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**United States**  
**Securities and Exchange Commission**  
**Washington, D.C. 20549**

**FORM 8-K**

Current Report

Pursuant to Section 13 or 15(d) of

The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): March 16, 2023

**RCI HOSPITALITY HOLDINGS, INC.**

(Exact Name of Registrant as Specified in Its Charter)

Texas  
(State or Other Jurisdiction  
of Incorporation)

001-13992  
(Commission  
File Number)

76-0458229  
(IRS Employer  
Identification No.)

10737 Cutten Road  
Houston, Texas 77066  
(Address of Principal Executive Offices, Including Zip Code)

(281) 397-6730  
(Issuer's Telephone Number, Including Area Code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, \$0.01 par value	RICK	The Nasdaq Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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## ITEM 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

Reference is made to the disclosure set forth below under Item 2.01 and Item 2.03 of this current report, which disclosure is incorporated herein by reference.

## ITEM 2.01 COMPLETION OF ACQUISITION OR DISPOSITION OF ASSETS.

As previously disclosed in our current report filed on December 15, 2022, on December 12, 2022, RCI Hospitality Holdings, Inc. (“RCIH,” “we,” or “us”) and certain subsidiaries entered into definitive agreements to acquire five gentlemen’s clubs, five related real estate properties, associated intellectual property, and certain automated teller machines for a total purchase price of \$66.5 million, payable with a total of \$25.0 million in cash, a total of \$25.5 million in seller financing, and 200,000 restricted shares of common stock based on an \$80 per share price, subject to certain lock-up, leak out restrictions. On March 16, 2023, all of the transactions under the agreements closed, and we and our subsidiaries completed the acquisition of the clubs, real estate properties, intellectual property, and automated teller machines.

The five clubs were purchased through five different Asset Purchase Agreements (collectively, the “Asset Purchase Agreements”), under which a newly formed subsidiary of BD Hospitality Acquisition, Inc., (“BD Hospitality”), a wholly-owned subsidiary of RCIH, acquired from each club owning entity all of the tangible and intangible assets and personal property used in the business of that club, except for certain excluded assets. Below is a list of each club seller and purchaser, and the name and location of each club that was purchased:

<b>Club Sellers</b>	<b>Club Purchasers</b>	<b>Club Name</b>	<b>Club Location</b>
TTNA, Inc.	ST Dining Services, Inc.	Baby Dolls	10250 Shady Trail, Dallas, Texas
DB Entertainment, Inc.	RCI Dining Services (Eules), Inc.	Baby Dolls	3601 Highway 157, Ft. Worth, Texas
Duncan Burch, Inc.	RCI Dining Services (Southwest Freeway), Inc.	Chicas Locas (formerly Michael’s International)	6440 Southwest Freeway, Houston, Texas
Millennium Restaurants Group, Inc.	RCI Dining Services (Composite), Inc.	Chicas Locas (formerly Cabaret Royale)	10723 Composite Dr., Dallas, Texas
T and N, Incorporated	RCI Dining Services (Majesty), Inc.	Chicas Locas	2711 Majesty Dr., Arlington, Texas

Under the Asset Purchase Agreements, the purchase prices and payment terms paid by the club purchasers for the purchase of the five clubs were as follows: (1) \$4,850,000 for the Baby Dolls in Dallas, with \$1,500,000 paid in cash by wire transfer and \$3,350,000 paid by the issuance of a ten-year secured promissory note; (2) \$500,000 for the Baby Dolls in Fort Worth, paid by the issuance of a ten-year secured promissory note; (3) \$4,000,000 for the Chicas Locas in Houston, with \$1,500,000 paid in cash by wire transfer and \$2,500,000 paid by the issuance of a ten-year secured promissory note; (4) \$1,850,000 for the Chicas Locas in Dallas, with \$500,000 paid in cash by wire transfer and \$1,350,000 paid by the issuance of a ten-year secured promissory note; and (5) \$500,000 for the Chicas Locas in Arlington, paid by the issuance of a ten-year secured promissory note. Each of the promissory notes issued to each club seller bears interest at 7% per annum, is payable in arrears in 120 equal monthly payments of principal and interest, provides for a right of acceleration in the event of default, and is secured by all of the purchased assets acquired in that transaction. Each of the promissory notes may be prepaid in whole or in part without penalty. A copy of the “form of” these five promissory notes is filed hereto as Exhibit 4.1 and is incorporated herein by reference. Additionally, with respect to the promissory notes issued to each of the club sellers, BD Hospitality pledged the stock of each club purchaser to secure payment by each such club purchaser under each promissory note.

Additionally, the transactions under two Intellectual Property Purchase Agreements between RCIH and HQ Real Estate Management LLC (“HQ”) and RCIH and ERAF, Inc. (“ERAF”), respectively (collectively, the “IP Purchase Agreements”) closed. Under the agreement with HQ, RCIH acquired all right, title and interest in certain service marks/trademarks with respect to the “Baby Dolls” name, along with certain other related intellectual property rights, for a purchase price of \$7,000,000, paid by the issuance of a ten-year secured promissory note. Under the agreement with ERAF, RCIH acquired all right, title and interest in the service marks/trademark “Cabaret Royale,” the common law rights, if any, in “Chicas Locas” and “Michael’s International,” if any, along with certain other related intellectual property rights, for a purchase price of \$4,200,000, paid by the issuance of a ten-year secured promissory note. Each of the two promissory notes issued to HQ and ERAF bears interest at 7% per annum, is payable in arrears in 120 equal monthly payments of principal and interest, and is secured by all of the intellectual property assets acquired in that transaction. Further, HQ has the right to request and obtain a \$1,000,000 principal draw down/payment on the \$7,000,000 promissory note once annually beginning

on the fifth anniversary of the sale. These two promissory notes are substantially similar to the “form of” promissory note filed hereto as Exhibits 4.1, except for the draw down/payment right of HQ in the \$7,000,000 promissory note which provision is not included in the “form of” promissory note.

Also in connection with the above transactions, the transactions under the Asset Purchase Agreement (the “ATM Purchase Agreement”) between BD Hospitality and ECAL-D&D, Inc. closed, and BD Hospitality purchased certain automated teller machines (or ATMs) located at the five club locations for a purchase price of \$2,600,000, paid \$1,500,000 in cash and \$1,100,000 by the issuance of a ten-year secured promissory note, bearing interest at 7% per annum, payable in arrears in 120 equal monthly payments of principal and interest, which note is secured by the ATM assets acquired in this transaction. This promissory note is substantially similar to the “form of” promissory note filed hereto as Exhibits 4.1.

The Asset Purchase Agreements, IP Purchase Agreements and ATM Purchase Agreement each provide that the seller under each such agreement will indemnify the respective purchaser from all losses whether arising from a direct (or first party) claim or a third-party claim, arising from: (1) any breach of any representation or warranty; (2) any breach or nonfulfillment of any covenant or agreement; and (3) any liabilities arising prior to closing. Each purchaser under each such agreement will indemnify the respective seller from all losses whether arising from a direct (or first party) claim or a third-party claim, arising from: (1) any breach of any representation or warranty; (2) any breach or nonfulfillment of any covenant or agreement; and (3) any liabilities arising on or after closing. The above indemnifications are subject to certain limitations and thresholds, as set forth in the agreements. At closing, Burch Management Company, Inc., the owner of all of the seller entities (“Burch Management”), entered into an Absolute Unconditional and Continuing Guaranty, under which it has guaranteed the indemnification obligations of such sellers, and BD Hospitality entered into an Absolute Unconditional and Continuing Guaranty, under which it has guaranteed the indemnification and payment obligations of such purchasers. Copies of a form of the guaranty of Burch Management and a form of the guaranty of BD Hospitality are filed hereto as Exhibits 10.1 and 10.2, respectively, and are incorporated herein by reference.

Additionally, the Purchase and Sale Agreement (the “Real Estate Purchase Agreement”) between Duncan Burch, an individual and the record owner of the real estate properties where the five clubs are located, and our subsidiary RCI Holdings, Inc. (“RCI Holdings”), closed, and RCI Holdings purchased by Special Warranty Deed such properties for a total purchase price of \$41,000,000, payable as follows: (1) \$20,000,000 in cash paid by wire transfer; (2) \$5,000,000 by the issuance of a ten-year secured promissory note, bearing interest at 7% per annum, payable in arrears in 120 equal monthly payments of principal and interest; additionally, once in every calendar year, Mr. Burch has the right to request and obtain a \$1,000,000 draw down/payment in the amount of \$1,000,000; and (3) the issuance of 200,000 restricted shares of common stock of RCIH valued at \$16,000,000, which shares are subject to a Lock-Up Agreement under which Mr. Burch is restricted in the number of shares that he can sell for 24 month after closing, resulting in RCIH having total shares outstanding of 9,430,225. A copy of the Lock-Up Agreement is filed hereto as Exhibit 10.3, and is incorporated herein by reference. A copy of the real estate promissory note is filed hereto as Exhibit 4.2 and is incorporated herein by reference.

Also at closing of the above transactions, (a) Mr. Burch entered into a Non-Competition Agreement covering a 50-mile radius of each club location, with certain carve-outs for existing licenses held by affiliates of Mr. Burch, a copy of which agreement is filed hereto as Exhibit 10.4, (b) RCI Dining Service (Euless), Inc. (the club purchaser of Baby Dolls – Ft. Worth) closed on the purchase of the stock of Baby Dolls’ Topless Saloons, Inc., which holds the specialized certificate of occupancy allowing a sexually oriented business to operate at that location, for consideration of \$10.00, (c) each of the club purchasers entered into a lease agreement with certain entities affiliated with the club sellers to lease space in the clubs for clothing boutiques for rent of \$1.00 per year for 10 years, and (d) Burch Management entered into a lease agreement with RCI Holdings under which Burch Management will lease its current office and storage space at 10723 Composite for rent of \$1.00 per year for 10 years.

The descriptions above of the promissory notes and agreements that are filed as exhibits hereto (collectively, the “Filed Exhibits”) are qualified in their entirety by reference to the terms of such promissory notes and agreements, copies of which are filed hereto, and are incorporated herein by reference. The Filed Exhibits to this current report have been included to provide investors and security holders with information regarding their terms. They are not intended to provide any other factual information about RCIH, any parties to such agreements or their respective subsidiaries and affiliates. The Filed Exhibits contain representations and warranties to certain parties made solely for the benefit of such parties. The assertions embodied in those representations and warranties are subject to qualifications and limitations agreed to by the respective parties in negotiating the terms of the documents. Moreover, certain representations and warranties in the agreements were made as of a specified date, may be subject to a contractual standard of materiality different from what might be viewed as material to investors, or may have been used for the purpose of allocating risk between the parties, rather than establishing matters as facts. Accordingly, the representations and warranties in the Filed Exhibits should not be relied on by any persons as characterizations of the actual state of facts about RCIH or any other parties to the agreements at the time they were made or otherwise. In addition, information concerning the subject matter of the representations and

warranties may change after the date of the agreements, which subsequent information may or may not be fully reflected in RCIH's public disclosures.

**ITEM 2.03 CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT.**

Reference is made to the disclosure set forth above under Item 2.01 of this current report, which disclosure is incorporated herein by reference.

**ITEM 8.01 OTHER EVENTS.**

On March 16, 2023, we issued a press release announcing the closing of the transactions described under Item 2.01 above. A copy of the press release is being furnished as Exhibit 99.1 to this current report and will not be treated as "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section.

**ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS**

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
4.1	<a href="#">Form of Promissory Note dated March 16, 2023</a>
4.2	<a href="#">Promissory Note (Real Estate) dated March 16, 2023</a>
10.1	<a href="#">Form of Absolute Unconditional and Continuing Guaranty of Burch Management Company, Inc. dated March 16, 2023</a>
10.2	<a href="#">Form of Absolute Unconditional and Continuing Guaranty of BD Hospitality Acquisition, Inc. dated March 16, 2023</a>
10.3	<a href="#">Lock-Up Agreement with Duncan Burch dated March 16, 2023</a>
10.4	<a href="#">Non-Competition Agreement with Duncan Burch dated March 16, 2023</a>
99.1	<a href="#">Press release dated March 16, 2023</a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

RCI HOSPITALITY HOLDINGS, INC.

