

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

PREMIER KINGS, INC., *et al.*,¹

Debtors.

(Chapter 11)

Case No. 23-02871-TOM

Jointly Administered

**MOTION OF RRG OF JACKSONVILLE, LLC FOR RELIEF
FROM ORDER ASSUMING AND ASSIGNING CONTRACT**

RRG of Jacksonville, LLC (“RRG”), a purchaser of certain of the Debtors’ assets, moves the Court in accordance with Rule 9024 of the Federal Rules of Bankruptcy Procedure (Bankruptcy Rules) for relief from the provisions of the Sale Order assuming and assigning a contract to RRG. In support of its motion, RRG submits herewith the Affidavit of Randy Pianin in Support of Motion of RRG of Jacksonville, LLC for Relief from Order and states the following:

Procedural Background

1. Premier Holdings of Georgia, LLC (“PHG”) has commenced an adversary proceeding against RRG [Adv. Proc. No, 23-02871] (the “Adversary Proceeding”) seeking to compel RRG to assume a development agreement contract with PHG (the “Development Agreement”) that it contends RRG inadvertently assumed as part of the Sale Order.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification numbers, are: Premier Kings, Inc. (3932); Premier Kings of Georgia, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors’ address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071. The Court entered an order for joint administration on October 30, 2023 [Doc. No. 84].



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2. RRG has answered the Adversary Proceeding and filed a motion for judgment on the pleadings. RRG did not assume the Development Agreement and did not intend to do so. In the event the Court finds that the Sale Order effected an assumption of the Development Agreement and assignment to RRG, RRG files this motion to see relief from that portion of the Sale Order in accordance with Rule 60(b)(1) of the Federal Rules of Civil Procedure as made applicable by Bankruptcy Rule 9024.

Facts

3. By Order dated December 13, 2023 [Docket No. 355] (the “Sale Order”), the Court approved the sale of certain of the Debtor’s assets to RRG. Under the terms of the asset purchase agreement, RRG had the right to assume certain leases and executory contracts. The Sale Order specifically incorporates by reference the terms of the Asset Purchase Agreement between the Debtor and RRG. [See Sale Order at p. 127].

4. The Asset Purchase Agreement is dated October 25, 2023 and was amended by the terms of the First Amendment to Asset Purchase Agreement dated December 11, 2023 [See Sale Order at p. 208]. The First Amendment designates leases for assumption at Schedule 1-3(a)(2) “Designated Leases for Assumption.” [See Sale Order at p. 215]. On Schedule 1-3(a)(2), RRG listed:

<u>Store Number</u>	<u>Store Address</u>
26868	7304 Hwy. 21, Port Wentworth, GA

[Sale Order at p. 215].

5. The Asset Purchase Agreement also permitted the Defendant to accept or reject leases by sending written notice to the Debtors. The Defendant sent to the Debtors two (2) such notices of Designated Leases and Rejected Leases, one on December 4, 2023 and one on December

26, 2023 (the “Lease Notices”), both of which reference designation of leases and intentionally omit any reference to the Development Agreement (or any other type of contract). True and accurate copies of the notices are appended to the Affidavit of Randy Pianin submitted herewith. (Affidavit of Randy Pianin (hereinafter, “Aff. Pianin”), Exhibit A).

6. A true and accurate copy of the Ground Lease dated May 8, 2018, and the First Amendment to Ground Lease dated August 3, 2018, for this location is attached to the Affidavit of Randy Pianin (the “Lease”). (Aff. Pianin, Ex. B) There is no reference to the Development Agreement in the Lease.

7. The Sale Order also made provision for the assumption of certain Designated Contracts as identified by RRG. The Sale Order incorporated Schedule 1-2(a) -2 which provided that the contracts being assumed by RRG were:

None

[Sale Order at p. 183]. The omission of the Development Agreement from Schedule 1-2(a) -2 makes it clear that the Defendant did not intend to assume the Development Agreement.

