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Burger King Corpn; 7360 N Kendall Drive  
P.O. Box 520783, General Mail Facility  
Miami, Florida 33152  
Attn: Lisa Wilson

D-411238 iss  
#4-6000

OPTION AGREEMENT AND GRANT OF RIGHT OF FIRST REFUSAL

THIS AGREEMENT, made as of May 9, 1985, between BURGER KING LIMITED PARTNERSHIP III, a New York limited partnership having its principal place of business at Two World Trade Center, New York, New York 10048 (the "Optionor"), and BURGER KING CORPORATION, a Florida corporation having its principal place of business at 7360 North Kendall Drive, Miami, Florida 33156 ("BKC").

W I T N E S S E T H :

THAT WHEREAS as of the date hereof, Optionor has acquired the fee simple title to, or a subleasehold interest in, the parcel of land, located in the City of Gary, County of Lake, State of Indiana, more particularly described in Exhibit A hereto (the "Land"); and BKC shall construct or cause to be constructed on behalf of Optionor a Burger King restaurant building and other improvements (together, the "Improvements") on the Land (Optionor's interest in the Land, together with the Improvements shall be hereinafter referred to as the "Property");

WHEREAS, the Property is a Fee Property;

WHEREAS (i) if the Property is a Fee Property, Optionor is the owner of the fee simple title to the Property, or (ii) if the Property is a Ground Leasehold Property, Optionor is the subtenant under a sublease (the "Sublease") from BKC, which holds the lessee's interest in a Ground Lease (the "Ground Lease"), and Optionor is the owner of the Improvements;

WHEREAS Optionor owns or will own fee title to, or has or will have subleasehold interests in, certain other parcels of land, and owns or will own the buildings and improvements thereon (collectively, the "Other Properties" and together with the Property, the "Properties"), all of which are, or will be, subject to other option agreements (collectively, the "Other Option Agreements") substantially in the form of this Agreement;

CHICAGO TITLE INSURANCE COMPANY  
INDIANA DIVISION

**FILED**

JUL 2 1985

*Jessie O. ...*  
AUDITOR LAKE COUNTY

JTM - BKLP III  
1/24/84 - 3rd DRAFT  
#4590 - Gary, Indiana  
LW - 05/14/85

STATE OF INDIANA  
LAKE COUNTY  
FILES FOR RECORD  
JUL 8 12 54 PM '85  
RUDDOLPH CLAY  
RECORDER

151  
17.50  
25

WHEREAS pursuant to a lease agreement (the "Lease") covering the Property, to be executed by and between a franchisee of BKC ("Franchisee") and Optionor, Franchisee shall lease the Property from Optionor for the purpose of operating a Burger King restaurant thereon.

NOW, THEREFORE, in consideration of the receipt of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and BKC hereby agree as follows:

Section 1. The Option. In accordance with the terms hereof and subject to the conditions hereinafter recited, Optionor hereby grants to BKC, its successors and assigns, the exclusive right and option ("Option") to purchase (i) if the Property is a Fee Property, the fee simple title to the Property, or (ii) if the Property is a Ground Leasehold Property, all of Optionor's right, title and interest in the Sublease, together, in either event, with the title to the Improvements located on the Land. BKC has no obligation to exercise the Option to purchase the Property.

a. BKC may exercise the Option to purchase the Property at any time during the eighth (8th), ninth (9th), and tenth (10th) years after May 17, 1984 (the "Option Period").

b. Written notice of its intention to exercise the Option ("Notice") must be given by BKC to Optionor within the Option Period, not more than one hundred eighty (180) days and not fewer than sixty (60) days prior to the date established by BKC in the Notice for closing the purchase of the Property ("Purchase Date"). The Purchase Date must occur during the Option Period, unless otherwise agreed in writing by Optionor and BKC.

c. BKC may purchase the Property pursuant to its timely exercise of the Option whether or not it has exercised or intends to exercise, its rights to purchase any of the Other Properties, in accordance with any of the Other Option Agreements.

d. Upon exercise of the Option, BKC shall purchase the Property on the Purchase Date for cash (unless otherwise agreed by Optionor and BKC) at a price equal to its fair market value (encumbered by the Lease, if the Lease is then in full force and effect, but not encumbered by this Agreement), determined as of a date not later than thirty (30) days subsequent to receipt by Optionor of the Notice. Fair market value of the Property shall be determined by calculating the average of three appraisals obtained as follows: within ten (10) days after the date of the Notice, Optionor and BKC each shall choose one appraiser and such two appraisers shall promptly jointly choose a third appraiser (or, if they cannot agree, the third appraiser shall be appointed by the American Arbitration

Association located in the community wherein the Property is located). Each appraiser selected hereunder shall be reasonably familiar with the local community wherein the Property is located and shall be a member in good standing of the American Institute of Real Estate Appraisers or any successor organization. Each appraiser shall promptly prepare and submit to Optionor and BKC his appraisal of the Property.

e. Delivery by BKC of the Notice shall be deemed to commit BKC irrevocably to purchase, and Optionor irrevocably to sell, the Property in accordance with this Agreement.