Date: March 17, 2023

By: /s/ Eric Langan  
Eric Langan  
President and Chief Executive Officer

## PROMISSORY NOTE

Date: March 16, 2023

Principal Amount: \$[ ]

Place of Payment: P.O. Box 542225, Dallas, Texas 75354

[ ] (“**Payor**”), for value received promises to pay to the order of [ ] (“**Holder**”), in lawful money of the United States of America, the principal sum of [ ] (\$[ ]), together with interest thereon from the date hereof at the fixed interest rate of seven percent (7%) per annum and shall be due and payable as follows:

### **1. Terms of Payment:**

In One Hundred Twenty (120) equal monthly installments of principal and interest in the amount of [ ] (\$[ ]), with the first such installment being due and payable on the 16<sup>th</sup> day of April, 2023, and a like payment of [ ] (\$[ ]) being due and payable on the \_\_\_\_ day of each month thereafter until the final payment of [ ] (\$[ ]) on the 16<sup>th</sup> day of March, 2033 (the “**Maturity Date**”).

All installment payments must be paid via secured wire transfer at Payor’s expense to an account designated by Holder. All late payments shall accrue interest at the rate of eighteen percent (18%) per annum (“**Annual Interest Rate on Matured Unpaid Amounts**”) from date due until paid without any notice or demand required.

If any installment becomes overdue for more than ten (10) days, a late payment charge of 5% of the late installment will be charged to Payor to defray the expense of handling the delinquent payment without any notice or demand required.

Payor promises to pay to the order of Holder the Principal Amount plus interest at the Annual Interest Rate. This note is payable at the Place for Payment and according to the Terms of Payment. All unpaid amounts are due by the Maturity Date. If any amount is not paid either when due under the Terms of Payment or on acceleration of maturity, Payor promises to pay any unpaid amounts plus interest from the date the payment was due to the date of payment at the Annual Interest Rate on Matured, Unpaid Amounts.

### **2. Security for Payment**

This Note is secured by [ ].

**3. Maximum Amount of Indebtedness.** All agreements between Payor and Holder, or any subsequent holder of this Note, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity of this Note or otherwise, shall the amount paid or agreed to be paid to the Holder of this Note for the use, forbearance, or detention of the funds advanced pursuant to this Note or for the performance or payment of any covenant or obligation contained herein or in any other document evidencing, securing, or pertaining to this Note, exceed the maximum amount of interest which Holder may charge Payor under the laws of the State of Texas and the United States of America ("Applicable Law"). If from any circumstance whatsoever, fulfillment of any provision hereof or of any such other document, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by Applicable Law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstance the holder hereof shall ever receive

anything of value deemed excess interest by Applicable Law, an amount equal to any such excess interest shall be applied to the reduction of the principal amount owing under this Note, and not to the payment of interest, or if such excess interest exceeds the unpaid principal balance of this Note, such excess interest shall be refunded to Payor. All sums paid or agreed to be paid to any holder of this note for the use, forbearance, or detention of any funds advanced pursuant to this Note shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated and spread throughout the full term of this Note until payment in full so that the rate of interest on the account of the indebtedness evidenced by this Note is uniform throughout the term hereof.

**4. Prepayment.** This Note may be prepaid in whole or in part at any time without premium or penalty.

**5. Cumulative Rights.** No delay on the part of Holder in the exercise of any power or right under this Note, or under any other instruments executed pursuant hereto, shall operate as a waiver thereof, nor shall a single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other right or power hereunder. Enforcement by Holder of any security for the payment hereof shall not constitute any election by it of remedies so as to preclude the exercise of any other remedy available to Holder.

**6. Events of Default and Remedies.** It is agreed that time is of the essence in this Note. At the option of the Holder, the entire unpaid balance of this Note shall at the sole and absolute option of Holder become immediately due and payable upon the occurrence of one or more of the following events of default ("Events of Default"):

(a) Failure of Payor to make any payment of any installments on this Note, as and when the same become due and payable in accordance with the terms hereof and such failure continues for a period of ten (10) days after the due date and written notice thereof;

(b) There is a non-monetary default under the Note now or hereafter in effect which, by its terms, covers this Note or the indebtedness evidenced hereby and such default shall continue for thirty (30) days after the date of written notice thereof from the Payor to Holder, unless such default does not involve the payment of money and cannot be cured within such thirty (30) day period with diligent efforts and (i) Payor has been and continues to diligently and in good faith pursue a cure thereof and (ii) Payor notifies Holder in writing of the cure it is pursuing and the projected completion date of such cure, then the time allowed Payor to cure the default shall be extended for such period as may be reasonably necessary for the prompt, diligent, good faith cure thereof, but such period shall not exceed sixty (60) days after the date of Payor's written notice of default to Holder; and/or

(c) Payor shall (i) be adjudged insolvent by any state or federal court of competent jurisdiction, (ii) voluntarily seek, consent to, or acquiesce in the benefit or benefits of any Debtor Relief Law (as hereinafter defined) or (iii) become party to (or be made the subject of) any proceeding provided by any Debtor Relief law, other than as a creditor or claimant, that could suspend or otherwise adversely affect the rights of Holder granted hereunder (unless in the event such proceeding is involuntary, the petition instituting the same is dismissed within ninety (90) days of the filing of same). As used herein, the term "Debtor Relief Law" means the Bankruptcy Code of the United States of America and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, or similar Debtor Relief Laws from time to time in effect affecting the rights of creditors generally.

In the event any one or more of the Events of Default specified above shall have happened, the Holder of this Note may proceed to protect and enforce its rights either by suit in equity or by action at law, or by other appropriate proceedings, whether for the specific performance of any covenant or agreement contained in this Note or in aid of the exercise of any power or right granted by this Note, or to enforce any other legal or equitable right of the Holder of this Note. Such rights include the right to declare the unpaid principal balance, earned interest, and any other amounts owed on the Note immediately due, and the right to exercise all other rights and remedies available at law or in equity.

**7. Waiver.** Except as may be otherwise specifically provided for herein, Payor and any and all sureties, guarantors, and endorsers of this Note and all parties now or hereafter liable for the payment of any sum of money payable on this Note, jointly and severally waive grace, demand, demand for payment, presentment for payment, presentation for payment, protest, notice of any kind or character (including, but not limited to, notice of dishonor, notice of protest, notice of intention or intent to accelerate maturity and notice of acceleration of maturity) and diligence in collecting and bringing suit against any party hereto and agree, without affecting their liability in any way:

(a) To all extensions and partial payments, with or without notice, before and after maturity;

(b) To any substitution, exchange, or release of any security now or hereafter given for this Note;

(c) To the release of any party primarily or secondarily liable hereon; and

(d) That it will not be necessary for Holder, in order to enforce payment of this Note, to first institute or exhaust Holder's remedies against Payor or any other party liable for the payment of any sum of money payable on this Note or against any security for this Note.

Payor and any and all sureties, guarantors, and endorsers of this Note and all parties now or hereafter liable for the payment of any sum of money payable on this Note, jointly and severally waive rights under sections 51.003, 51.004 and 51.005 of the Texas Property Code and rights under section 17.001 and chapter 43 of the Texas Civil Practice and Remedies Code and rule 31 of the Texas Rules of Civil Procedure.

Payor and all endorsers, sureties, and guarantors of this Note hereby severally waive demand, presentment for payment, protest, notice of protest, notice of intention to accelerate the maturity of this Note, diligence in collecting, the bringing of any suit against any party and any notice of or defense on account of any extensions, renewals, partial payments, or changes in any manner of or in this Note or in any of its terms, provisions, and covenants, or any releases or substitutions of any security, or any delay, indulgence or other act of any trustee or any holder hereof, whether before or after maturity.

**8. Right of Offset.** The Holder and the Payor acknowledge and agree that Holder has been granted, subject to the terms of the Asset Purchase Agreement certain rights to offset certain obligations under the Asset Purchase Agreement against the obligations that are then due and payable to the Holder by the Payor under this Note.



**9. Attorney's Fees and Costs.** If this Note is placed in the hands of any attorney for collection after default, or if all or any part of the liabilities by this Note is proved, established or collected in any court or in any bankruptcy, receivership, debtor relief, probate, or other court proceedings, Payor and all endorsers, sureties, and guarantors of this Note jointly and severally agree to pay reasonable attorney's fees and collection costs to the holder hereof in addition to the principal and interest payable hereunder. Payor will pay Holder these fees, costs, and expenses on demand at Payor's expense to an account designated by Holder for the payment of principal and interest herein. These expenses and interest will become part of the debt evidenced by the note and will be secured by any security for payment.

**10. Modification of Note.** This Note may not be modified, altered, or amended, except by an agreement in writing signed by Payor and Holder.

**11. Assignment.** Payor may not sell, assign, or transfer this Note, or any portion thereof, including without limitation, Payor's right, title, interest, remedies, powers, and/or duties hereunder or thereunder, without the prior written consent of Holder. This Note and all rights and powers hereunder may be transferred and assigned by Holder at such time and upon such terms as Holder may deem advisable and the assignee shall succeed to all rights and powers of Holder.

**12. Entire Agreement; Successor and Assigns.** This Note shall be binding upon and inure to the benefit of the successors and assigns of Payor and Holder. Payor's successors and assigns shall include, without limitation, a trustee, receiver, or debtor-in-possession of or for Payor. This Note supersedes all prior agreements or understandings between the parties with respect to the subject matter of this Note.

**13. Severability.** Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Note shall be prohibited by or invalid under Applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or remaining provisions of this Note.

**14. Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE FEDERAL LAWS OF THE UNITED STATES APPLICABLE TO THE TRANSACTION EVIDENCED HEREBY, AS SUCH LAWS MAY BE IN EFFECT FROM TIME TO TIME. THIS NOTE IS ENFORCEABLE IN DALLAS COUNTY, TEXAS.

**15. Headings.** The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matters to be considered in construing the terms of this Agreement.

**16. Construction.** Wherever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular. Both Holder and Payor's attorney were participants to the drafting of this document and same shall not be construed strictly against either party,

## **NOTICE OF FINAL AGREEMENT**

THIS AGREEMENT AND THE OTHER "LOAN AGREEMENTS" (AS SUCH TERM IS DEFINED IN SECTION 26.02(a)(2) OF THE TEXAS BUSINESS AND COMMERCE CODE, AS AMENDED) REPRESENT THE FINAL AGREEMENT BETWEEN THE

PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED as of the date set forth above.

\_\_\_\_\_  
By: [ ], President [ ], Payor

## PROMISSORY NOTE

Date: March 16, 2023

Principal Amount of Note: \$5,000,000.00

Place of Payment: P.O. Box 542225, Dallas, Texas 75354

RCI Holdings, Inc, a Texas Corporation, ("Payor"), for value received promises to pay to the order of Duncan Burch ("Holder"), in lawful money of the United States of America, the principal sum of Five Million Dollars (\$5,000,000.00), together with interest thereon from the date hereof at the fixed interest rate of seven percent (7%) per annum and shall be due and payable as follows:

### **1. Terms of Payment:**

In One Hundred Twenty (120) equal monthly installments of principal and interest in the amount of Fifty Eight Thousand Fifty Four Dollars and Twenty Four Cents (\$58,054.24) with the first such installment of Fifty Eight Thousand Fifty Four Dollars and Twenty Four Cents (\$58,054.24) being due and payable on the 16th day of April, 2023, and a like payment of Fifty Eight Thousand Fifty Four Dollars and Twenty Four Cents (\$58,054.24) being due and payable on the 16th day of each month thereafter until the final payment of Fifty Eight Thousand Fifty Four Dollars and Twenty Four Cents (\$58,054.24) on the 16th day of March, 2033 (the "Maturity Date").

Provided however, once in every calendar year the Holder may call due from Payor ("Principal Call") a payment of principal in the amount of One Million Dollars (\$1,000,000.00) against the then remaining principal balance ("Principal Payment"). Such Principal Payment shall be paid on the date designated by Holder in the Principal Call as set forth below. On the occurrence of any Principal Payment, the amount of the remaining principal balance due under this Note shall be recalculated by taking the principal balance due on the date of Holder's making of the Principal Payment and deducting said Principal Payment therefrom ("Recalculated Principal"). Thereafter, the monthly payments hereunder shall be calculated based upon the Recalculated Principal, plus interest at seven percent (7%) per annum for the remaining months of this Note.