8. In accordance with the terms of the Asset Purchase Agreement the Debtor and RRG executed a written Assignment and Assumption Agreement of Lease Agreement. A true and accurate copy of the Assumption Agreement is attached to RRG’s Motion for Judgment on the Pleadings [AP, Dkt No. ____] (the “Assumption Agreement”).

9. Paragraph 5 of the Assumption Agreement provides that:

No Third-Party Beneficiaries. This Assignment is for the sole and exclusive benefit of the Parties and their respective successor and permitted assigns, and nothing herein is intended or shall be construed to confer upon any person other than the Parties and their respective successors and permitted assigns any rights, remedies or claims under, or by any reason of, this Assignment of any term, covenant or condition hereof.

10. The Assumption Agreement provides that RRG is assuming “that certain Ground Lease, dated as of May 8, 2018, as amended by that certain Amendment to Ground Lease, dated August 3, 2018, and as subject to that certain Development Agreement between Premier Holdings of Georgia, LLC and Assignor, dated May 17, 2019.” The Assumption Agreement intentionally does not state that the Defendant is assuming the Development Agreement.

11. A true and accurate copy of the Development Agreement dated May 17, 2019 is attached to the Affidavit of Randy Pianin. (Aff. Pianin, Ex. C).

12. The Lease makes no reference to the Development Agreement and the Development Agreement makes no reference to the Lease.

Argument

13. Applicable Standard. Rule 60(b)(1) permits a court to alter or amend a judgment for “mistake, inadvertence, surprise, or excusable neglect.” Fed. R. Civ. P. Rule 60(b)(1). The goal of Rule 60(b)(1) is to correct errors of law or misapprehensions of fact. The decision to alter or amend a judgment is in the sound discretion of the trial judge. Futures Trading Comm'n v. Am. Commodities Group, 753 F.2d 862, 866 (11th Cir.1984).

14. “Mistake” as used within Rule 60 encompasses a broad spectrum of errors consistent with the common dictionary definition of the word. Kemp v. United States, 596 U.S. 598, 142 S. Ct. 1856, 213 L.Ed. 2d 90 (2022).

15. The Debtor scheduled the Lease as an executory contract. [See Schedules of Assets and Liabilities, Docket No. 257 (hereinafter “Schedules”) p. 108.] The Debtor did not schedule the Development Agreement as an executory contract, instead stating that “Mr Sidhu and Premier Kings of Georgia guaranteed loan realted [*sic*] to FFE and the real estate of store #27690 and 26868.” Schedules, p. 117.

16. Neither RRG nor the Debtor had anything to gain from the assumption of the Development Agreement. The Development Agreement represents a commitment of approximately \$2 million, or over 10% of the entire purchase price under the Asset Purchase Agreement². It provides no value to RRG and there was no reason for RRG or any other party acting in a commercially reasonable manner to assume the Development Agreement. (Aff. Pianin, ¶¶ 12, 13) PHG does not argue or contend otherwise, it simply seeks to take advantage of what it chooses to construe as an inadvertent error in its favor in an agreement between the Debtor and RRG. The Development Agreement was not the subject of negotiations or discussion between the Debtor and RRG and indeed it was not downloaded to the data room, or otherwise made available to RRG, until after the execution of the Schedule of Leases to be assumed and in fact until after the closing of the transactions contemplated by the Asset Purchase Agreement. (Aff. Pianin, ¶ 10)

17. RRG had no reason to assume the Development Agreement. The aggregate payments under Lease and the Development Agreement fell far outside the maximum contract boundaries RRG had established to evaluate locations. The Development Agreement adds \$11,000.00 per month to the base rent of \$6,164.92 per month creating a lease obligation that would represent 17.05% of annual sale volume for this location. No operator would willingly assume such an obligation. (Aff. Pianin, ¶¶ 11, 12)

18. A bankruptcy court has the jurisdiction and discretion to relieve a party from the mistaken assumption of a contract:

When an innocent mistake can be rectified without harm to anyone (*loss of a windfall is not the kind of harm that a court should endeavor to avert*), it should be. Especially in a case such as this. If the mistake is not corrected, the cost will be borne not by its maker-United-but by creditors no less innocent than the airplanes' owners. A refusal to correct would serve no deterrent or punitive purpose; it would merely redistribute wealth among creditors capriciously.