## Section 2. Terms of Conveyance and Settlement.

a. Closing. The Purchase Date shall occur at the time set forth in the Notice.

b. Title to be Conveyed. If (i) the Property is a Fee Property, or (ii) the Property is a Ground Leasehold Property but Optionor, as of the Purchase Date, has acquired the fee title to the Land, Optionor shall convey the fee title to the Property to BKC by a deed with covenant against Optionor's affirmative acts (other than acts consented to, or requested by, BKC) and subject to the matters described in Section 2c. hereof. If the Property is a Ground Leasehold Property, Optionor shall convey, assign and transfer to BKC all of its right, title and interest in the Sublease by an assignment, and shall convey title to the Improvements on the Land by a deed in the form described in the preceding sentence and subject to the matters described in Section 2c. hereof.

c. Encumbrances. The Property will be conveyed subject to (i) the Lease (which will be assigned to BKC), (ii) such encumbrances as existed at the date of commencement of business of the Burger King restaurant on the Property (iii) easements, covenants, agreements and other encumbrances (except liens securing indebtedness of Optionor, its successors and assigns), arising or created in connection with the construction, use or operation of the Improvements on the Land, but which do not adversely affect the value of the Property or the operation of the restaurant thereon, (iv) any zoning laws and ordinances, (v) exceptions resulting from any condemnation, pending condemnation or conveyance in lieu of condemnation, (vi) current taxes, utilities and other similar charges which are to be prorated at the closing, (vii) any state of facts a current survey would show, and (viii) exceptions created by, at the request of, or with the approval of BKC.

d. Title Insurance Binder. Prior to the Purchase Date, BKC may obtain, at its own expense, an updated title insurance binder evidencing the current status of the title to the Property, and Optionor will remove and/or cause to be released, at its expense, before or simultaneously with the closing, all encumbrances and exceptions recited in such title binder and not permitted by Section 2c. hereof.

e. Indemnity. BKC will execute and deliver to Optionor an indemnity, substantially in the form attached hereto as Exhibit B, indemnifying Optionor from any and all continuing liability under the Lease, the Ground Lease, and the Sublease, if applicable, except for any obligations arising prior to the Purchase Date.

f. Costs. All charges incident to the conveyance, transfer and sale of the Property hereunder, including counsel fees, escrow fees, recording fees, title insurance premiums, title company costs, survey costs, and all applicable federal, state and local taxes (other than income or franchise taxes levied upon or assessed against Optionor), which may be incurred or imposed by reason of such conveyance, transfer and sale or by reason of the delivery of any deeds and/or assignments shall be paid by the respective parties hereto in accordance with the custom prevailing in the locality where the Property is located.

g. Brokerage. The parties hereto agree that no brokerage commission shall be due or payable by Optionor or BKC in connection with any purchase and sale of the Property hereunder.

h. Failure to Convey Title. If Optionor fails or refuses to convey title to the Property as required by Sections 2b. and 2c. hereof, or if the title insurance binder obtained by BKC evidences encumbrances or exceptions not permitted in Section 2c. hereof and which are not removed by Optionor, the sole remedy of BKC will be either (i) to enforce specific performance by Optionor of its duty to convey and transfer the Property upon the terms set forth herein or (ii) to refuse to purchase the Property ("the Refusal"), whereupon the parties hereto shall have no further rights or obligations hereunder to purchase or sell the Property on the Purchase Date and neither party hereto shall be liable to the other hereunder for the failure or inability to close the purchase of the Property. Provided, however, BKC shall not be prohibited as a result of the Refusal, from later exercising the Option, although it may be necessary for BKC to again refuse to purchase the Property as a result of Optionor's inability to convey title, as contemplated in this paragraph.