Any Principal Call that Holder elects to make shall be made by Holder notifying Payor in writing of the exercise of Holder's right to such Principal Payment thirty (30) days prior to the date the Principal Payment is due from Payor to Holder.

All installment payments must be paid via secured wire transfer at Payor's expense to an account designated by Holder. All late payments shall accrue interest at the rate of eighteen percent (18 %) per annum ("Annual Interest Rate on Matured Unpaid Amounts") from date due until paid without any notice or demand required.

If any installment becomes overdue for more than ten (10) days, a late payment charge of 5% of the late installment will be charged to Payor to defray the expense of handling the delinquent payment without any notice or demand required.

Payor promises to pay to the order of Holder the Principal Amount plus interest at the Annual Interest Rate. This note is payable at the Place for Payment and according to the Terms of Payment. All unpaid amounts are due by the Maturity Date. If any amount is not paid either when due under the Terms of Payment or on acceleration of maturity, Payor promises to pay any unpaid amounts plus interest from the date the payment was due to the date of payment at the Annual Interest Rate on Matured, Unpaid Amounts.

## 2. Security for Payment

This note is secured by a vendor's lien retained by Holder in a deed from Duncan Burch to Payor of even date of this Note, and by a Deed of Trust of even date from Payor to Charles J. Quaid, Trustee, both of which cover the real property described in Exhibits "A", "B", "C", "D" and "E" hereto commonly known (in no particular order) as (a) 10250 Shady Trail, Dallas, Dallas County Texas 75220 (b) 3601 Highway 157, Ft. Worth, Tarrant County, Texas (c) 6640 Southwest Freeway, Houston, Harris County, Texas 77074 (d) 10250 Shady Trail, Dallas, Dallas County, Texas 75220 and (e) 2711 Majesty Dr., Arlington, Tarrant County, Texas 76011.

**3. Maximum Amount of Indebtedness.** All agreements between Payor and Holder, or any subsequent holder of this Note, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity of this Note or otherwise, shall the amount paid or agreed to be paid to the Holder of this Note for the use, forbearance, or detention of the funds advanced pursuant to this Note or for the performance or payment of any covenant or obligation contained herein or in any other document evidencing, securing, or pertaining to this Note, exceed the maximum amount of interest which Holder may charge Payor under the laws of the State of Texas and the United States of America ("Applicable Law"). If from any circumstance whatsoever, fulfillment of any provision hereof or of any such other document, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by Applicable Law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstance the holder hereof shall ever receive anything of value deemed excess interest by Applicable Law, an amount equal to any such excess interest shall be applied to the reduction of the principal amount owing under this Note, and not to the payment of interest, or if such excess interest exceeds the unpaid principal balance of this Note, such excess interest shall be refunded to Payor. All sums paid or agreed to be paid to any holder of this note for the use, forbearance, or detention of any funds advanced pursuant to this Note shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated and spread throughout the full term of this Note until payment in full so that the rate of interest on the account of the indebtedness evidenced by this Note is uniform throughout the term hereof.

**4. Prepayment.** This Note may be prepaid in whole or in part at any time without premium or penalty.

**5. Cumulative Rights.** No delay on the part of Holder in the exercise of any power or right under this Note, or under any other instruments executed pursuant hereto, shall operate as a waiver thereof, nor shall a single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other right or power hereunder. Enforcement by Holder of any security for the payment hereof shall not constitute any election by it of remedies so as to preclude the exercise of any other remedy available to Holder.

**6. Events of Default and Remedies.** It is agreed that time is of the essence in this Note. At the option of the Holder, the entire unpaid balance of this Note shall at the sole and absolute option of Holder become immediately due and payable upon the occurrence of one or more of the following events of default ("Events of Default"):

(a) Failure of Payor to make any payment of any installments on this Note, as and when the same become due and payable in accordance with the terms hereof and such failure continues for a period of ten (10) days after the due date and written notice thereof;

(b) Payor shall (i) be adjudged insolvent by any state or federal court of competent jurisdiction, (ii) voluntarily seek, consent to, or acquiesce in the benefit or benefits of any Debtor Relief Law (as hereinafter defined) or (iii) become party to (or be made the subject of) any proceeding provided by any Debtor Relief law,

other than as a creditor or claimant, that could suspend or otherwise adversely affect the rights of Holder granted hereunder (unless in the event such proceeding is involuntary, the petition instituting the same is dismissed within ninety (90) days of the filing of same). As used herein, the term "Debtor Relief Law" means the Bankruptcy Code of the United States of America and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, or similar Debtor Relief Laws from time to time in effect affecting the rights of creditors generally; and/or

(c) Payor fails to timely perform any obligation under the Deed of Trust referenced above and such failure continues for a period of thirty (30) days after the due date and written notice thereof.

In the event any one or more of the Events of Default specified above shall have happened, the Holder of this Note may proceed to protect and enforce its rights either by suit in equity or by action at law, or by other appropriate proceedings, whether for the specific performance of any covenant or agreement contained in this Note or in aid of the exercise of any power or right granted by this Note, or to enforce any other legal or equitable right of the Holder of this Note. Such rights include the right to declare the unpaid principal balance, earned interest, and any other amounts owed on the note immediately due, and the right to exercise all other rights and remedies available at law or in equity.

**7. Waiver.** Except as may be otherwise specifically provided for herein, Payor and any and all sureties, guarantors, and endorsers of this Note and all parties now or hereafter liable for the payment of any sum of money payable on this Note, jointly and severally waive grace, demand, demand for payment, presentment for payment, presentation for payment, protest, notice of any kind or character (including, but not limited to, notice of dishonor, notice of protest, notice of intention or intent to accelerate maturity and notice of acceleration of maturity) and diligence in collecting and bringing suit against any party hereto and agree, without affecting their liability in any way:

(a) To all extensions and partial payments, with or without notice, before and after maturity;

(b) To any substitution, exchange, or release of any security now or hereafter given for this Note;

(c) To the release of any party primarily or secondarily liable hereon; and

(d) That it will not be necessary for Holder, in order to enforce payment of this Note, to first institute or exhaust Holder's remedies against Payor or any other party liable for the payment of any sum of money payable on this Note or against any security for this Note.

Payor and any and all sureties, guarantors, and endorsers of this Note and all parties now or hereafter liable for the payment of any sum of money payable on this Note, jointly and severally waive rights under sections 51.003, 51.004 and 51.005 of the Texas Property Code and rights under section 17.001 and chapter 43 of the Texas Civil Practice and Remedies Code and rule 31 of the Texas Rules of Civil Procedure.

Payor and all endorsers, sureties, and guarantors of this Note hereby severally waive demand, presentment for payment, protest, notice of protest, notice of intention to accelerate the maturity of this Note, diligence in collecting, the bringing of any suit against any party and any notice of or defense on account of any extensions, renewals, partial payments, or changes in any manner of or in this Note or in any of its terms, provisions, and covenants, or any releases or

substitutions of any security, or any delay, indulgence or other act of any trustee or any holder hereof, whether before or after maturity.

**8. Attorney's Fees and Costs.** If this Note is placed in the hands of any attorney for collection after default, or if all or any part of the liabilities by this Note is proved, established or collected in any court or in any bankruptcy, receivership, debtor relief, probate, or other court proceedings, Payor and all endorsers, sureties, and guarantors of this Note jointly and severally agree to pay reasonable attorney's fees and collection costs to the holder hereof in addition to the principal and interest payable hereunder. Payor will pay Holder these fees, costs, and expenses on demand at Payor's expense to an account designated by Holder for the payment of principal and interest herein. These expenses and interest will become part of the debt evidenced by the note and will be secured by any security for payment.

**9. Modification of Note.** This Note may not be modified, altered, or amended, except by an agreement in writing signed by Payor and Holder.

**10. Assignment.** Payor may not sell, assign, or transfer this Note, or any portion thereof, including without limitation, Payor's right, title, interest, remedies, powers, and/or duties hereunder or thereunder, without the prior written consent of Holder. This Note and all rights and powers hereunder may be transferred and assigned by Holder at such time and upon such terms as Holder may deem advisable and the assignee shall succeed to all rights and powers of Holder.

**11. Entire Agreement; Successor and Assigns.** This Note shall be binding upon and inure to the benefit of the successors and assigns of Payor and Holder. Payor's successors and assigns shall include, without limitation, a trustee, receiver, or debtor-in-possession of or for Payor. If any provision of this Note conflicts with any provision of the above referenced deed of trust of the same transaction between the parties hereto, the provisions of the Note will govern to the extent of the conflict. This Note supersedes all prior agreements or understandings between the parties with respect to the subject matter of this Note.

**12. Severability.** Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Note shall be prohibited by or invalid under Applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or remaining provisions of this Note.

**13. Governing Law.** THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE FEDERAL LAWS OF THE UNITED STATES APPLICABLE TO THE TRANSACTION EVIDENCED HEREBY, AS SUCH LAWS MAY BE IN EFFECT FROM TIME TO TIME. THIS NOTE IS ENFORCEABLE IN DALLAS COUNTY, TEXAS.

**14. Headings.** The headings used in this Agreement are used for administrative purposes only and do not constitute substantive matters to be considered in construing the terms of this Agreement.

**15. Construction.** Wherever the context shall so require, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular. Both Holder and Payor's attorney were participants to the drafting of this document and same shall not be construed strictly against either party,

## **NOTICE OF FINAL AGREEMENT**

THIS AGREEMENT AND THE OTHER "LOAN AGREEMENTS" (AS SUCH TERM IS DEFINED IN SECTION 26.02(a)(2) OF THE TEXAS BUSINESS AND COMMERCE CODE, AS AMENDED) REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

EXECUTED as of the date set forth above.

/s/ Eric Langan  
RCI Holdings, Inc, a Texas Corporation, Payor  
By: Eric Langan, President

**ABSOLUTE UNCONDITIONAL AND CONTINUING GUARANTY**

THIS ABSOLUTE, UNCONDITIONAL AND CONTINUING GUARANTY, dated as of the 16<sup>th</sup> day of March, 2023 (the "Guaranty"), is executed by BURCH MANAGEMENT COMPANY, INC., a Texas corporation (whether one or more, herein referred to as the "Guarantor"), in favor of [ ] ("Creditor").

WITNESSETH:

WHEREAS, [ ] and wholly-owned subsidiary of the Guarantor ("Borrower") entered into an Asset Purchase Agreement with Creditor on December 12, 2022, which agreement was amended in January and February, 2023 (as amended, the "Purchase Agreement"); and

WHEREAS, without this Guaranty, Creditor would be unwilling to enter into the Purchase Agreement; and

WHEREAS, because of the direct benefit to Guarantor from the transaction contemplated by the Purchase Agreement, and as an inducement to Creditor to make enter into the Purchase Agreement, Guarantor agrees to guarantee to Creditor the obligations of Borrower as set forth herein.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor hereby guarantees to Creditor the prompt and full payment of the Guaranteed Indebtedness (hereinafter defined), as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity, or otherwise, and at all times thereafter, and performance of all obligations of Borrower in connection with the Guaranteed Indebtedness, this Guaranty being upon the following terms and conditions:

1. The term "Guaranteed Indebtedness," as used herein is (a) any amount owed to Creditor under Article XI of the Purchase Agreement under the terms thereof;

2. This instrument shall be an absolute and continuing guaranty of payment and performance and not one only of collection, and shall cover all of the Guaranteed Indebtedness, and it shall apply to and secure any ultimate balance due or remaining unpaid to Creditor, notwithstanding any interruptions in the business relations of Borrower with Creditor.