² The Plaintiff has stated that the monthly payment under the Development Agreement is \$11,000. The Development Agreement terminates in 15 years, \$132,000 annually x 15 years = \$1,980,000.

In Re UAL Corp., 411 F. 3d 818, 824-825 (7th Cir. 2005) (emphasis added).

19. In UAL Corp., the Court was called upon to consider the actions of the debtor United Airlines in inadvertently assuming three aircraft leases which it wrongly believed no amounts were due upon. The Court noted in UAL that there was no detrimental reliance by the contract party arising out of the error and the same is true in the instant case. Id.

20. Unlike the facts in UAL, the contract party charged with mistake is not the original contract party, but a purchaser who was not a party to the insider Development Agreement and had no reason to be aware of its terms.

21. At no time prior to the deadline for assumption and rejection of leases, or prior to closing on this transaction on January 16, 2024, were RRG or its advisors provided a copy of, or access to, the Development Agreement dated May 17, 2019. On February 19, 2024, counsel for Premier Kings provided RRG with a copy of the Development Agreement in connection with this dispute. It appears that the Development Agreement was first uploaded to the transaction data room on January 31, 2024. RRG was not alerted to this addition to the transaction data room and the Development Agreement was not reviewed by RRG at that time as RRG did not continue to monitor the transaction data room after closing. Aff. Pianin, ¶ 10.

22. The Development Agreement does not state the amount of any payment due but instead apparently makes reference to a future and unidentified “bank loan.” For this reason alone, RRG would have never assumed the agreement without knowing what payment obligations were entailed or having any ability to do so by reference to an unidentified “bank loan.” Aff. Pianin, ¶ 11.

23. There is no harm to any party by, as necessary, amending the sale order, to relieve RRG of the burden of assumption. The only “harm” would be the loss of a windfall to PHG, as the Court in UAL noted “not the sort of harm the Court should endeavor to avert.” *Id.* at 824-825.

Conclusion

24. To the extent the Court finds that the Development Agreement was assumed by the Debtor and assigned to RRG, the Court should relieve RRG of the inadvertent error by amending the Sale Order to provide for the rejection of the Development Agreement.

Wherefore, RRG prays that the Court enter an Order amending the Sale Order to provide for the rejection of the Development Agreement and that the Court grant such other and further relief as is just.

RRG of Jacksonville, LLC

by its attorneys,

/s/ Peter J. Haley

Peter J. Haley *pro hac vice*
peter.haley@nelsonmullins.com
Nelson Mullins Riley & Scarborough LLP
One Financial Center, 35th Floor
Boston, Massachusetts 02111
Phone: (617) 217-4714

Gregory M. Taube
AL Federal Court ASB-4499-A41G
Nelson Mullins Riley & Scarborough LLP
201 17th Street, NW, Suite 1700
Atlanta, Georgia 30363
(404) 322-6000 (Phone)
greg.taube@nelsonmullins.com

Dated: May 8, 2024

Certificate of Service

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: May 8, 2024

/s/ Peter J. Haley
Peter J. Haley

Exhibit A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

PREMIER KINGS, INC., *et al.*,¹

Debtors.

(Chapter 11)

Case No. 23-02871-TOM

Jointly Administered

**AFFIDAVIT OF RANDY PIANIN IN SUPPORT OF MOTION OF
RRG OF JACKSONVILLE, LLC. FOR RELIEF FROM ORDER**

I, Randy Pianin, being of legal age, on oath, do depose and state that:

1. I am the Chief Executive Officer of RRG of Jacksonville, LLC (“RRG”), the purchaser of certain assets of the Debtor in this proceeding.