### Section 3. Grant of Right of First Refusal.

(a) At any time during the first seven (7) years after May 17, 1984 (unless the Optionor acquires title to the Property prior to such date in which case the 7-year period will be automatically extended to include the period from such earlier date to the date of commencement of the 7-year period), if, as and when Optionor receives a bona fide offer from a third party to purchase the Property acceptable to Optionor, Optionor shall give BKC written notice setting forth the name and address of the prospective purchaser, the price and terms of the offer, and such other information as BKC may reasonably request in order to evaluate the offer. BKC shall then have the prior right to

purchase the Property at the price and upon the terms of such offer. BKC shall have fourteen (14) working days (excluding weekends and legal holidays) after receipt of Optionor's notice of offer and the furnishing of all reasonably requested information within which to notify Optionor of its intent to accept or reject the offer. Silence on the part of BKC shall constitute rejection. If the proposed sale includes assets of Optionor not related to the Property, BKC may purchase either the Property or the Property together with the other assets, and an equitable purchase price shall be allocated to each asset included in the proposed sale.

(b) The election by BKC not to exercise its right of first refusal as to any offer which is not consummated shall not affect its right of first refusal as to any subsequent offer. Any sale or attempted sale effected without first giving BKC the right of first refusal described above shall be void and of no force and effect. If BKC does not accept the offer to purchase the Property, Optionor may conclude the sale to the purchaser upon the terms of such offer, and upon any such sale, this Agreement shall terminate and the option rights and rights of first refusal hereunder shall be of no further effect.

Section 4. Warranty. Optionor represents and warrants that at the time of execution of this Agreement it has the lawful right and authority to grant to BKC the Option and the Right of First Refusal described herein.

Section 5. No Assignment. Neither this Agreement, nor the rights or options set forth herein, may be sold, assigned, transferred, pledged or encumbered in any manner, whether voluntarily or by operation of law, without the prior written consent of Optionor or its successors in interest to the Property. This Agreement, and the rights and options set forth herein, shall not be affected by the merger or consolidation of BKC with another corporation or by the sale or transfer by any parent of BKC of any or all of BKC's outstanding securities. This Agreement, shall run with the title to the Property and shall be binding upon Optionor and its successors in interest to the Property and shall inure to the benefit of BKC and its successors.

Section 6. Notices. Any notice or other communication given by either party hereto to the other relating to this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, addressed to such other party at the respective address set forth below (or such other address as may be specified by such other party from time to time in accordance with the notice provisions herein), and each notice or other communication shall be deemed given when so mailed.

If to BKC, to:

Burger King Corporation  
7360 North Kendall Drive  
Miami, Florida 33156

Attention: General Counsel

If to Optionor, to:

Burger King Limited Partnership III  
c/o Shearson/BK Restaurants, Inc.  
Two World Trade Center  
New York, New York 10048

Attention: President

Section 7. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the jurisdiction wherein the Property is located.

Section 8. Entire Agreement. This Agreement constitutes the entire agreement between BKC and Optionor with respect to the subject matter hereof. Neither this Agreement nor the provisions hereof may be waived, modified or amended except by an instrument in writing signed by BKC and Optionor.

Section 9. Subordination. Optionor agrees that any mortgage, deed of trust or other security interest encumbering the Property for indebtedness of Optionor will be subject and subordinate to the Lease, the property management agreement between BKC and Optionor relating to the Property (the "Property Management Agreement"), any new Lease entered into pursuant to the Property Management Agreement, BKC's right to possession of the Property under the terms of the Lease as provided in the Property Management Agreement, and this Agreement. Each document evidencing such mortgage, deed of trust or other security interest in the Property, including documents to be recorded, will contain an acknowledgment that it is subordinate in accordance with the terms and provisions contained in this paragraph.

Section 10. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be considered an original, but all of which shall constitute only one instrument. The parties agree to execute this Agreement in a form capable of recording. Either party may record this Agreement in the jurisdiction where the Property is located.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

Witnesses:

Sara Lopez  
Daryl Culp

BURGER KING CORPORATION

By: Eugene J. Solo  
Vice President  
Attest: William B. Brown  
Assistant Secretary

Witnesses:

Katherine Gasser  
Norma Delapine

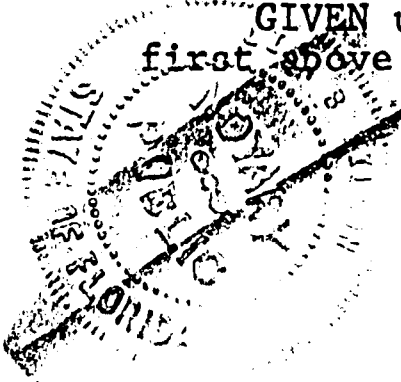
BURGER KING LIMITED PARTNERSHIP III  
By Its Sole General Partner:  
SHEARSON/BK RESTAURANTS, INC.

