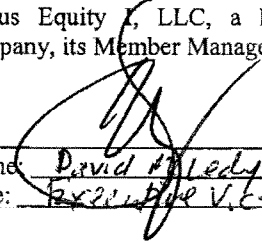
O. **WAIVER OF JURY TRIAL. LENDER, BORROWERS, REMAINDER I, REMAINDER II AND TENANT, TO THE EXTENT PERMITTED BY LAW, WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF, IN CONNECTION WITH OR RELATING TO, THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS AND ANY OTHER TRANSACTION CONTEMPLATED HEREBY AND THEREBY. THIS WAIVER APPLIES TO ANY ACTION, SUIT OR PROCEEDING WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE.**

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto in manner and form sufficient to bind them, as of the day and year first above written.

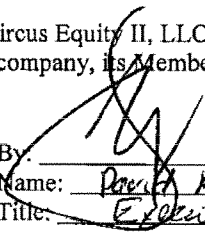
CIRCUS PROPERTY I, LLC,
a Delaware limited liability company

By: Circus Equity I, LLC, a Delaware limited liability company, its Member Manager

By: 
Name: David M. Ledy
Title: Executive Vice President

CIRCUS PROPERTY II, LLC, a Delaware limited liability company

By: Circus Equity II, LLC, a Delaware limited liability company, its Member Manager

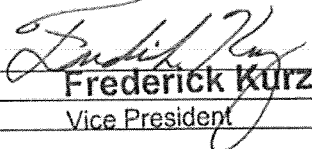
By: 
Name: David M. Ledy
Title: Executive Vice President

THREE RING REMAINDER I, LLC, a Delaware limited liability company

By: Three Ring Remeq I, LLC, a Delaware limited liability company, its Member Manager

By: Kimco Net Rem, LLC, a Delaware limited liability company, its member manager

By: Kimco Net Rem Business Trust, a Maryland business trust, manager

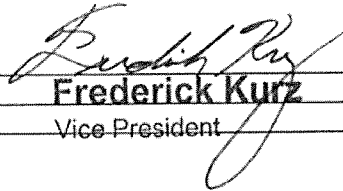
By: 
Name: Frederick Kurz
Title: Vice President

THREE RING REMAINDER II, LLC, a Delaware limited liability company

By: Three Ring Remeq II, LLC, a Delaware limited liability company, its Member Manager

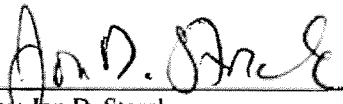
By: Kimco Net Rem, LLC, a Delaware limited liability company, its member manager

By: Kimco Net Rem Business Trust, a Maryland business trust, manager

By: 
Name: Frederick Kurz
Title: Vice President

CEF FUNDING II, L.L.C., a Delaware limited liability
company

By: **GE CAPITAL FRANCHISE FINANCE
CORPORATION**, Sub-servicer

By: 
Name: Jon D. Storck
Its Authorized Signatory

PICCADILLY RESTAURANTS, LLC, a Delaware limited liability company (in its capacity as debtor and debtor-in-possession)

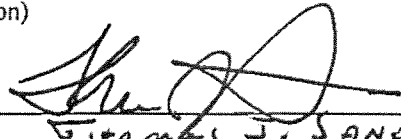
By: 
Name: Frank J. Sander
Title: CEO

EXHIBIT A**Pool I Before Closing**

Lender Loan No.	Lender Asset No.	Property	Outstanding Principal Balance (as of August 1, 2013*) - \$
000427362	019663	2601 Eastern Blvd, Montgomery, AL**	855,687.35
000427365	019666	7750 W. Bellfort Avenue, Houston, TX**	1,026,115.40
000427367	019668	10906 St. Charles Rock Road, St. Ann, MO**	701,238.61
000427359	019659	5474 Essen Lane, Baton Rouge, LA	1,460,240.01
000427358	019658	69008 Highway 190 Service Road, Covington, LA	1,381,378.16
000427357	019657	6406 Florida Blvd, Baton Rouge, LA	1,302,378.16
000427364	019665	533 Lapalco Blvd, Gretna, LA	1,611,001.53
000427363	019664	4996 Stage Rd, Memphis, TN	1,166,614.62
000427366	019667	8004 W Broad St, Richmond, VA	1,425,766.60