2. RRG entered into an Asset Purchase Agreement with the Debtors dated October 25, 2023, that was amended by the terms of the First Amendment to Asset Purchase Agreement dated December 11, 2023 [See Order dated December 13, 2023 [Docket No. 355] (the “Sale Order”) at p. 208]. The First Amendment to Asset Purchase Agreement designates leases for assumption at Schedule 1-3(a)(2) “Designated Leases for Assumption.” [See Sale Order at p. 215]. A true and accurate copy of the Asset Purchase Agreement, including the First Amendment to Asset Purchase Agreement, is appended to the Sale Order at pp. 137-216.

3. RRG delivered two notices of Designated Leases and Rejected Leases to the Debtor, one on December 4, 2023 and one on December 26, 2023 (the “Lease Notices”). True and accurate copies of the Lease Notices are attached hereto as Exhibit A.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification numbers, are: Premier Kings, Inc. (3932); Premier Kings of Georgia, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors’ address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071. The Court entered an order for joint administration on October 30, 2023 [Doc. No. 84].

4. The deadline for RRG to designate leases for assumption was December 26, 2023.

5. As part of the process of evaluating store locations for assumption or rejection, RRG was focused primarily on two elements; making a physical visit to each site to observe the condition of the premises and operation of the store and comparing the rent under each store lease with the projected income at each location. Given the wide dispersal of store locations and the holiday season this was an extremely compressed time frame to attempt to make a determination for approximately 45 locations.

6. In connection with these efforts, RRG was assisted by outside counsel, Nelson Mullins, and a real estate advisory firm, STNL Advisors LLC. RRG's experience in the market, suggested that it should aim for rent that was that was below or no greater than the range of 7.5% - 9.0% of projected sales for the location.

7. In instances where the existing rent obligations exceeded this standard, RRG attempted to negotiate a new rental rate or, in some instances, indicated that it would reject the lease.

8. The information provided to RRG and its advisors indicated that the rent at Store # 26868 located at 7304 Hwy. 21, Port Wentworth, GA as established by the monthly financial statements provided in the data room , showed the rent at \$6,146.92 from March 2023 through September 2023, the last date for which there were monthly financials. This is the rent that RRG is currently paying (\$73,979.04 annually). True and accurate copies of the Ground Lease and First Amendment to Ground Lease are attached hereto as Exhibit B.

9. Based on data made available to RRG during the due diligence process, the rent at Store 26868 as set forth on the Lease represents approximately 6.12% of sales at this location, derived from annual sales of \$1,208,184.00 and annual rent of \$73,979.04.

10. At no time prior to the deadline for assumption and rejection of leases, or prior to closing on this transaction on January 16, 2024, were RRG or its advisors provided a copy of, or access to, the Development Agreement dated May 17, 2019. On February 19, 2024, counsel for Premier Kings provided RRG with a copy of the Development Agreement in connection with this dispute. It appears that the Development Agreement was first uploaded to the transaction data room on January 31, 2024. RRG was not alerted to this addition to the transaction data room and the Development Agreement was not reviewed by RRG at that time as RRG did not continue to monitor the transaction data room after closing. A true and accurate copy of the Development Agreement is attached hereto as Exhibit C.

11. The Development Agreement does not state the amount of any payment due but instead apparently makes reference to a future and unidentified “bank loan.” For this reason alone, RRG would have never assumed the agreement without knowing what payment obligations were entailed or having any ability to do so by reference to an unidentified “bank loan.”

12. I am informed that Premier Holdings of Georgia is seeking a payment of approximately \$11,000.00 per month. With the application of this payment, the total monthly tenancy cost for this location would become 17.05% of sales. This is a threshold that far exceeds any reasonable rate for the property and falls well outside RRG’s internal goals for evaluating assumption. If RRG had understood the monthly tenancy costs to be 17.05% of sales it would have exercised its right to reject the lease for this location.

13. RRG never had any intent to assume the Development Agreement or any need to do so.

14. The Development Agreement provides no value or benefit to RRG whatsoever.

Signed under the penalties of perjury this 8th day of May, 2024.