3. If Guarantor becomes liable for any indebtedness owing by Borrower to Creditor, by endorsement or otherwise, other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Creditor hereunder shall be cumulative of any and all other rights that Creditor may ever have against Guarantor. The exercise by Creditor of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. If, for any reason whatsoever, Borrower is now, or hereafter becomes, indebted to Guarantor, such indebtedness and all interest thereon shall, at all times, be subordinate in all respects to the Guaranteed Indebtedness, and Guarantor shall not be entitled to enforce or receive payment thereof until the Guaranteed Indebtedness has been fully paid. Notwithstanding anything to the contrary contained in this Guaranty, or as a result of any payments made by any party hereunder, Guarantor shall not have any right of subrogation, reimbursement, exoneration, indemnification, participation, and/or contribution against Borrower or any other guarantor of the Guaranteed Indebtedness, any and all such right(s) of subrogation, reimbursement, exoneration, indemnification, participation, and/or contribution being hereby expressly waived and released as between Guarantor and Creditor. Accordingly, so long as any portion of the Guaranteed Indebtedness remains unpaid, Guarantor shall not have any right of subrogation, reimbursement, exoneration, indemnification, participation, and/or contribution under the documents executed in favor of Creditor securing payment of the Guaranteed Indebtedness or to participate in any way therein, or in any right, title, or interest in and to any mortgaged property or any collateral for the Guaranteed Indebtedness, all such rights of subrogation, reimbursement, exoneration, indemnification, participation, and/or contribution being hereby expressly waived as long as any portion of the Guaranteed Indebtedness remains unpaid.

4. In the event of default by Borrower in payment of the Guaranteed Indebtedness, or any part thereof, when such indebtedness becomes due, either by its terms or as the result of the exercise of any power to accelerate, Guarantor shall, on demand and without further notice of nonpayment or of dishonor, without any notice having been given to Guarantor previous to such demand of the acceptance by Creditor of this Guaranty and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness, pay the amount due thereon to Creditor, and it shall not be necessary for Creditor, in order to enforce such payment by Guarantor, first to institute suit or exhaust its remedies against Borrower or others liable on such indebtedness, or to enforce its rights against any security which shall ever have been given to secure such indebtedness. Suit may be brought, or demand may be made against all parties who have signed this Guaranty, or



against any one or more of them, separately or together, without impairing the rights of Creditor against any other party hereto.

5. Guarantor hereby agrees that Guarantor's obligations under the terms of this Guaranty shall not be released, diminished, impaired, reduced, or affected by the occurrence of any one or more of the following events: (a) the taking or accepting of any other security or guaranty for any or all of the Guaranteed Indebtedness; (b) any release, surrender, exchange, subordination, or loss of any security at any time existing in connection with any or all of the Guaranteed Indebtedness; (c) any partial release of the liability of Guarantor hereunder or, if there is more than one person or entity signing this Guaranty, the complete or partial release of any one or more of them hereunder; (d) the insolvency, bankruptcy, disability, dissolution, termination, receivership, reorganization or lack of corporate, partnership or other power of Borrower, any of the undersigned, or any party at any time liable for the payment of any or all of the Guaranteed Indebtedness, whether now existing or hereafter occurring; (e) renewal, extension, modification or rearrangement of the payment of any or all of the Guaranteed Indebtedness, either with or without notice to or consent of Guarantor, or any adjustment, indulgence, forbearance, or compromise that may be granted or given by Creditor to Borrower or Guarantor; (f) any neglect, delay, omission, failure, or refusal of Creditor to take or prosecute any action for the collection of any of the Guaranteed Indebtedness or to foreclose or take or prosecute any action to foreclose upon any security therefor, or to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Guaranteed Indebtedness; (g) any failure of Creditor to notify Guarantor of any renewal, extension, rearrangement, modification or assignment of the Guaranteed Indebtedness or any part thereof, or of any instrument evidencing or securing the Guaranteed Indebtedness or any part thereof, or of the release of or change in any security or of any other action taken or refrained from being taken by Creditor against Borrower or of any new agreement between Creditor and Borrower, it being understood that Creditor shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Indebtedness; (h) the unenforceability of all or any part of the Guaranteed Indebtedness against Borrower, whether because the Guaranteed Indebtedness exceeds the amount permitted by law, the act of creating the Guaranteed Indebtedness, or any part thereof, is ultra vires, the officers or persons creating the same acted in excess of their authority, or otherwise, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other person be found not liable on the Guaranteed Indebtedness, or any part thereof, for any reason; or (i) any payment by Borrower to Creditor is held to constitute a preference under the bankruptcy laws or if, for any other reason, Creditor is required to refund such payment or pay the amount thereof to someone else. It is the intent of Guarantor and Creditor that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Indebtedness is fully and finally paid, such obligations and liabilities shall not be discharged or released, in whole or in part, by any act or occurrence which might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor.

6. Creditor is hereby given a lien for the amount of the liability and indebtedness, whether or not due and payable, created by this Guaranty upon all property and security now or hereafter in the possession or custody of Creditor by or for the account of Guarantor or in which Guarantor may have any interest (all remittances and property to be deemed in the possession or custody of Creditor as soon as put in transit to it by mail or carrier), and also upon the balance of any deposit accounts of Guarantor held with Creditor existing from time to time, and Creditor is hereby authorized and empowered, at its option, to appropriate any and all thereof and apply any and all thereof and the proceeds thereof to the payment and extinguishment of the liability and indebtedness hereby created at any time after such liability and indebtedness becomes payable. Creditor is further authorized and empowered, at its option at any time, after the liability and indebtedness hereby created becomes payable, and after the expiration of any grace period, to sell, assign and deliver any security or property at any time in the possession or custody of Creditor for Guarantor or in which Guarantor may have any interest at public or private sale, for cash, credit or for future delivery, all at the option of Creditor, without further advertisement or notice of sale, and without notice to Guarantor of intention to sell, which rights of Guarantor are hereby expressly waived. Upon any sales at public auction, Creditor may bid for and purchase the whole or any part of the security or property sold free of any right of redemption which Guarantor hereby waives and releases.

7. In case of any sale by Creditor of any such security or property on credit or for future delivery, such may be retained by Creditor until the selling price is paid by the purchaser and Creditor shall incur no liability in case of failure of the purchaser to pay therefor. In case of any such failure, any such security or property may be resold.

8. This Guaranty is for the benefit of Creditor and Creditor's successors and assigns and, in the event of an assignment of the Guaranteed Indebtedness, or any part thereof, the rights and benefits hereunder, to the extent applicable to the indebtedness so assigned, may be transferred with such indebtedness. This Guaranty is binding not only on Guarantor, but on Guarantor's and/or successors and assigns and, if this Guaranty is signed by more than one person or entity, then all of the obligations of Guarantor arising herein shall be jointly and severally binding on Guarantor and Guarantor's successors, and assigns. This Guaranty shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of Texas, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. If any provision of this Guaranty or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Guaranty nor the application of such provision to any other person or circumstances shall be

affected thereby, but rather the same shall be enforced to the greatest extent permitted by law. Guarantor hereby agrees with Creditor that all rights, remedies and recourses afforded to Creditor by reason of this Guaranty or otherwise are separate and cumulative and may be pursued separately, successively, or concurrently, as occasion therefor shall arise, and are nonexclusive and shall in no way limit or prejudice any other legal or equitable right, remedy, or recourse which Creditor may have. Guarantor shall pay the reasonable attorneys' fees and all other costs and expenses which may be incurred by Creditor in the enforcement of this Guaranty.

9. It is not the intention of Creditor or Guarantor to obligate Guarantor to pay interest in excess of that legally permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Indebtedness constitutes interest in excess of the maximum amount of interest which Guarantor (in such capacity) may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof at the maximum rate so permitted under applicable law.

10. Guarantor does hereby and shall indemnify, defend and hold Creditor harmless of and from any and all loss or damage of whatsoever kind and from any suits, claims, or demands, including, without limitation, Creditor's legal fees and expenses through all trial and appellate levels, on account of any matters or anything arising out of this Guaranty or in connection herewith on account of any such acts or omissions to act by Creditor in connection with this Guaranty, which obligations shall survive termination of this Guaranty, other than any of the foregoing arising out of the gross negligence or willful misconduct of Creditor.

11. Upon the filing of a petition in bankruptcy with respect to Borrower, any assignment for the benefit of creditors of Borrower, or any other circumstances necessitating Creditor to file its claim against Borrower, Guarantor agrees that, notwithstanding any stay, injunction or other prohibition preventing the maturity, acceleration or collection of all or any portion of the Guaranteed Indebtedness, the Guaranteed Indebtedness (whether or not then due and payable by Borrower) shall forthwith become due and payable by Guarantor for purposes of this Guaranty, on demand. The obligation of Guarantor to pay the Guaranteed Indebtedness of Guarantor hereunder shall not be affected or impaired by Creditor's omission or failure to prove its claim against Borrower. Accordingly, the rights of Creditor under this Guaranty shall not be affected or impaired by its election to prove its claim(s) or its election not to pursue such claim(s), as it sees fit, without in any way releasing, reducing or otherwise affecting the liability to Creditor of Guarantor.

12. Notwithstanding that this Guaranty may have been cancelled or terminated, in the event that all or any part of the Guaranteed Indebtedness is paid by or on behalf of Borrower and because of any bankruptcy or other laws relating to creditor rights, Creditor repays any amounts to Borrower or to any trustee, receiver or otherwise, then the amount so repaid shall again become part of the Guaranteed Indebtedness, the repayment of which is guaranteed hereby, and Guarantor shall immediately repay all such amounts to Creditor. If the original of this Guaranty was marked "Cancelled" by Creditor and returned to Guarantor, for the purposes of this Section, a photocopy or other reproduction of this Guaranty shall constitute the original of this Guaranty.

13. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and delivered in person or sent by registered or certified mail (return receipt requested) or nationally recognized overnight delivery service, postage pre-paid, or electronic mail, provided that any notice sent by electronic mail must include a reference to this Section 13 to be effective, addressed as follows, or to such other address as such party may notify to the other parties in writing:

to Creditor:

[ ]  
Attn: [ ]  
10737 Cutten Road  
Houston, TX, 77066

with copy to:

Robert D. Axelrod, Esq. Axelrod & Smith  
1502 Augusta Drive, Suite 320  
Houston, Texas 77057  
AND via email to [rdaxel@asklawhou.com](mailto:rdaxel@asklawhou.com)

To Guarantor:

Burch Management Company, Inc.  
Attn: Charles J. Quaid  
c/o Quaid Farish, LLC.  
8150 N. Central Exp., Ste 600  
Dallas, Texas 75206  
Email: [cquaid@quaidfarish.com](mailto:cquaid@quaidfarish.com)

with copy to:

Charles J. Quaid  
8150 North Central Exp. Suite 600  
Dallas, Texas 75206  
AND via email to [cquaid@quaidfarish.com](mailto:cquaid@quaidfarish.com)

(b) A notice or communication will be effective (i) if delivered in person, by electronic mail, or by overnight courier, on the business day it is delivered and (ii) if sent by registered or certified mail, three (3) business days after dispatch. In the event either party delivers a notice by electronic mail, such party agrees to deposit the original notice in a post office, branch office post office, or mail depository maintained by the U.S. Postal Service postage prepaid and addressed as set forth above.

(c) Each party may change the address to which any such notice, report, demand, or other instrument is to be delivered or mailed, by furnishing written notice of such change to the other party, but no such notice of change shall be effective unless and until received by such other party.

(d) Notwithstanding anything in this instrument to the contrary, all requirements of notice shall be deemed inapplicable if Creditor is prevented from giving such notice by bankruptcy or any other applicable law. In such event, the cure period, if any, shall then run from the occurrence of the event or condition of default rather than from the date of notice.

14. Guarantor irrevocably and unconditionally: (a) agrees that any suit, action or other legal proceeding arising out of or relating to this Guaranty may be brought, at the option of Creditor, in a court of competent jurisdiction in Dallas County, Texas (either a court of the State of Texas or the United States District Court located in said county); (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any and all personal rights under the laws of any state to object to the laying of venue of any such suit, action or proceeding in the State of Texas; and (d) agrees that service of any court paper may be effected on Guarantor by mail, addressed and mailed as provided herein, or in such other manner as may be provided under applicable laws or court rules in the State of Texas. Nothing contained herein, however, shall prevent Creditor from bringing an action or exercising any rights against any security or against Guarantor personally, and against any property of Guarantor, within any other state. Initiating such proceeding or taking such action in any other state shall in no event constitute a waiver of the agreement contained herein that the laws of the State of Texas shall govern the rights and obligations of Guarantor and Creditor hereunder or of the submission herein made by Guarantor to personal jurisdiction within the State of Texas. The aforesaid means of obtaining personal jurisdiction and perfecting service of process are not intended to be exclusive but are cumulative and in addition to all other means of obtaining personal jurisdiction and perfecting service of process now or hereafter provided by the laws of the State of Texas.