*Assumes the scheduled payments due on August 1, 2013 were made

**Circus I Exchange Property

EXHIBIT B**Pool II Before Closing**

Lender Loan No.	Lender Asset No.	Property	Outstanding Principal Balance (as of August 1, 2013*) - \$
000427351	019652	1536 Highway 138, Conyers, GA**	1,186,779.60
000427353	019653	955 N. Glynn Street, Fayetteville, GA**	1,356,899.17
000427352	020234	2226 N Druid Hills Rd NE, Atlanta, GA	1,250,778.90
000427354	019654	5644 Memorial Dr, Stone Mountain, GA	1,215,133.64
000427355	019655	1265 Mt Zion Rd (fka 1265 Morrow Industrial Blvd), Morrow, GA	1,336,648.29
000427356	019656	3110 Washington Rd, Augusta, GA**	1,259,687.02

*Assumes the scheduled payments due on August 1, 2013 were made

**Circus II Exchange Property

EXHIBIT C-1

Pool I After Closing

Lender Asset No.	Property
019652	1536 Highway 138, Conyers, GA
019653	955 N. Glynn Street, Fayetteville, GA
019656	3110 Washington Rd, Augusta, GA
019659	5474 Essen Lane, Baton Rouge, LA
019658	69008 Highway 190 Service Road, Covington, LA
019657	6406 Florida Blvd., Baton Rouge, LA
019665	533 Lapalco Blvd., Gretna, LA
019664	4996 Stage Rd., Memphis, TN
019667	8004 W Broad St., Richmond, VA

EXHIBIT C-2
Pool II After Closing

Lender Asset No.	Property
019666	7750 W. Bellfort Avenue, Houston, TX
019668	10906 St. Charles Rock Road, St. Ann, MO
020234	2226 N Druid Hills Rd NE, Atlanta, GA
019654	5644 Memorial Dr., Stone Mountain, GA
019655	1265 Mt Zion Rd. (fka 1265 Morrow Industrial Blvd), Morrow, GA
019663	2601 Eastern Boulevard, Montgomery, AL

EXHIBIT D

Notice Addresses

If to Circus I and Circus II:

c/o U.S. Realty Advisors, LLC
1370 Avenue of the Americas
New York, New York 10019
Attention: David M. Ledy

with a copy to:

Proskauer Rose LLP
Eleven Times Square
New York, New York 10036-8299
Attention: Wendy J. Schriber, Esq.

If to Remainder I and Remainder II:

c/o Kimco Realty Corporation
3333 New Hyde Park Road
New Hyde Park, New York 11042
Attention:

with a copy to:

Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
Attention: Stephen M. Lyons III, Esq.
Telephone: (215) 851-8116
Telecopy: (215) 851-1420

If to Lender:

GE Capital Franchise Finance Corporation
500 W. Monroe
Chicago, Illinois 60661
Attention: Jon D. Storck

and

GE Capital Franchise Finance Corporation
8377 East Hartford Drive, Suite 200
Scottsdale, Arizona 85255
Attention: Harold W. Vinson

with a copy to:

Kutak Rock LLP
8601 North Scottsdale Road, Suite 300
Scottsdale, Arizona 85253
Attention: Mark R. Nethers, Esq.

If to Tenant:

Piccadilly Restaurants, LLC
3232 S. Sherwood Forest Boulevard
Baton Rouge, Louisiana 70816
Attention: Thomas J. Sandeman

with a copy to:

Gordon, Arata, McCollam, Duplantis & Eagan, LLC
One American Place
301 Main Street, Suite 1600
Baton Rouge, LA 70801-1916
Attention: Peter A. Kopfinger, Esq.