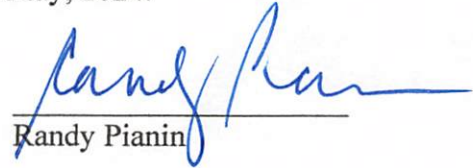

Randy Pianin

Exhibit A

RRG of Jacksonville, LLC
525 South Flagler Drive, Suite 201
West Palm Beach, FL 33401

December 4, 2023

By E-Mail As Set Forth Below

Premier Kings of Georgia, Inc.
Premier Kings Inc., et al.
c/o Aurora Management Partners
112 South Tyron Street, Suite 1770
Charlotte, NC 28284
Attn: David Baker
dbaker@auroramp.com

Cole Schotz, P. C.
1201 Willis Street, Suite 320
Baltimore, MD 21231
Attn: Gary Leibowitz and Irving E. Walker
GLEibowitz@coleschotz.com
IWalker@coleschotz.com

Re: Asset Purchase Agreement by and between Premier Kings of Georgia, Inc. (“Seller) and RRG of Jacksonville, LLC, or its nominee(s) (“Buyer”) dated as of October 25, 2023 (the “APA) Premier Kings, Inc., et al Chapter 11 Case No. 23-02871-TOM (United States Bankruptcy Court N.D. Ala.)

Gentlemen:

Buyer is writing in accordance with Section 1.3 of the APA. In accordance with Section 1.3(a) of the APA, Buyer provides notice that:

- A. Buyer will assume those Leases set forth on Schedule A enclosed with this letter (the “**Designated Leases**”); provided, however, Buyer has negotiated and/or is in the process of negotiating amended terms and conditions of certain of the Designated Leases (the “**Conditionally Designated Leases**”). Pursuant to the terms and conditions of the APA, as amended from time to time, Buyer’s assumption of each of the Conditionally Designated Leases will be subject to the execution of a lease amendment in a form and substance satisfactory to Buyer (and in the absence of such an amendment, Buyer does not intend to assume such Conditionally Designated Leases and such Conditionally Designated Leases shall be Rejected Leases, as herein defined).
- B. For purposes of clarity and to avoid confusion, Buyer has set forth on Schedule B enclosed with this letter those Leases which it does not intend to assume (the “**Rejected Leases**”).

In accordance with Section 1.3(a) of the APA, also enclosed with this letter is a proposed Schedule 1.3(a)-2 to the APA indicating the Designated Leases and the Conditionally Designated Leases.

Very Truly Yours,

RRG of Jacksonville, LLC

By: 
Name: MICHAEL L. SCHMICKLE
Title: MANAGER

Enclosures:

Schedule A – Designated Leases

Schedule B – Rejected Leases

Schedule 1.3(a)-2 to the APA (proposed)

cc:

Nelson Mullins Riley & Scarborough LLP

1905 NW Corporate Blvd., Suite 310

Boca Raton, FL 33431

Attn: Matthew M. Thompson

Email: matthew.thompson@nelsonmullins.com

Schedule A - Designated Leases

The following Leases, identified by Store Number and Store Address, will be assumed by Buyer (subject to the reservation of rights set forth in the foregoing letter):