15. Guarantor represents and warrants to Creditor that, at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of the liability of Guarantor to Creditor hereunder, or the immediate taking effect of this Guaranty as the sole agreement between Guarantor and Creditor with respect to guaranteeing the Guaranteed Indebtedness. Guarantor further represents and warrants to Creditor that this Guaranty, when executed and delivered by Guarantor, will constitute the legal, valid and binding obligations of Guarantor enforceable in accordance with the terms hereof; that the execution, delivery and performance by Guarantor of this Guaranty will not violate any indenture, agreement or other instrument (or, if Guarantor is a corporation, its articles of incorporation or bylaws) to which Guarantor is a party, or by which it or any of its property is bound, or be in conflict with, result in a breach of, or constitute (with due notice or the lapse of time, or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets, except as contemplated by the provisions of this Guaranty; that, if Guarantor is a corporation, the execution, delivery and performance by Guarantor of this Guaranty is within its corporate or partnership powers and purposes, and has been duly authorized by all requisite corporate action of Guarantor; that there are no judgments outstanding against Guarantor and there is no action, suit, proceeding, or investigation now pending (or to the best of Guarantor's knowledge, after diligent inquiry, threatened) against, involving or affecting Guarantor or any of its properties or any part thereof, at law, in equity or before any governmental authority that, if adversely determined as to Guarantor, would have a material adverse effect on the Guarantor's ability to perform, or affect the validity as to Guarantor of, the obligations of Guarantor under this Guaranty.

16. The liability of Guarantor hereunder shall be joint and several with Borrower and with all other guarantors of the Guaranteed Indebtedness and is unconditional.

17. This Guaranty constitutes the sole agreement of the parties with respect to the transaction contemplated hereby and supersede all oral negotiations and prior writings with respect thereto. No waivers, amendments or modifications of this Guaranty shall be valid unless in writing and signed by an authorized officer of the Creditor. No waiver by Creditor of any default shall operate as a waiver of any other default or the same default on a future occasion. Neither the failure nor any delay on the part of the Creditor in exercising any right, power, or remedy under this Guaranty shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or remedy.

**WAIVER OF TRIAL BY JURY. GUARANTOR AND CREDITOR HEREBY MUTUALLY, KNOWINGLY, WILLINGLY, AND VOLUNTARILY WAIVE THEIR RIGHT TO TRIAL BY JURY AND AGREE THAT NO PARTY, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF THE PARTIES (ALL OF WHOM ARE HEREINAFTER REFERRED TO AS THE "PARTIES") SHALL SEEK**

**A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEEDING BASED UPON OR ARISING OUT OF THIS GUARANTY OR ANY INSTRUMENT EVIDENCING, SECURING, OR RELATING TO THE GUARANTEED INDEBTEDNESS OR OTHER OBLIGATIONS EVIDENCED HEREBY OR ANY RELATED AGREEMENT OR INSTRUMENT, ANY OTHER COLLATERAL FOR THE INDEBTEDNESS EVIDENCED HEREBY OR ANY COURSE OF ACTION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION RELATING TO THIS GUARANTY. THE PARTIES ALSO WAIVE ANY, RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES. THE WAIVER CONTAINED HEREIN IS IRREVOCABLE, CONSTITUTES A KNOWING AND VOLUNTARY WAIVER, AND SHALL BE SUBJECT TO NO EXCEPTIONS. CREDITOR HAS IN NO WAY AGREED WITH OR REPRESENTED TO GUARANTOR OR TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.**

[SIGNATURE ON FOLLOWING PAGE]

Absolute Unconditional and Continuing Guaranty – Page 5

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BURCH MANAGEMENT COMPANY, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Duncan Burch, President

STATE OF TEXAS

COUNTY OF HARRIS

The foregoing instrument was acknowledged before me by means of his physical presence, this 16<sup>th</sup> day of March, 2023, by Duncan Burch, in his capacity as President of, and on behalf of BURCH MANAGEMENT COMPANY, INC., a Texas corporation, who is (\_\_\_\_) personally known to me or (\_\_\_\_) produced a driver's license as identification.

\_\_\_\_\_  
NOTARY PUBLIC-State of Texas

Print/Type/Stamp Name:  
\_\_\_\_\_

Commission Expiration Date:  
\_\_\_\_\_

Notary Seal:

(Signing as a notary public and not as a guarantor or endorser.)

**ABSOLUTE UNCONDITIONAL AND CONTINUING GUARANTY**

THIS ABSOLUTE, UNCONDITIONAL AND CONTINUING GUARANTY, dated as of the 16<sup>th</sup> day of March, 2023 (the "Guaranty"), is executed by BD HOSPITALITY ACQUISITION, INC., a Texas corporation (whether one or more, herein referred to as the "Guarantor"), in favor of [ ] ("Creditor").

WITNESSETH:

WHEREAS, [ ] and wholly-owned subsidiary of the Guarantor ("Borrower") entered into an Asset Purchase Agreement with Creditor on December 12, 2022, which agreement was amended in January and February, 2023 (as amended, the "Purchase Agreement"); and

WHEREAS, without this Guaranty, Creditor would be unwilling to enter into the Purchase Agreement or extend credit to Borrower; and

WHEREAS, because of the direct benefit to Guarantor from the transaction contemplated by the Purchase Agreement and any and all loan(s) to be made by Creditor in favor of Borrower, and as an inducement to Creditor to make enter into the Purchase Agreement and provide said loan(s) to Borrower, Guarantor agrees to guarantee to Creditor the obligations of Borrower as set forth herein.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor hereby guarantees to Creditor the prompt and full payment of the Guaranteed Indebtedness (hereinafter defined), as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity, or otherwise, and at all times thereafter, and performance of all obligations of Borrower in connection with the Guaranteed Indebtedness, this Guaranty being upon the following terms and conditions:

1. The term "Guaranteed Indebtedness," as used herein, includes all indebtedness and amounts owed of every kind and character, without limit as to amount, whether now existing or hereafter arising, of Borrower to Creditor, regardless of whether evidenced by notes, drafts, acceptances, discounts, overdrafts, letters of credit, or otherwise, and whether such indebtedness be fixed, contingent, joint, several, or joint and several, including, but not limited to: (a) the indebtedness arising under that certain Promissory Note in the principal amount of \$[ ] dated of even date herewith executed by Borrower in favor of Creditor (the "Note"); (b) any amount owed to Creditor under Article XI of the Purchase Agreement; (c) interest on any of the indebtedness described in the preceding, if entitled to interest under such obligation; (d) any and all costs, attorneys fees, and expenses incurred by Creditor by reason of Borrower's default in payment of any of the foregoing indebtedness; (e) any renewal, extension or rearrangement of the indebtedness, costs, or expenses described above, or any part thereof; and (f) any amount paid by Borrower to Creditor which is later set aside in a bankruptcy proceeding.

2. This instrument shall be an absolute and continuing guaranty of payment and performance and not one only of collection, and shall cover all of the Guaranteed Indebtedness, and it shall apply to and secure any ultimate balance due or remaining unpaid to Creditor, notwithstanding any interruptions in the business relations of Borrower with Creditor.

3. If Guarantor becomes liable for any indebtedness owing by Borrower to Creditor, by endorsement or otherwise, other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Creditor hereunder shall be cumulative of any and all other rights that Creditor may ever have against Guarantor. The exercise by Creditor of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. If, for any reason whatsoever, Borrower is now, or hereafter becomes, indebted to Guarantor, such indebtedness and all interest thereon shall, at all times, be subordinate in all respects to the Guaranteed Indebtedness, and Guarantor shall not be entitled to enforce or receive payment thereof until the Guaranteed Indebtedness has been fully paid. Notwithstanding anything to the contrary contained in this Guaranty, or as a result of any payments made by any party hereunder, Guarantor shall not have any right of subrogation, reimbursement, exoneration, indemnification, participation, and/or contribution against Borrower or any other guarantor of the Guaranteed Indebtedness, any and all such right(s) of subrogation, reimbursement, exoneration, indemnification, participation, and/or contribution being hereby expressly waived and released as between Guarantor and Creditor. Accordingly, so long as any portion of the Guaranteed Indebtedness remains unpaid, Guarantor shall not have any right of subrogation, reimbursement, exoneration, indemnification, participation, and/or contribution under the documents executed in favor of Creditor securing payment of the Guaranteed Indebtedness or to participate in any way therein, or in any right, title, or interest in and to any mortgaged property or any collateral for the Guaranteed Indebtedness, all such rights of subrogation, reimbursement, exoneration, indemnification, participation, and/or contribution being hereby expressly waived as long as any portion of the Guaranteed Indebtedness remains unpaid.

4. In the event of default by Borrower in payment of the Guaranteed Indebtedness, or any part thereof, when such indebtedness becomes due, either by its terms or as the result of the exercise of any power to accelerate, Guarantor shall, on demand and without further notice of nonpayment or of dishonor, without any notice having been given to Guarantor previous to such demand of the acceptance by Creditor of this Guaranty and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness, pay the amount due thereon to Creditor, and it shall not be necessary for Creditor, in order to enforce such payment by Guarantor, first to institute suit or exhaust its remedies against Borrower or others liable on such indebtedness, or to enforce its rights against any security which shall ever have been given to secure such indebtedness. Suit may be brought, or demand may be made against all parties who have signed this Guaranty, or against any one or more of them, separately or together, without impairing the rights of Creditor against any other party hereto.

5. Guarantor hereby agrees that Guarantor's obligations under the terms of this Guaranty shall not be released, diminished, impaired, reduced, or affected by the occurrence of any one or more of the following events: (a) the taking or accepting of any other security or guaranty for any or all of the Guaranteed Indebtedness; (b) any release, surrender, exchange, subordination, or loss of any security at any time existing in connection with any or all of the Guaranteed Indebtedness; (c) any partial release of the liability of Guarantor hereunder or, if there is more than one person or entity signing this Guaranty, the complete or partial release of any one or more of them hereunder; (d) the insolvency, bankruptcy, disability, dissolution, termination, receivership, reorganization or lack of corporate, partnership or other power of Borrower, any of the undersigned, or any party at any time liable for the payment of any or all of the Guaranteed Indebtedness, whether now existing or hereafter occurring; (e) renewal, extension, modification or rearrangement of the payment of any or all of the Guaranteed Indebtedness, either with or without notice to or consent of Guarantor, or any adjustment, indulgence, forbearance, or compromise that may be granted or given by Creditor to Borrower or Guarantor; (f) any neglect, delay, omission, failure, or refusal of Creditor to take or prosecute any action for the collection of any of the Guaranteed Indebtedness or to foreclose or take or prosecute any action to foreclose upon any security therefor, or to take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Guaranteed Indebtedness; (g) any failure of Creditor to notify Guarantor of any renewal, extension, rearrangement, modification or assignment of the Guaranteed Indebtedness or any part thereof, or of any instrument evidencing or securing the Guaranteed Indebtedness or any part thereof, or of the release of or change in any security or of any other action taken or refrained from being taken by Creditor against Borrower or of any new agreement between Creditor and Borrower, it being understood that Creditor shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Indebtedness; (h) the unenforceability of all or any part of the Guaranteed Indebtedness against Borrower, whether because the Guaranteed Indebtedness exceeds the amount permitted by law, the act of creating the Guaranteed Indebtedness, or any part thereof, is *ultra vires*, the officers or persons creating the same acted in excess of their authority, or otherwise, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other person be found not liable on the Guaranteed Indebtedness, or any part thereof, for any reason; or (i) any payment by Borrower to Creditor is held to constitute a preference under the bankruptcy laws or if, for any other reason, Creditor is required to refund such payment or pay the amount thereof to someone else. It is the intent of Guarantor and Creditor that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Indebtedness is fully and finally paid, such obligations and liabilities shall not be discharged or released, in whole or in part, by any act or occurrence which might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor.