SCHEDULE 1**Circus I Master Lease Rent Payments**

Month	Day	Year	\$ Amount
9	1	2013	\$159,568.92
10	1	2013	\$159,568.92
11	1	2013	\$159,568.92
12	1	2013	\$159,568.92
1	1	2014	\$159,568.92
2	1	2014	\$159,568.92
3	1	2014	\$159,568.92
4	1	2014	\$159,568.92
5	1	2014	\$159,568.92
6	1	2014	\$159,568.92
7	1	2014	\$159,568.92
8	1	2014	\$159,568.92
9	1	2014	\$159,568.92
10	1	2014	\$159,568.92
11	1	2014	\$159,568.92
12	1	2014	\$159,568.92
1	1	2015	\$159,568.92
2	1	2015	\$159,568.92
3	1	2015	\$159,568.92
4	1	2015	\$159,568.92
5	1	2015	\$159,568.92
6	1	2015	\$159,568.92
7	1	2015	\$159,568.92
8	1	2015	\$159,568.92
9	1	2015	\$159,568.92
10	1	2015	\$159,568.92
11	1	2015	\$159,568.92
12	1	2015	\$159,568.92
1	1	2016	\$159,568.92
2	1	2016	\$159,568.92
3	1	2016	\$159,568.92
4	1	2016	\$167,547.36
5	1	2016	\$167,547.36
6	1	2016	\$167,547.36
7	1	2016	\$167,547.36
8	1	2016	\$167,547.36
9	1	2016	\$167,547.36
10	1	2016	\$167,547.36

Month	Day	Year	\$ Amount
11	1	2016	\$167,547.36
12	1	2016	\$167,547.36
1	1	2017	\$167,547.36
2	1	2017	\$167,547.36
3	1	2017	\$167,547.36
4	1	2017	\$167,547.36
5	1	2017	\$167,547.36
6	1	2017	\$167,547.36
7	1	2017	\$167,547.36
8	1	2017	\$167,547.36
9	1	2017	\$167,547.36
10	1	2017	\$167,547.36
11	1	2017	\$167,547.36
12	1	2017	\$167,547.36
1	1	2018	\$167,547.36
2	1	2018	\$167,547.36
3	1	2018	\$167,547.36
4	1	2018	\$167,547.36
5	1	2018	\$167,547.36
6	1	2018	\$167,547.36
7	1	2018	\$167,547.36
8	1	2018	\$167,547.36
9	1	2018	\$167,547.36
10	1	2018	\$167,547.36
11	1	2018	\$167,547.36
12	1	2018	\$167,547.36
1	1	2019	\$167,547.36
2	1	2019	\$167,547.36
3	1	2019	\$167,547.36
4	1	2019	\$167,547.36
5	1	2019	\$167,547.36
6	1	2019	\$167,547.36
7	1	2019	\$167,547.36
8	1	2019	\$167,547.36
9	1	2019	\$167,547.36
10	1	2019	\$167,547.36
11	1	2019	\$167,547.36
12	1	2019	\$167,547.36
1	1	2020	\$167,547.36
2	1	2020	\$167,547.36
3	1	2020	\$167,547.36
4	1	2020	\$167,547.36

Month	Day	Year	\$ Amount
5	1	2020	\$167,547.36
6	1	2020	\$167,547.36
7	1	2020	\$167,547.36
8	1	2020	\$167,547.36
9	1	2020	\$167,547.36
10	1	2020	\$167,547.36
11	1	2020	\$167,547.36
12	1	2020	\$167,547.36
1	1	2021	\$167,547.36
2	1	2021	\$167,547.36
3	1	2021	\$167,547.36

SCHEDULE 2**Circus II Master Lease Rent Payments**

Month	Day	Year	\$ Amount
9	1	2013	\$94,915.16
10	1	2013	\$94,915.16
11	1	2013	\$94,915.16
12	1	2013	\$94,915.16
1	1	2014	\$94,915.16
2	1	2014	\$94,915.16
3	1	2014	\$94,915.16
4	1	2014	\$94,915.16
5	1	2014	\$94,915.16
6	1	2014	\$94,915.16
7	1	2014	\$94,915.16
8	1	2014	\$94,915.16
9	1	2014	\$94,915.16
10	1	2014	\$94,915.16
11	1	2014	\$94,915.16
12	1	2014	\$94,915.16
1	1	2015	\$94,915.16
2	1	2015	\$94,915.16
3	1	2015	\$94,915.16
4	1	2015	\$94,915.16
5	1	2015	\$94,915.16
6	1	2015	\$94,915.16
7	1	2015	\$94,915.16
8	1	2015	\$94,915.16
9	1	2015	\$94,915.16
10	1	2015	\$94,915.16
11	1	2015	\$94,915.16
12	1	2015	\$94,915.16
1	1	2016	\$94,915.16
2	1	2016	\$94,915.16
3	1	2016	\$94,915.16
4	1	2016	\$94,915.16
5	1	2016	\$94,915.16
6	1	2016	\$94,915.16
7	1	2016	\$94,915.16
8	1	2016	\$99,660.92
9	1	2016	\$99,660.92
10	1	2016	\$99,660.92