Store Number	Store Address
322	601 Martin Luther King Blvd., Savannah, GA
1197	250 Monument Road, Jacksonville, FL
1226	14 W. DeRenne Ave., Savannah, GA
1404	11711 Abercorn Street, Savannah, GA
1471	1295 Ribaut Road, Beaufort, GA
1551	4241 August Road, Garden City, GA
1691	5015 New Jesup Hwy, Brunswick, GA
1724	5922 Merrill Road, Jacksonville, FL
2124	1710 Memorial Drive, Waycross, GA
2397	998 Sunset Blvd., Loc 129, Jesup, GA
3048	8770 Whyte Hardee Blvd, Hardeeville, SC
5571	415 US-80 East, Pooler, GA
6986	11031 Old St. Augustine Rd, Jacksonville, FL
7068	13180 Atlantic Blvd., Jacksonville, FL
7121	10142 Phillip's Hwy, Jacksonville, FL
8907	1162 Boone Ave., Ext E, Kingsland, GA
9942	9090 Merrill Road, Jacksonville, FL
10241	13060 Hwy. 251, Darien, GA
10893	815 Elma G. Miles Parkway, Hinesville, GA
11309	462581 SR 200, Yulee, FL
12107	115 Golden Isles Plaza, Brunswick, GA
12792	3527 Hwy. 84 West, Blackshear, GA
12906	8257 E. Main Street, Ridgeland, SC
13106	13404 Sutton Park Drive, Jacksonville, FL
13243	154 S. Main Street, Baxley, GA
14209	201 Museum Street, Hilton Head Island, SC
14614	602 Fair Road, Statesboro, GA
15499	13049 N. Main Street, Jacksonville, FL
16751	184 S. Hwy. 17, East Palatka, FL
17831	11761 Beach Blvd Ste 15, Jacksonville, FL
19411	2455 SR 207, St. Augustine, FL
23049	496 Jimmy DeLoach Parkway, Savannah, GA
23155	3 Baylor Brook Drive, Okatie, SC
23806	2430 Osborn Rd., St. Mary's, GA
24560	5910 Ogeehee Road, Savannah, GA
25882	106 N. Duval Street, Claxton, GA
25937	4660 Hwy. 17, Richmond Hill, GA
26749	13708 East Oglethorpe Hwy., Midway, GA
26868	7304 Hwy. 21, Port Wentworth, GA
27690	13200 W. Cleveland Street, Nahunta, GA

Schedule B - Rejected Leases

The following Leases, identified by Store Number and Store Address, will not be assumed by Buyer:

Store Number	Store Address
521	7923 White Bluff Road, Savannah, GA
2873	1940 S. 8th Street, Fernandina Beach, FL
10422	542370 US Highway 1, Callahan, FL
15760	4268 Ogeechee Road, Savannah, GA

Schedule 1.3(a)-2 to APA

Designated Leases:

Store Number	Store Address
322	601 Martin Luther King Blvd., Savannah, GA
1197	250 Monument Road, Jacksonville, FL
1226	14 W. DeRenne Ave., Savannah, GA
1404	11711 Abercorn Street, Savannah, GA
1471	1295 Ribaut Road, Beaufort, GA
1551	4241 August Road, Garden City, GA
1691	5015 New Jesup Hwy, Brunswick, GA
1724	5922 Merrill Road, Jacksonville, FL
2124	1710 Memorial Drive, Waycross, GA
2397	998 Sunset Blvd., Loc 129, Jesup, GA
3048	8770 Whyte Hardee Blvd, Hardeeville, SC
5571	415 US-80 East, Pooler, GA
6986	11031 Old St. Augustine Rd, Jacksonville, FL
7068	13180 Atlantic Blvd., Jacksonville, FL
7121	10142 Phillip's Hwy, Jacksonville, FL
8907	1162 Boone Ave., Ext E, Kingsland, GA
9942	9090 Merrill Road, Jacksonville, FL
10241	13060 Hwy. 251, Darien, GA
10893	815 Elma G. Miles Parkway, Hinesville, GA
11309	462581 SR 200, Yulee, FL
12107	115 Golden Isles Plaza, Brunswick, GA
12792	3527 Hwy. 84 West, Blackshear, GA
12906	8257 E. Main Street, Ridgeland, SC
13106	13404 Sutton Park Drive, Jacksonville, FL
13243	154 S. Main Street, Baxley, GA
14209	201 Museum Street, Hilton Head Island, SC
14614	602 Fair Road, Statesboro, GA
15499	13049 N. Main Street, Jacksonville, FL
16751	184 S. Hwy. 17, East Palatka, FL
17831	11761 Beach Blvd Ste 15, Jacksonville, FL
19411	2455 SR 207, St. Augustine, FL
23049	496 Jimmy DeLoach Parkway, Savannah, GA
23155	3 Baylor Brook Drive, Okatie, SC
23806	2430 Osborn Rd., St. Mary's, GA
24560	5910 Ogeehee Road, Savannah, GA
25882	106 N. Duval Street, Claxton, GA
25937	4660 Hwy. 17, Richmond Hill, GA
26749	13708 East Oglethorpe Hwy., Midway, GA
26868	7304 Hwy. 21, Port Wentworth, GA
27690	13200 W. Cleveland Street, Nahunta, GA