6. Creditor is hereby given a lien for the amount of the liability and indebtedness, whether or not due and payable, created by this Guaranty upon all property and security now or hereafter in the possession or custody of Creditor by or for the account of Guarantor or in which Guarantor may have any interest (all remittances and property to be deemed in the possession or custody of Creditor as soon as put in transit to it by mail or carrier), and also upon the balance of any deposit accounts of Guarantor held with Creditor existing from time to time, and Creditor is hereby authorized and empowered, at its option, to appropriate any and all thereof and apply any and all thereof and the proceeds thereof to the payment and extinguishment of the liability and indebtedness hereby created at any time after such liability and indebtedness becomes payable. Creditor is further authorized and empowered, at its option at any time, after the liability and indebtedness hereby created becomes payable, and after the expiration of any grace period, to sell, assign and deliver any security or property at any time in the possession or custody of Creditor for Guarantor or in which Guarantor may have any interest at public or private sale, for cash, credit or for future delivery, all at the option of Creditor, without further advertisement or notice of sale, and without notice to Guarantor of intention to sell, which rights of Guarantor are hereby expressly waived. Upon any sales at public auction, Creditor may bid for and purchase the whole or any part of the security or property sold free of any right of redemption which Guarantor hereby waives and releases.

7. In case of any sale by Creditor of any such security or property on credit or for future delivery, such may be retained by Creditor until the selling price is paid by the purchaser and Creditor shall incur no liability in case of failure of the purchaser to pay therefor. In case of any such failure, any such security or property may be resold.

8. This Guaranty is for the benefit of Creditor and Creditor's successors and assigns and, in the event of an assignment of the Guaranteed Indebtedness, or any part thereof, the rights and benefits hereunder, to the extent applicable to the indebtedness so assigned, may be transferred with such indebtedness. This Guaranty is binding not only on Guarantor, but on Guarantor's and/or successors and assigns and, if this Guaranty is signed by more than one person or entity, then all of the obligations of Guarantor arising herein shall be jointly and severally binding on Guarantor and Guarantor's successors, and assigns. This Guaranty shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of Texas, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. If any provision of this Guaranty or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Guaranty nor the application of such provision to any other person or circumstances shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law. Guarantor hereby agrees with Creditor that all rights, remedies and recourses afforded to Creditor by reason of this Guaranty or otherwise are separate and cumulative and may be pursued separately, successively, or concurrently, as occasion therefor shall arise, and are nonexclusive and shall in no way limit or prejudice any other legal or equitable right, remedy, or recourse which Creditor may have. Guarantor shall pay the reasonable attorneys' fees and all other costs and expenses which may be incurred by Creditor in the enforcement of this Guaranty.

9. It is not the intention of Creditor or Guarantor to obligate Guarantor to pay interest in excess of that legally permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Indebtedness constitutes interest in excess of the maximum amount of interest which Guarantor (in such capacity) may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof at the maximum rate so permitted under applicable law.

10. Guarantor does hereby and shall indemnify, defend and hold Creditor harmless of and from any and all loss or damage of whatsoever kind and from any suits, claims, or demands, including, without limitation, Creditor's legal fees and expenses through all trial and appellate levels, on account of any matters or anything arising out of this Guaranty or in connection herewith on account of any such acts or omissions to act by Creditor in connection with this Guaranty, which obligations shall survive termination of this Guaranty, other than any of the foregoing arising out of the gross negligence or willful misconduct of Creditor.

11. Upon the filing of a petition in bankruptcy with respect to Borrower, any assignment for the benefit of creditors of Borrower, or any other circumstances necessitating Creditor to file its claim against Borrower, Guarantor agrees that, notwithstanding any stay, injunction or other prohibition preventing the maturity, acceleration or collection of all or any portion of the Guaranteed Indebtedness, the Guaranteed Indebtedness (whether or not then due and payable by Borrower) shall forthwith become due and payable by Guarantor for purposes of this Guaranty, on demand. The obligation of Guarantor to pay the Guaranteed Indebtedness of Guarantor hereunder shall not be affected or impaired by Creditor's omission or failure to prove its claim against Borrower. Accordingly, the rights of Creditor under this Guaranty shall not be affected or impaired by its election to prove its claim(s) or its election not to pursue such claim(s), as it sees fit, without in any way releasing, reducing or otherwise affecting the liability to Creditor of Guarantor.

12. Notwithstanding that this Guaranty may have been cancelled or terminated, in the event that all or any part of the Guaranteed Indebtedness is paid by or on behalf of Borrower and because of any bankruptcy or other laws relating to creditor rights, Creditor repays any amounts to Borrower or to any trustee, receiver or otherwise, then the amount so repaid shall again become part of the Guaranteed Indebtedness, the repayment of which is guaranteed hereby, and Guarantor shall immediately repay all such amounts to Creditor. If the original of this Guaranty was marked "Cancelled" by Creditor and returned to Guarantor, for the purposes of this Section, a photocopy or other reproduction of this Guaranty shall constitute the original of this Guaranty.

13. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and delivered in person or sent by registered or certified mail (return receipt requested) or nationally recognized overnight delivery service, postage pre-paid, or electronic mail, provided that any notice sent by electronic mail must include a reference to this Section 13 to be effective, addressed as follows, or to such other address as such party may notify to the other parties in writing:

to Creditor:

To Guarantor:

with copy to:

with copy to:



[ ]  
Attn: Charles J. Quaid  
c/o Quaid Farish, LLC.  
8150 N. Central Exp., Ste 600  
Dallas, Texas 75206  
Email: cquaid@quaidfarish.com

Charles J. Quaid  
8150 North Central Exp. Suite 600  
Dallas, Texas 75206  
AND via email to cquaid@quaidfarish.com

BD Hospitality Acquisition, Inc.  
Attn: Eric Langan  
10737 Cutten Road  
Houston, TX, 77066

Robert D. Axelrod, Esq. Axelrod & Smith  
1502 Augusta Drive, Suite 320  
Houston, Texas 77057

AND via email to rdaxel@asklawhou.com

(b) A notice or communication will be effective (i) if delivered in person, by electronic mail, or by overnight courier, on the business day it is delivered and (ii) if sent by registered or certified mail, three (3) business days after dispatch. In the event either party delivers a notice by electronic mail, such party agrees to deposit the original notice in a post office, branch office post office, or mail depository maintained by the U.S. Postal Service postage prepaid and addressed as set forth above.

(c) Each party may change the address to which any such notice, report, demand, or other instrument is to be delivered or mailed, by furnishing written notice of such change to the other party, but no such notice of change shall be effective unless and until received by such other party.

(d) Notwithstanding anything in this instrument to the contrary, all requirements of notice shall be deemed inapplicable if Creditor is prevented from giving such notice by bankruptcy or any other applicable law. In such event, the cure period, if any, shall then run from the occurrence of the event or condition of default rather than from the date of notice.

14. Guarantor irrevocably and unconditionally: (a) agrees that any suit, action or other legal proceeding arising out of or relating to this Guaranty may be brought, at the option of Creditor, in a court of competent jurisdiction in Dallas County, Texas (either a court of the State of Texas or the United States District Court located in said county); (b) consents to the jurisdiction of each such court in any such suit, action or proceeding; (c) waives any and all personal rights under the laws of any state to object to the laying of venue of any such suit, action or proceeding in the State of Texas; and (d) agrees that service of any court paper may be effected on Guarantor by mail, addressed and mailed as provided herein, or in such other manner as may be provided under applicable laws or court rules in the State of Texas. Nothing contained herein, however, shall prevent Creditor from bringing an action or exercising any rights against any security or against Guarantor personally, and against any property of Guarantor, within any other state. Initiating such proceeding or taking such action in any other state shall in no event constitute a waiver of the agreement contained herein that the laws of the State of Texas shall govern the rights and obligations of Guarantor and Creditor hereunder or of the submission herein made by Guarantor to personal jurisdiction within the State of Texas. The aforesaid means of obtaining personal jurisdiction and perfecting service of process are not intended to be exclusive but are cumulative and in addition to all other means of obtaining personal jurisdiction and perfecting service of process now or hereafter provided by the laws of the State of Texas.

15. Guarantor represents and warrants to Creditor that, at the time of the execution and delivery of this Guaranty, nothing exists to impair the effectiveness of the liability of Guarantor to Creditor hereunder, or the immediate taking effect of this Guaranty as the sole agreement between Guarantor and Creditor with respect to guaranteeing the Guaranteed Indebtedness. Guarantor further represents and warrants to Creditor that this Guaranty, when executed and delivered by Guarantor, will constitute the legal, valid and binding obligations of Guarantor enforceable in accordance with the terms hereof; that the execution, delivery and performance by Guarantor of this Guaranty will not violate any indenture, agreement or other instrument (or, if Guarantor is a corporation, its articles of incorporation or bylaws) to which Guarantor is a party, or by which it or any of its property is bound, or be in conflict with, result in a breach of, or constitute (with due notice or the lapse of time, or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets, except as contemplated by the provisions of this Guaranty; that, if Guarantor is a corporation, the execution, delivery and performance by Guarantor of this Guaranty is within its corporate or partnership powers and purposes, and has been duly authorized by all requisite corporate action of Guarantor; that there are no judgments outstanding against Guarantor and there is no action, suit, proceeding, or investigation now pending (or to the best of Guarantor's knowledge, after diligent inquiry, threatened) against, involving or affecting Guarantor or any of its properties or any part thereof, at law, in equity or before any governmental authority that, if adversely determined as to Guarantor, would have a material adverse effect on the Guarantor's ability to perform, or affect the validity as to Guarantor of, the obligations of Guarantor under this Guaranty.

16. The liability of Guarantor hereunder shall be joint and several with Borrower and with all other guarantors of the Guaranteed Indebtedness and is unconditional.

17. This Guaranty constitutes the sole agreement of the parties with respect to the transaction contemplated hereby and supersede all oral negotiations and prior writings with respect thereto. No waivers, amendments or modifications of this Guaranty shall be valid unless in writing and signed by an authorized officer of the Creditor. No waiver by Creditor of any default shall operate as a waiver of any other default or the same default on a future occasion. Neither the failure nor any delay on the part of the Creditor in exercising any right, power, or remedy under this Guaranty shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or remedy.

**WAIVER OF TRIAL BY JURY. GUARANTOR AND CREDITOR HEREBY MUTUALLY, KNOWINGLY, WILLINGLY, AND VOLUNTARILY WAIVE THEIR RIGHT TO TRIAL BY JURY AND AGREE THAT NO PARTY, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF THE PARTIES (ALL OF WHOM ARE HEREINAFTER REFERRED TO AS THE "PARTIES") SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEEDING BASED UPON OR ARISING OUT OF THIS GUARANTY OR ANY INSTRUMENT EVIDENCING, SECURING, OR RELATING TO THE GUARANTEED INDEBTEDNESS OR OTHER OBLIGATIONS EVIDENCED HEREBY OR ANY RELATED AGREEMENT OR INSTRUMENT, ANY OTHER COLLATERAL FOR THE INDEBTEDNESS EVIDENCED HEREBY OR ANY COURSE OF ACTION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION RELATING TO THIS GUARANTY. THE PARTIES ALSO WAIVE ANY, RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES. THE WAIVER CONTAINED HEREIN IS IRREVOCABLE, CONSTITUTES A KNOWING AND VOLUNTARY WAIVER, AND SHALL BE SUBJECT TO NO EXCEPTIONS. CREDITOR HAS IN NO WAY AGREED WITH OR REPRESENTED TO GUARANTOR OR TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.**

BD HOSPITALITY ACQUISITION, INC.,  
a Texas corporation

By: \_\_\_\_\_  
Eric Langan, President

STATE OF TEXAS

COUNTY OF HARRIS

The foregoing instrument was acknowledged before me by means of his physical presence, this 16<sup>th</sup> day of March, 2023, by Eric Langan, in his capacity as President of, and on behalf of BD HOSPITALITY ACQUISITION, INC., a Texas corporation, who is (\_\_\_\_) personally known to me or (\_\_\_\_) produced a driver's license as identification.

\_\_\_\_\_  
NOTARY PUBLIC-State of Texas

Print/Type/Stamp Name:  
\_\_\_\_\_

Commission Expiration Date:  
\_\_\_\_\_

Notary Seal:

(Signing as a notary public and not as a guarantor or endorser.)