Month	Day	Year	\$ Amount
11	1	2016	\$99,660.92
12	1	2016	\$99,660.92
1	1	2017	\$99,660.92
2	1	2017	\$99,660.92
3	1	2017	\$99,660.92
4	1	2017	\$99,660.92
5	1	2017	\$99,660.92
6	1	2017	\$99,660.92
7	1	2017	\$99,660.92
8	1	2017	\$99,660.92
9	1	2017	\$99,660.92
10	1	2017	\$99,660.92
11	1	2017	\$99,660.92
12	1	2017	\$99,660.92
1	1	2018	\$99,660.92
2	1	2018	\$99,660.92
3	1	2018	\$99,660.92
4	1	2018	\$99,660.92
5	1	2018	\$99,660.92
6	1	2018	\$99,660.92
7	1	2018	\$99,660.92
8	1	2018	\$99,660.92
9	1	2018	\$99,660.92
10	1	2018	\$99,660.92
11	1	2018	\$99,660.92
12	1	2018	\$99,660.92
1	1	2019	\$99,660.92
2	1	2019	\$99,660.92
3	1	2019	\$99,660.92
4	1	2019	\$99,660.92
5	1	2019	\$99,660.92
6	1	2019	\$99,660.92
7	1	2019	\$99,660.92
8	1	2019	\$99,660.92
9	1	2019	\$99,660.92
10	1	2019	\$99,660.92
11	1	2019	\$99,660.92
12	1	2019	\$99,660.92
1	1	2020	\$99,660.92
2	1	2020	\$99,660.92
3	1	2020	\$99,660.92
4	1	2020	\$99,660.92

Month	Day	Year	\$ Amount
5	1	2020	\$99,660.92
6	1	2020	\$99,660.92
7	1	2020	\$99,660.92
8	1	2020	\$99,660.92
9	1	2020	\$99,660.92
10	1	2020	\$99,660.92
11	1	2020	\$99,660.92
12	1	2020	\$99,660.92
1	1	2021	\$99,660.92
2	1	2021	\$99,660.92
3	1	2021	\$99,660.92