By: [Signature]  
Vice President  
Attest: [Signature]  
Assistant Secretary

STATE OF FLORIDA )  
COUNTY OF DADE )

BEFORE ME, Lisa B. Wilson, a Notary Public, this 23rd day of May, 1985, personally appeared BURGER KING CORPORATION by Eugene Teala and Michael B. Marver, its Vice President and Assistant Secretary, respectively, and acknowledged the execution of the foregoing instrument.

GIVEN under my hand and seal of office, the day and year first above written.



Lisa B. Wilson  
Notary Public

NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXPIRES MAR 16 1986  
BONDED THRU GENERAL INS. UNDERWRITERS

STATE OF NEW YORK )  
COUNTY OF NEW YORK )

On this 13 day of June, 1985, before me personally came Robert F. Greenwald, to me personally known, who, being by me duly sworn, did depose and say that he/she resides at 67-66 108 Street, Forest Hills, New York; that he/she is the vice president of SHEARSON/BK RESTAURANTS, INC., the sole general partner of BURGER KING LIMITED PARTNERSHIP III, the partnership described in and which executed the within OPTION AGREEMENT AND GRANT OF RIGHT OF FIRST REFUSAL; and that he/she signed his/her name thereto by authority of such partnership.

Lisa M. Pugliese  
Notary Public

LISA M. PUGLIESE  
NOTARY PUBLIC, State of New York  
No. 30-4816555  
Qualified in Nassau County  
Commission Expires March 30, 1986

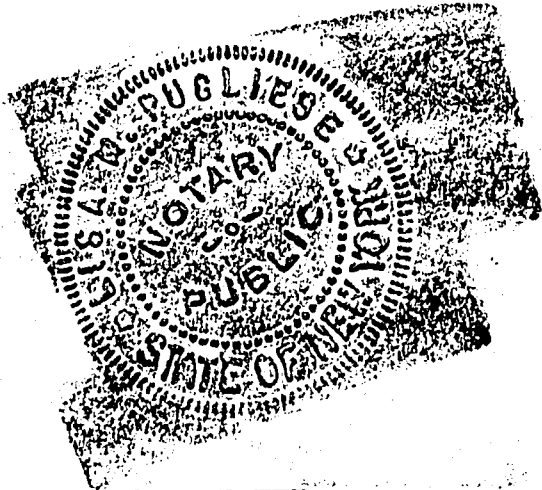




EXHIBIT ALEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND, situate in the City of Gary,  
County of Lake and State of Indiana, more particularly bounded  
and described as follows:

Lot 3, Unit 2, Ewen's First Addition to Lake County, Indiana, as  
shown in Plat Book 34, page 41, in Lake County, Indiana.

# 49-520-3

#4590 - Gary, Indiana

EXHIBIT BAgreement of Indemnification

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, Burger King Corporation, a Florida corporation having its principal place of business at 7360 North Kendall Drive, Miami, Florida 33156 ("BKC"), hereby assumes all liability, obligations and undertakings under that certain sublease between BKC, as lessor and Burger King Limited Partnership III, a New York limited partnership having its principal offices at Two World Trade Center, New York, New York (the "Partnership"), as lessee, and dated \_\_\_\_\_, as the same may have been amended from time to time (the "Sublease") and that certain lease between the Partnership, as lessor and \_\_\_\_\_, as lessee, and dated \_\_\_\_\_, as the same may have been amended from time to time (the "Lease"), and BKC hereby agrees to defend and indemnify the Partnership against all liability under the Sublease and the Lease other than liability for obligations arising prior to the date hereof. It is a condition of this agreement that the Partnership shall, within a reasonable period of time after becoming aware of any claim for which defense and indemnification may be sought hereunder, (a) give written notice thereof to BKC, (b) afford BKC a reasonable opportunity to defend, settle, compromise or otherwise dispose of such claim with counsel selected by BKC and (c) cooperate with BKC, at BKC's cost and expense, in the investigation and defense of such claim. If BKC fails or refuses in a timely manner to defend any such claim, then the Partnership shall have the right to defend against or compromise such claim by counsel of its own choosing and BKC shall pay to the Partnership immediately upon demand the amount of the costs and expenses reasonably incurred by the Partnership in defending against such claim (including, without limitation, counsel fees and disbursements and court costs), together with the amount of any judgment obtained or any amount paid by way of compromise of such claim.

Date: \_\_\_\_\_

BURGER KING CORPORATION

By: \_\_\_\_\_  
Vice PresidentAttest: \_\_\_\_\_  
Assistant Secretary