## LOCK-UP AGREEMENT

**THIS LOCK-UP AGREEMENT** (this “**Agreement**”) is made and entered into as of the date set forth on the signature page below, between **RCI HOSPITALITY HOLDINGS, INC.**, a Texas corporation (“**Rick’s**”) and **DUNCAN BURCH**, an individual, at 1418 Dudley Drive, Carrollton, Dallas County, Texas 75007 (“**Burch**”).

### *RECITALS:*

**WHEREAS**, Burch entered into a Purchase and Sale Agreement (the “**Purchase Agreement**”) with a wholly owned subsidiary of Rick’s (the “**Rick’s Subsidiary**”) pursuant to which the Rick’s Subsidiary acquired from Burch certain real property located in Tarrant County, Harris County and Dallas County, Texas (the “**Property**”);

**WHEREAS**, as part of the purchase price paid pursuant to the Purchase Agreement, Rick’s Subsidiary caused to be issued 200,000 restricted shares of common stock, par value \$0.01, of Rick’s (the “**Rick’s Shares**”) to Burch;

**WHEREAS**, Burch is entitled to receive the Rick’s Shares upon the date of closing of the Purchase Agreement (the “**Closing Date**”), which is conditioned upon, among other things, the execution and delivery of this Agreement;

**WHEREAS**, Burch has agreed to enter into this Agreement to restrict the Transfer (defined below) of the Rick’s Shares, all on the terms set forth below.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Burch may not sell, pledge, hypothecate, grant a security interest in, transfer, assign, convey, or in any other manner dispose of (“**Transfer**”) the Rick’s Shares (the “**Transfer Restriction**”) except in compliance with this Agreement.

2. Burch may Transfer, and the Transfer Restriction shall expire with respect to, the Rick’s Shares in accordance with the following schedule:

<i>No. of Rick's Shares</i>	<i>Date Transfer Restriction Expires</i>
<i>10,527</i>	<i>6 months after the Closing Date</i>
<i>10,527</i>	<i>7 months after the Closing Date</i>
<i>10,527</i>	<i>8 months after the Closing Date</i>
<i>10,527</i>	<i>9 months after the Closing Date</i>
<i>10,527</i>	<i>10 months after the Closing Date</i>
<i>10,526</i>	<i>11 months after the Closing Date</i>
<i>10,526</i>	<i>12 months after the Closing Date</i>
<i>10,526</i>	<i>13 months after the Closing Date</i>
<i>10,526</i>	<i>14 months after the Closing Date</i>
<i>10,526</i>	<i>15 months after the Closing Date</i>
<i>10,526</i>	<i>16 months after the Closing Date</i>
<i>10,526</i>	<i>17 months after the Closing Date</i>
<i>10,526</i>	<i>18 months after the Closing Date</i>
<i>10,526</i>	<i>19 months after the Closing Date</i>
<i>10,526</i>	<i>20 months after the Closing Date</i>
<i>10,526</i>	<i>21 months after the Closing Date</i>
<i>10,526</i>	<i>22 months after the Closing Date</i>
<i>10,526</i>	<i>23 months after the Closing Date</i>
<i>10,526</i>	<i>24 months after the Closing Date</i>

Burch acknowledges that the certificates representing the Rick's Shares will contain certain restrictive legends reflecting this resale restriction.

3. Notwithstanding Section 2, beginning on the date that is six months after the Closing Date, Burch may Transfer all or any portion of the Rick's Shares still subject to the Transfer Restriction, provided that the transferee executes a written agreement with Rick's to be bound by terms and conditions that are substantially similar to the restrictions herein.

4. The Transfer Restrictions are in addition to all other restrictions on transfer imposed by applicable federal and state securities laws, rules, and regulations, including Rule 144 of the Securities Act of 1933, as amended (the "Act"). Any Transfer permitted hereunder must comply with the Act and other applicable securities laws.

5. Burch shall not engage in any short selling of shares of Rick's common stock until the Transfer Restrictions in Section 2 have expired with respect to all of the Rick's Shares held by Burch; provided, however that this Section 5 shall not apply to any actions taken which are related to a hedge transaction (including associated lending transactions) or margin loan facility in which Burch pledges, hypothecates, or otherwise grants a security interest in or to Rick's Shares no longer subject to the Transfer Restriction.

6. The Rick's Shares covered by this Agreement shall be correspondingly adjusted should Rick's undergo a forward split, a reverse split, pay a dividend in shares of its common stock, or otherwise materially adjust or reclassify its shares of common stock.

7. Except as otherwise provided in this Agreement or any other agreements between the parties, Burch shall be entitled to its beneficial rights of ownership of the Rick's Shares, including the right to vote the Rick's Shares for any and all purposes.

8. Burch acknowledges that stock transfer restrictions and/or stock legends will be placed on the certificates representing the Rick's Shares to enforce the provisions of this Agreement.

9. In the event that Rick's files or permits or causes to be filed a resale registration statement with the Securities & Exchange Commission (the "SEC") for the resale of shares of its common stock by other shareholders owning Rick's common stock, other than on a Form S-4, Form S-8, or Form S-3 shelf registration statement filed for any offering except as described under I.B.3. of Form S-3, Rick's shall, and hereby does, grant piggy-back registration rights to Burch to register for re-sale the Rick's Shares and, upon such registration, the Transfer Restrictions shall expire.

10. Acquisition of Stock for Investment. Burch hereby represents and warrants to Rick's and Rick's Subsidiary the following as of the Closing Date:

a. Burch understands that the issuance of the Rick's Shares to Burch will not have been registered under the Act, or any state securities laws, and accordingly, are restricted securities, and Burch's present intention is to receive and hold the Rick's Shares for investment only and not with a view to the distribution or resale thereof.

b. Additionally, Burch understands that any sale of any of the Rick's Shares issued under current law, will require either (i) the registration of the Rick's Shares under the Act and applicable state securities laws; (ii) compliance with Rule 144 under the Act; or (iii) the availability of an exemption from the registration requirements of the Act and applicable state securities laws.

c. Burch acknowledge and represent that he is an "accredited investor" as that term is defined in Rule 5.01(a) of Regulation D promulgated under the Act.

d. To assist in implementing the above provisions, Burch hereby consents to the placement of the legend set forth below, or a substantially similar legend, on all certificates representing ownership of the Rick's Shares acquired hereby until the Rick's Shares have been sold, transferred, or otherwise disposed of, pursuant to the requirements hereof. The legend shall read substantially as follows:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY APPLICABLE STATE SECURITIES ACTS. THESE SECURITIES HAVE BEEN ACQUIRED FOR INVESTMENT, ARE RESTRICTED AS TO TRANSFERABILITY, AND MAY NOT BE SOLD, HYPOTHECATED, OR OTHERWISE TRANSFERRED WITHOUT COMPLIANCE WITH THE REGISTRATION AND QUALIFICATION PROVISIONS OF APPLICABLE FEDERAL AND STATE SECURITIES LAWS OR APPLICABLE EXEMPTIONS THEREFROM.

e. Burch understands and agrees that Rick's may notify its transfer agent of this Agreement and the limitation on the number of Rick's Shares that may be sold in any given month in accordance with the terms and conditions of this Agreement.

11. **Burch's Access to Information.** Burch hereby confirms and represents that he: (a) have received (i) a copy of Rick's Form 10-K filed with the Securities and Exchange Commission (the "SEC") for the year ended September 30, 2022; (ii) a copy of Rick's Form 14A filed with the SEC on July 11, 2022; (iii) a copy of Rick's Form S-3 filed with the SEC on May 14, 2021, which went effective on June 3, 2021; (iv) a copy of the Form 10-Q filed with the SEC on February 9, 2023; (v) a copy of the Form 8-K's filed with the SEC on October 12, 2022, November 2, 2022, December 14, 2022, December 14, 2022, December 15, 2022, January 11, 2023, January 13, 2023, January 27, 2023 and February 9, 2023; (b) has been afforded the opportunity to ask questions of and receive answers from representatives of Rick's concerning the business and financial condition, properties, operations and prospects of Rick's; (c) has such knowledge and experience in financial and business matters so as to be capable of evaluating the relative merits and risks of the transactions contemplated hereby; (d) has had an opportunity to engage and is represented by an attorney of his choice; (e) has had an opportunity to negotiate the terms and conditions of this Agreement; (f) has been given adequate time to evaluate the merits and risks of the transactions contemplated hereby; and (g) has been provided with and given an opportunity to review all current information about Rick's.

12. The party who fails to fully adhere to the terms and conditions of this Agreement shall be liable to every other party for any damages suffered by any party by reason of such breach of the terms and conditions hereof. Burch agrees that in the event of a breach of any of the terms and conditions of this Agreement by Burch, that in addition to all other remedies that may be available in law or in equity to Rick's, a preliminary and permanent injunction and an order of a court requiring Burch to cease and desist from violating the terms and conditions of this Agreement and specifically requiring Burch to perform its obligations hereunder is fair and reasonable by reason of the inability of the parties to this Agreement to presently determine the type, extent, or amount of damages that Rick's may suffer as a result of any breach or continuation thereof. In the event of default hereunder, the non-defaulting party shall be entitled to recover its reasonable attorney's fees incurred in the enforcement of this Agreement.

13. This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof, and may not be amended except by a written instrument executed by the parties hereto.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas; and all of the parties hereto agree that any action based upon this Agreement may be brought in the federal or state courts located in Harris County, Texas only, and each submits itself to the jurisdiction of such courts for all purposes hereunder.

15. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the undersigned have duly executed and delivered this Agreement as of the day and year first above written.

Dated: March 16, 2023

**RCI HOSPITALITY HOLDINGS, INC.**

By: /s/ Eric Langan  
Eric Langan, President

By: /s/ Duncan Burch  
Duncan Burch, Individually

Number of Rick's Shares Subject to this Agreement:  
200,000

## NON-COMPETITION AGREEMENT

This Non-Competition Agreement dated March 16, 2023 (the “**Non-Competition Agreement**”) is by and among RCI Hospitality Holdings, Inc., a Texas corporation (“**RCI Hospitality**”), BD Hospitality Acquisition, Inc., a Texas corporation (“**BD Hospitality**”), RCI Holdings, Inc., a Texas corporation (“**RCI Holdings**”), and Duncan Burch, an individual (“**Burch**”).

### WITNESSETH:

**WHEREAS**, Burch and RCI Holdings, Inc. (a subsidiary of RCI Hospitality) have entered into a Purchase and Sale Agreement (the “**Real Estate Agreement**”) pursuant to which Burch will sell by Special Warranty Deed to RCI Holdings five parcels of real property located at: (a) 3601 Highway 157, Ft. Worth, Tarrant County, Texas 75236; (b) 2711 Majesty Arlington, Tarrant County, Texas 76011; (c) 6440 Southwest Freeway, Houston Harris County, Texas 77074; (d) 10723 Composite Drive, Dallas, Dallas County, Texas 77220; and (e) 10250 Shady Trail, Dallas, Dallas County, Texas 77220 (collectively, the “**Real Property**”);

**WHEREAS**, wholly-owned subsidiaries of BD Hospitality, including ST Dining Services, Inc., a Texas corporation (“**ST Dining**”), RCI Dining Services (Eules), Inc., a Texas corporation (“**RCI Dining Eules**”), RCI Dining Services (Southwest Freeway), Inc., a Texas corporation (“**RCI Dining SWF**”), RCI Dining Services (Composite), Inc., a Texas corporation (“**RCI Dining Composite**”), RCI Dining Services (Majesty), Inc., a Texas corporation (“**RCI Dining Majesty**,” and collectively with ST Dining, RCI Dining Eules, RCI Dining SWF and RCI Dining Composite, the “**Club Operators**”), will as tenants of RCI Holdings operate sexually oriented adult cabarets featuring erotic female striptease entertainment at the locations of the five parcels of Real Property (collectively, the “**Clubs**”); and

**WHEREAS**, RCI Holdings and BD Hospitality are each a subsidiary of RCI Hospitality; and

**WHEREAS**, RCI Hospitality and RCI Holdings require that Burch enter into this Non-Competition Agreement as a condition to closing the transactions contemplated by the Real Estate Agreement, and to induce RCI Holdings to enter into such Real Estate Agreement and to complete such transaction, Burch has agreed to enter into this Non-Competition Agreement; and