SCHEDULE 3

Circus I Amended and Restated Promissory Note Amortization Schedule

Payment	Period Beginning	Due Date	Beginning Balance	Interest	Principal	Monthly Payment	Ending Balance
148	7/1/2013	8/1/2013					11,743,901.00
149	8/1/2013	9/1/2013	11,743,901.00	97,006.06	\$52,968.36	149,974.42	11,690,932.64
150	9/1/2013	10/1/2013	11,690,932.64	93,453.42	\$56,521.00	149,974.42	11,634,411.64
151	10/1/2013	11/1/2013	11,634,411.64	96,101.66	\$53,872.76	149,974.42	11,580,538.88
152	11/1/2013	12/1/2013	11,580,538.88	92,570.97	\$57,403.45	149,974.42	11,523,135.43
153	12/1/2013	1/1/2014	11,523,135.43	95,182.51	\$54,791.91	149,974.42	11,468,343.52
154	1/1/2014	2/1/2014	11,468,343.52	94,729.92	\$55,244.50	149,974.42	11,413,099.02
155	2/1/2014	3/1/2014	11,413,099.02	85,150.34	\$64,824.08	149,974.42	11,348,274.94
156	3/1/2014	4/1/2014	11,348,274.94	93,738.14	\$56,236.28	149,974.42	11,292,038.66
157	4/1/2014	5/1/2014	11,292,038.66	90,264.79	\$59,709.63	149,974.42	11,232,329.03
158	5/1/2014	6/1/2014	11,232,329.03	92,780.41	\$57,194.01	149,974.42	11,175,135.02
159	6/1/2014	7/1/2014	11,175,135.02	89,330.30	\$60,644.12	149,974.42	11,114,490.90
160	7/1/2014	8/1/2014	11,114,490.90	91,807.05	\$58,167.37	149,974.42	11,056,323.53
161	8/1/2014	9/1/2014	11,056,323.53	91,326.58	\$58,647.84	149,974.42	10,997,675.69
162	9/1/2014	10/1/2014	10,997,675.69	87,911.75	\$62,062.67	149,974.42	10,935,613.02
163	10/1/2014	11/1/2014	10,935,613.02	90,329.50	\$59,644.92	149,974.42	10,875,968.10
164	11/1/2014	12/1/2014	10,875,968.10	86,938.86	\$63,035.56	149,974.42	10,812,932.54
165	12/1/2014	1/1/2015	10,812,932.54	89,316.14	\$60,658.28	149,974.42	10,752,274.26
166	1/1/2015	2/1/2015	10,752,274.26	88,815.10	\$61,159.32	149,974.42	10,691,114.94
167	2/1/2015	3/1/2015	10,691,114.94	79,763.80	\$70,210.62	149,974.42	10,620,904.32
168	3/1/2015	4/1/2015	10,620,904.32	87,729.97	\$62,244.45	149,974.42	10,558,659.87
169	4/1/2015	5/1/2015	10,558,659.87	84,402.41	\$65,572.01	149,974.42	10,493,087.86
170	5/1/2015	6/1/2015	10,493,087.86	86,674.19	\$63,300.23	149,974.42	10,429,787.63
171	6/1/2015	7/1/2015	10,429,787.63	83,372.25	\$66,602.17	149,974.42	10,363,185.46
172	7/1/2015	8/1/2015	10,363,185.46	85,601.18	\$64,373.24	149,974.42	10,298,812.22
173	8/1/2015	9/1/2015	10,298,812.22	85,069.45	\$64,904.97	149,974.42	10,233,907.25
174	9/1/2015	10/1/2015	10,233,907.25	81,806.44	\$68,167.98	149,974.42	10,165,739.27
175	10/1/2015	11/1/2015	10,165,739.27	83,970.25	\$66,004.17	149,974.42	10,099,735.10
176	11/1/2015	12/1/2015	10,099,735.10	80,733.92	\$69,240.50	149,974.42	10,030,494.60
177	12/1/2015	1/1/2016	10,030,494.60	82,853.11	\$67,121.31	149,974.42	9,963,373.29
178	1/1/2016	2/1/2016	9,963,373.29	82,298.68	\$67,675.74	149,974.42	9,895,697.55
179	2/1/2016	3/1/2016	9,895,697.55	76,466.14	\$73,508.28	149,974.42	9,822,189.27
180	3/1/2016	4/1/2016	9,822,189.27	81,132.48	\$76,340.66	157,473.14	9,745,848.61
181	4/1/2016	5/1/2016	9,745,848.61	77,905.07	\$79,568.07	157,473.14	9,666,280.54
182	5/1/2016	6/1/2016	9,666,280.54	79,844.66	\$77,628.48	157,473.14	9,588,652.06
183	6/1/2016	7/1/2016	9,588,652.06	76,648.49	\$80,824.65	157,473.14	9,507,827.41
184	7/1/2016	8/1/2016	9,507,827.41	78,535.82	\$78,937.32	157,473.14	9,428,890.09
185	8/1/2016	9/1/2016	9,428,890.09	77,883.78	\$79,589.36	157,473.14	9,349,300.73
186	9/1/2016	10/1/2016	9,349,300.73	74,735.19	\$82,737.95	157,473.14	9,266,562.78
187	10/1/2016	11/1/2016	9,266,562.78	76,542.94	\$80,930.20	157,473.14	9,185,632.58
188	11/1/2016	12/1/2016	9,185,632.58	73,426.88	\$84,046.26	157,473.14	9,101,586.32

Payment	Period Beginning	Due Date	Beginning Balance	Interest	Principal	Monthly Payment	Ending Balance
189	12/1/2016	1/1/2017	9,101,586.32	75,180.22	\$82,292.92	157,473.14	9,019,293.40
190	1/1/2017	2/1/2017	9,019,293.40	74,500.47	\$82,972.67	157,473.14	8,936,320.73
191	2/1/2017	3/1/2017	8,936,320.73	66,671.70	\$90,801.44	157,473.14	8,845,519.29
192	3/1/2017	4/1/2017	8,845,519.29	73,065.07	\$84,408.07	157,473.14	8,761,111.22
193	4/1/2017	5/1/2017	8,761,111.22	70,033.40	\$87,439.74	157,473.14	8,673,671.48
194	5/1/2017	6/1/2017	8,673,671.48	71,645.59	\$85,827.55	157,473.14	8,587,843.93
195	6/1/2017	7/1/2017	8,587,843.93	68,648.36	\$88,824.78	157,473.14	8,499,019.15
196	7/1/2017	8/1/2017	8,499,019.15	70,202.94	\$87,270.20	157,473.14	8,411,748.95
197	8/1/2017	9/1/2017	8,411,748.95	69,482.07	\$87,991.07	157,473.14	8,323,757.88
198	9/1/2017	10/1/2017	8,323,757.88	66,537.35	\$90,935.79	157,473.14	8,232,822.09
199	10/1/2017	11/1/2017	8,232,822.09	68,004.12	\$89,469.02	157,473.14	8,143,353.07
200	11/1/2017	12/1/2017	8,143,353.07	65,095.25	\$92,377.89	157,473.14	8,050,975.18
201	12/1/2017	1/1/2018	8,050,975.18	66,502.04	\$90,971.10	157,473.14	7,960,004.08
202	1/1/2018	2/1/2018	7,960,004.08	65,750.61	\$91,722.53	157,473.14	7,868,281.55
203	2/1/2018	3/1/2018	7,868,281.55	58,703.33	\$98,769.81	157,473.14	7,769,511.74
204	3/1/2018	4/1/2018	7,769,511.74	64,177.12	\$93,296.02	157,473.14	7,676,215.72
205	4/1/2018	5/1/2018	7,676,215.72	61,361.11	\$96,112.03	157,473.14	7,580,103.69
206	5/1/2018	6/1/2018	7,580,103.69	62,612.58	\$94,860.56	157,473.14	7,485,243.13
207	6/1/2018	7/1/2018	7,485,243.13	59,834.54	\$97,638.60	157,473.14	7,387,604.53
208	7/1/2018	8/1/2018	7,387,604.53	61,022.52	\$96,450.62	157,473.14	7,291,153.91
209	8/1/2018	9/1/2018	7,291,153.91	60,225.82	\$97,247.32	157,473.14	7,193,906.59
210	9/1/2018	10/1/2018	7,193,906.59	57,505.69	\$99,967.45	157,473.14	7,093,939.14
211	10/1/2018	11/1/2018	7,093,939.14	58,596.80	\$98,876.34	157,473.14	6,995,062.80
212	11/1/2018	12/1/2018	6,995,062.80	55,916.20	\$101,556.94	157,473.14	6,893,505.86
213	12/1/2018	1/1/2019	6,893,505.86	56,941.20	\$100,531.94	157,473.14	6,792,973.92
214	1/1/2019	2/1/2019	6,792,973.92	56,110.79	\$101,362.35	157,473.14	6,691,611.57
215	2/1/2019	3/1/2019	6,691,611.57	49,924.48	\$107,548.66	157,473.14	6,584,062.91
216	3/1/2019	4/1/2019	6,584,062.91	54,385.16	\$103,087.98	157,473.14	6,480,974.93
217	4/1/2019	5/1/2019	6,480,974.93	51,806.75	\$105,666.39	157,473.14	6,375,308.54
218	5/1/2019	6/1/2019	6,375,308.54	52,660.83	\$104,812.31	157,473.14	6,270,496.23
219	6/1/2019	7/1/2019	6,270,496.23	50,124.26	\$107,348.88	157,473.14	6,163,147.35
220	7/1/2019	8/1/2019	6,163,147.35	50,908.35	\$106,564.79	157,473.14	6,056,582.56
221	8/1/2019	9/1/2019	6,056,582.56	50,028.11	\$107,445.03	157,473.14	5,949,137.53
222	9/1/2019	10/1/2019	5,949,137.53	47,555.42	\$109,917.72	157,473.14	5,839,219.81
223	10/1/2019	11/1/2019	5,839,219.81	48,232.67	\$109,240.47	157,473.14	5,729,979.34
224	11/1/2019	12/1/2019	5,729,979.34	45,803.54	\$111,669.60	157,473.14	5,618,309.74
225	12/1/2019	1/1/2020	5,618,309.74	46,407.93	\$111,065.21	157,473.14	5,507,244.53
226	1/1/2020	2/1/2020	5,507,244.53	45,490.51	\$111,982.63	157,473.14	5,395,261.90
227	2/1/2020	3/1/2020	5,395,261.90	41,690.33	\$115,782.81	157,473.14	5,279,479.09
228	3/1/2020	4/1/2020	5,279,479.09	43,609.14	\$113,864.00	157,473.14	5,165,615.09
229	4/1/2020	5/1/2020	5,165,615.09	41,292.21	\$116,180.93	157,473.14	5,049,434.16
230	5/1/2020	6/1/2020	5,049,434.16	41,708.94	\$115,764.20	157,473.14	4,933,669.96
231	6/1/2020	7/1/2020	4,933,669.96	39,438.11	\$118,035.03	157,473.14	4,815,634.93
232	7/1/2020	8/1/2020	4,815,634.93	39,777.73	\$117,695.41	157,473.14	4,697,939.52
233	8/1/2020	9/1/2020	4,697,939.52	38,805.55	\$118,667.59	157,473.14	4,579,271.93