**NOW, THEREFORE**, in consideration of the premises, the closing of the Real Estate Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Covenants.** For a period of 5 years from the date of execution hereof (such 5-year period being referred to herein as the “**Restricted Period**”), Burch will not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, shareholder, corporate officer, director, investor, owner or in any other individual or representative capacity, whether for compensation or not:

- (a) Compete, either directly or indirectly, with RCI Hospitality, RCI Holdings, BD Hospitality, any of the Club Operators or any of the Clubs or any of their subsidiaries, parents or affiliates (collectively, the “**BD Hospitality Parties**”), by owning, or having any rights of conversion to own, or share in the earnings of, carry on, manage, operate, control, consult, be engaged in, render services to or solicit customers for any business engaged in the operation of an establishment featuring live female nude or semi-nude adult entertainment operated as a sexually oriented business within a 50 mile radius of each of the Clubs (the “**Prohibited Area**”); provided, however, that the following locations are

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excluded from the Prohibited Area: (i) 10901 Stemmons Freeway, Dallas, Texas; (ii) the Cowboys Red River site/parking site located at 10410 Technology Blvd., Dallas, Dallas County, Texas, and (iii) 2535 Manana Road, Dallas, Dallas County, Texas ; or

- (b) Solicit or induce, or attempt to solicit or induce, from any of the BD Hospitality Parties, any employee, independent contractor, or agent or consultant of any of the BD Hospitality Parties to leave his or her employment or terminate his or her agreement or relationship with any of the BD Hospitality Parties and go to work in the operation of an establishment featuring live female nude or semi-nude adult entertainment operated as a sexually oriented business for Burch or any entity Burch owns (beneficially or directly), or has any rights of conversion to own, or share in the earnings of, carry on, manage, operate, control, consult, be engaged in, or render services to.

Provided that notwithstanding anything herein to the contrary, the Covenant Not to Compete as contained in this Agreement shall terminate earlier than the Five Year Restricted Period, and terminate immediately, upon the breach by RCI Holdings or RCI Hospitality of any agreement of RCI Holdings or RCI Hospitality with Burch (including any Note between any of said parties, any guaranty of RCI Holdings or RCI Hospitality to Burch or any third party related to the BD Hospitality Parties) the breach of agreement, Note or indemnification by any of the BD Hospitality Parties to any third party.

2. **Burch's Acknowledgments and Agreements.** Burch acknowledges and agrees that:

- (a) He has received good and valuable consideration pursuant to and in connection with the transactions contemplated by the Real Estate Agreement, and that his receipt of such consideration constitutes valid consideration to him for his entry into this Non-Competition Agreement;
- (b) Due to the nature of the BD Hospitality Parties' business, the foregoing covenants place no greater restraint upon Burch than is reasonably necessary to protect the business and goodwill of the BD Hospitality Parties;
- (c) These covenants protect a legitimate interest of the BD Hospitality Parties and do not serve solely to limit the future competition of the BD Hospitality Parties;
- (d) This Non-Competition Agreement is not an invalid or unreasonable restraint of trade;
- (e) A breach of these covenants by Burch would cause irreparable damage to the BD Hospitality Parties;
- (f) These covenants will not preclude Burch from obtaining reasonable business relationships or becoming gainfully employed following the closing of the Real Estate Agreement;
- (g) These covenants are reasonable in scope and are reasonably necessary to protect the business and goodwill and valuable and extensive trade which the BD Hospitality Parties have established through their own expense and effort;

- (h) The signing of this Non-Competition Agreement is necessary as part of the consummation of the transactions contemplated by the Real Estate Agreement previously discussed; and
- (i) Burch has carefully read and considered all provisions of this Non-Competition Agreement and that all of the restrictions set forth are fair and reasonable and are reasonably required for the protection of the interests of the BD Hospitality Parties.

3. **Remedies, Injunction.** In the event of Burch's actual breach of any provisions of this Non-Competition Agreement, Burch agrees that any of the BD Hospitality Parties shall be entitled to a temporary restraining order, preliminary injunction and/or permanent injunction restraining and enjoining Burch from violating the provisions herein. Nothing in this Non-Competition Agreement shall be construed to prohibit any of the BD Hospitality Parties from pursuing any other available remedies for such breach or threatened breach, including the recovery of damages from Burch. Burch further agrees that, for the purpose of any such injunction proceeding, it shall be presumed that the BD Hospitality Parties' legal remedies would be inadequate and that the BD Hospitality Parties would suffer irreparable harm as a result of Burch's violation of the provisions of this Non-Competition Agreement.

4. **Severability.** In the event that any of the provisions of this Non-Competition Agreement are held to be invalid or unenforceable in whole or in part, those provisions to the extent enforceable and all other provisions shall nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included in this Non-Competition Agreement. In the event that any provision relating to the time period or scope of a restriction shall be declared by a court of competent jurisdiction to exceed the maximum time period or scope such court deems reasonable and enforceable, then the time period or scope of the restriction deemed reasonable and enforceable by the court shall become and shall thereafter be the maximum time period or the applicable scope of the restriction. Burch further agrees that such covenants and/or any portion thereof are severable, separate, and independent, and should any specific restriction or the application thereof, to any person, firm, corporation, or situation be held to be invalid, that holding shall not affect the remainder of such provisions or covenants.

5. **Third Party Beneficiaries.** As tenants of RCI Holdings, the Club Operators are third-party beneficiaries of the agreements under this Non-Competition Agreement.

6. **General Provisions.**

(a) **Notices.** Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and delivered in Person or sent by registered or certified mail (return receipt requested) or nationally recognized overnight delivery service, postage pre-paid, or electronic mail, provided that any notice sent by electronic mail must include a reference to this Section 6(a) to be effective, addressed as follows, or to such other address as such party may notify to the other parties in writing:

- (i) If to Burch: Duncan Burch  
Attn: Charles J. Quaid  
c/o Quaid Farish, LLC.  
8150 N. Central Exp., Ste 600  
Dallas, Texas 75206  
Email: [cquaid@quaidfarish.com](mailto:cquaid@quaidfarish.com)

with a copy to: Charles J. Quaid  
Quaid Farish, LLC.  
8150 N. Central Exp., Ste 600

Dallas, Texas 75206  
Email: [cquaid@quaidfarish.com](mailto:cquaid@quaidfarish.com)

- (ii) If to RCI Holdings: RCI Holdings, Inc.  
Attn: Eric Langan, President  
10737 Cutten Road  
Houston, Texas 77066

with a copy to: Robert D. Axelrod  
Axelrod & Smith  
1502 Augusta, Suite 320  
Houston, Texas 77057

- (iii) If to RCI Hospitality: RCI Hospitality Holdings, Inc.  
Attn: Eric Langan, President  
10737 Cutten Road  
Houston, Texas 77066

with a copy to: Robert D. Axelrod  
Axelrod & Smith  
1502 Augusta, Suite 320  
Houston, Texas 77057

- (iv) If to BD Hospitality: BD Hospitality Acquisition, Inc.  
Attn: Eric Langan, President  
10737 Cutten Road  
Houston, Texas 77066

with a copy to: Robert D. Axelrod  
Axelrod & Smith  
1502 Augusta, Suite 320  
Houston, Texas 77057

A notice or communication will be effective (i) if delivered in Person, by electronic mail, or by overnight courier, on the business day it is delivered and (ii) if sent by registered or certified mail, 3 business days after dispatch. In the event either party delivers a notice by electronic mail, such party agrees to deposit the original notice in a post office, branch office post office, or mail depository maintained by the U.S. Postal Service postage prepaid and addressed as set forth above.

(b) *Law Governing Non-Competition Agreement and Venue.* This Non-Competition Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to principles of conflict of laws. In any action between or among any of the parties, whether arising out of this Non-Competition Agreement or otherwise, each of the parties irrevocably consents to the exclusive jurisdiction and venue of the federal and state courts located in Dallas County, Texas.

(c) *Contract Terms to be Exclusive.* This Non-Competition Agreement contains the sole and entire agreement between the parties and shall supersede any and all other agreements between the parties with respect to Burch's agreement not to compete with any of the BD Hospitality Parties.

(d) *Waiver or Modification Ineffective Unless in Writing.* It is further agreed that no waiver or modification of this Non-Competition Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by each of the

parties hereto and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding or litigation between the parties hereto arising out of or affecting this Non-Competition Agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed by each of the parties hereto.

(e) *Assignment.* The rights and benefits of the BD Hospitality Parties under this Non-Competition Agreement shall inure to the benefit of and be binding upon the successors and assigns of the BD Hospitality Parties. The rights of Burch hereunder are personal and nontransferable except that the rights and benefits hereof shall inure to the benefit of the heirs, executors, and legal representatives of Burch.

(f) *Binding Effect.* Except as otherwise provided herein, this Non-Competition Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(g) *Execution.* This Non-Competition Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party, it being understood that both parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned have executed this Non-Competition Agreement to become effective as of the date first set forth above.

**RCI HOLDINGS, INC.**

By: /s/ Eric Langan  
Eric Langan, President

**RCI HOSPITALITY HOLDINGS, INC.**

By: /s/ Eric Langan  
Eric Langan, President

**BD HOSPITALITY ACQUISITION, INC.**

By: /s/ Eric Langan  
Eric Langan, President

/s/ Duncan Burch  
**DUNCAN BURCH**, Individually



## **RCI Announces Closing on the Acquisition of Five Adult Nightclubs in Texas**

HOUSTON, March 16, 2023— RCI Hospitality Holdings, Inc. (Nasdaq: RICK) announced closing on the acquisition of two Baby Dolls and three Chicas Locas adult nightclubs and their associated real estate in the Dallas-Fort Worth and Houston markets.

The company previously announced signing definitive agreements in December for the \$66.5 million acquisition, RCI's second largest since its founding and one of the largest in the history of the adult nightclub industry.

Payment consisted of \$25.0 million in cash of which \$10.0 million is being financed through an unsecured bank line of credit; 10-year, 7% seller financing notes totaling \$25.5 million; and 200,000 restricted shares of common stock of RCI valued at \$16.0 million, subject to a lock-up, leak out agreement.

Eric Langan, President and CEO of RCI Hospitality Holdings, Inc., said, "We're excited about this acquisition. The clubs are expected to contribute approximately \$11 million in adjusted EBITDA in year one. When we complete our expansion/renovation plans, we anticipate they will generate \$14-16 million in annual adjusted EBITDA."

Ed Anakar, President of RCI Management Services, Inc., said, "We are also excited about the new team members who are joining the RCI family. They are some of the best in the industry and important to our plans for growth."

### **About RCI Hospitality Holdings, Inc. (Nasdaq: RICK) (Twitter: [@RCIHHinc](#))**

With more than 60 locations, RCI Hospitality Holdings, Inc., through its subsidiaries, is the country's leading company in adult nightclubs and sports bars/restaurants. See all our brands at [www.rcihospitality.com](http://www.rcihospitality.com).

### **Forward-Looking Statements**

This press release may contain forward-looking statements that involve a number of risks and uncertainties that could cause the company's actual results to differ materially from those indicated, including, but not limited to, the risks and uncertainties associated with (i) operating and managing an adult entertainment or restaurant business, (ii) the business climates in cities where it operates, (iii) the success or lack thereof in launching and building the company's businesses, (iv) cyber security, (v) conditions relevant to real estate transactions, (vi) the impact of the COVID-19 pandemic, and (vii) numerous other factors such as laws governing the operation of adult entertainment or restaurant businesses, competition and dependence on key personnel. For more detailed discussion of such factors and certain risks and uncertainties, see RCI's annual report on Form 10-K for the year ended September 30, 2022, as well as its other filings with the U.S. Securities and Exchange Commission. The company has no obligation to update or revise the forward-looking statements to reflect the occurrence of future events or circumstances.

### **Media & Investor Contacts**

Gary Fishman and Steven Anreder at 212-532-3232 or [gary.fishman@anreder.com](mailto:gary.fishman@anreder.com) and [steven.anreder@anreder.com](mailto:steven.anreder@anreder.com)