Payment	Period Beginning	Due Date	Beginning Balance	Interest	Principal	Monthly Payment	Ending Balance
234	9/1/2020	10/1/2020	4,579,271.93	36,605.17	\$120,867.97	157,473.14	4,458,403.96
235	10/1/2020	11/1/2020	4,458,403.96	36,826.96	\$120,646.18	157,473.14	4,337,757.78
236	11/1/2020	12/1/2020	4,337,757.78	34,674.59	\$122,798.55	157,473.14	4,214,959.23
237	12/1/2020	1/1/2021	4,214,959.23	34,816.08	\$122,657.06	157,473.14	4,092,302.17
238	1/1/2021	2/1/2021	4,092,302.17	33,802.92	\$123,670.22	157,473.14	3,968,631.95
239	2/1/2021	3/1/2021	3,968,631.95	29,608.99	\$127,864.15	157,473.14	3,840,767.80
240	3/1/2021	4/1/2021	3,840,767.80	31,725.21	(\$31,725.21)	0.00	3,872,493.01
\$14,097,595.42							

Exhibit 3

AMENDMENT TO MASTER LEASE

THIS AMENDMENT TO MASTER LEASE (this "*Amendment*") is made as of _____, 2013 (the "*Effective Date*") by and between CIRCUS PROPERTY [I][II], LLC, a Delaware limited liability company ("*Lessor*"), and PICCADILLY RESTAURANTS, LLC, a Delaware limited liability company, successor by assignment to Piccadilly Cafeterias, Inc., a Louisiana corporation ("*Lessee*").

PRELIMINARY STATEMENTS

Lessor and Lessee are parties to that certain master lease dated as of [March 30][July 31], 2001 (as amended, the "*Master Lease*"), whereby Lessor has leased to Lessee, and Lessee has rented and leased from Lessor, on and subject to the terms, provisions and conditions of the Master Lease, the real property described by Asset No. and address on the attached *Exhibit A*, including all rights, privileges and appurtenances associated therewith and all buildings, structures, fixtures and improvements located on such real property (the "*Current Circus [I][II] Properties*"). Initially capitalized terms not otherwise defined in this Amendment shall have the meanings set forth in the Master Lease.

Lessor, Lessee, Circus Property [I][II], LLC, a Delaware limited liability company, and CEF Funding II, L.L.C., a Delaware limited liability company, and certain affiliates of Lessor entered into that certain master agreement dated as of _____, 2013 (the "*Master Agreement*") pursuant to which the parties contemplated that the three Current Circus [I][II] Properties described on the attached *Exhibit B* would be removed from the Master Lease and the three properties described on the attached *Exhibit C* would be added to the Master Lease (collectively, the "*Transaction*").

Pursuant to the Master Agreement, Lessor and Lessee have agreed to amend the Master Lease as set forth in this Amendment to evidence the Transaction.

AGREEMENT

1. *Amendment.* As of the Effective Date, the Master Lease is amended as follows:

(a) The following properties are deleted from the Master Lease and Exhibit A of the Master Lease (the "*Removed Properties*");

<u>GE No.</u>	<u>Property Address</u>
8001-	
8001-	
8001-	

The legal descriptions of the Removed Properties attached as *Exhibit D* are deleted from Exhibit A-1 of the Master Lease. The Master Lease is amended to remove from the definition of "Properties" the Removed Properties. The Removed Properties shall no longer be included within the meaning of the term "Properties" as defined and used in the Master Lease and the other Sale-Leaseback Documents. Without limiting the generality of the preceding sentence, the Removed Properties shall no longer be included within the Aggregate Fixed Charge Coverage Ratio requirement set forth in the Master Lease. Notwithstanding anything to the contrary set forth in any of the Sale-Leaseback Documents, the Master Lease and this Agreement, the amendment described in this *Section 1(a)* shall not limit any liability or

obligation of Lessee which has accrued prior to the date of this Amendment with respect to the Removed Properties under any provision of the Master Lease and/or the other Sale-Leaseback Documents, including, without limitation, any indemnification and/or hold harmless provision.

(b) The following properties are added to the Master Lease and Exhibit A of the Master Lease:

<u>GE No.</u>	<u>Property Address</u>
8001-	
8001-	
8001-	

The legal descriptions attached hereto as **Exhibit E** are added to Exhibit A-1 of the Master Lease (the "**Added Properties**"). The Master Lease is amended to add to the definition of "Properties" the Added Properties. The Added Properties shall be included within the meaning of the term "Properties" as defined and used in the Master Lease and the other Sale-Leaseback Documents. Without limiting the generality of the preceding sentence, the Added Properties shall be included within the Aggregate Fixed Charge Coverage Ratio requirement set forth in the Master Lease.

(c) From and after the Effective Date, the "Properties" as defined in the Master Lease shall mean the properties described on **Exhibit F**.

(d) The Base Monthly Rent is amended from and after the Effective Date to equal \$[], as such Base Monthly Rent shall be increased on each Adjustment Date as set forth in the Master Lease.

2. **Ratification.** Except as otherwise set forth in this Amendment, the Master Lease and the other Sale-Leaseback Documents are unmodified and in full force and effect.

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

Lessor and Lessee have executed this Amendment as of the date first set forth above.

LESSOR:

CIRCUS PROPERTY [I][II], LLC, a Delaware
limited liability company

By: **CIRCUS EQUITY [I][II], LLC**, a Delaware limited
liability company, its member

By _____
Printed Name _____
Its _____

LESSEE:

PICCADILLY RESTAURANTS, LLC, a Delaware
limited liability company

By _____
Printed Name _____
Its _____

The foregoing Amendment is agreed to and acknowledged by the undersigned:

CEF FUNDING II, L.L.C., a Delaware limited liability company

By: **GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation,
Sub-servicer

By _____
Printed Name _____
Its Authorized Signatory

[THREE RING REMAINDER [I][II], LLC, a Delaware limited liability company

By: **THREE RING EQUITY [I][II], LLC**, a Delaware limited liability company, its member

By _____
Printed Name _____
Its _____]

Exhibit 4

EXHIBIT 4

Amended Circus I Properties

Property
1536 Highway 138, Conyers, GA
955 N. Glynn Street, Fayetteville, GA
3110 Washington Rd, Augusta, GA
5474 Essen Lane, Baton Rouge, LA
69008 Highway 190 Service Road, Covington, LA
6406 Florida Blvd., Baton Rouge, LA
533 Lapalco Blvd., Gretna, LA
4996 Stage Rd., Memphis, TN
8004 W Broad St., Richmond, VA

Exhibit 5

EXHIBIT 5
Amended Circus II Properties

Property
7750 W. Bellfort Avenue, Houston, TX
10906 St. Charles Rock Road, St. Ann, MO
2226 N Druid Hills Rd NE, Atlanta, GA
5644 Memorial Dr., Stone Mountain, GA
1265 Mt Zion Rd. (fka 1265 Morrow Industrial Blvd), Morrow, GA
2601 Eastern Boulevard, Montgomery, AL