RRG of Jacksonville, LLC
525 South Flagler Drive, Suite 201
West Palm Beach, FL 33401

December 26, 2023

By E-Mail As Set Forth Below

Premier Kings of Georgia, Inc.
Premier Kings Inc., et al.
c/o Aurora Management Partners
112 South Tyron Street, Suite 1770
Charlotte, NC 28284
Attn: David Baker
dbaker@auroramp.com

Cole Schotz, P. C.
1201 Willis Street, Suite 320
Baltimore, MD 21231
Attn: Gary Leibowitz and Irving E. Walker
GLEibowitz@coleschotz.com
IWalker@coleschotz.com

Re: Asset Purchase Agreement by and between Premier Kings of Georgia, Inc. (“Seller) and RRG of Jacksonville, LLC, or its nominee(s) (“Buyer”) dated as of October 25, 2023, as amended by that certain First Amendment to Asset Purchase Agreement dated as of December 11, 2023 (collectively, the “APA”) Premier Kings, Inc., et al Chapter 11 Case No. 23-02871-TOM (United States Bankruptcy Court N.D. Ala.)

Gentlemen:

Buyer is writing in accordance with Section 1.3(e) of the APA. In accordance with Section 1.3(e) of the APA, Buyer provides notice that:

- A. Buyer hereby elects to remove the following Designed Leases from Schedule 1.3(a)-2 of the APA, such that the following Designated Leases are no longer Designated Leases and are now Rejected Leases:


Store Number	Store Address
6986	11031 Old St. Augustine Rd, Jacksonville, FL
7121	10142 Phillip's Hwy, Jacksonville, FL
17831	11761 Beach Blvd Ste 15, Jacksonville, FL
25882	106 N. Duval Street, Claxton, GA

- B. Further, the Assignable Franchise Agreement that corresponds to each Rejected Lease shall not be assumed by Buyer and is designated as a Rejected Franchise Agreement.

- C. For purposes of clarity: (i) Schedule A enclosed with this letter contains the Designated Leases that Buyer will assume (subject to Buyer's continuing rights pursuant to Section 1.3(e) of the APA) and constitutes Schedule 1.3(a)-2 of the APA; and (ii) Schedule B enclosed with this letter contains the Rejected Leases that Buyer does not intend to assume.

Very Truly Yours,

RRG of Jacksonville, LLC

By: 
Name: Randy Pianin
Title: Manager

Enclosures:

Schedule A – Designated Leases / Schedule 1.3(a)-2 to the APA
Schedule B – Rejected Leases

cc:

Nelson Mullins Riley & Scarborough LLP
1905 NW Corporate Blvd., Suite 310
Boca Raton, FL 33431
Attn: Matthew M. Thompson
Email: matthew.thompson@nelsonmullins.com
and
Attn: Peter Haley
Email: peter.haley@nelsonmullins.com

Schedule A - Designated Leases / Schedule 1.3(a)-2

The following Leases, identified by Store Number and Store Address, will be assumed by Buyer (subject to the reservation of rights set forth in the foregoing letter):

Store Number	Store Address
322	601 Martin Luther King Blvd., Savannah, GA
1197	250 Monument Road, Jacksonville, FL
1226	14 W. DeRenne Ave., Savannah, GA
1404	11711 Abercorn Street, Savannah, GA
1471	1295 Ribaut Road, Beaufort, GA
1551	4241 August Road, Garden City, GA
1691	5015 New Jesup Hwy, Brunswick, GA
1724	5922 Merrill Road, Jacksonville, FL
2124	1710 Memorial Drive, Waycross, GA
2397	998 Sunset Blvd., Loc 129, Jesup, GA
3048	8770 Whyte Hardee Blvd, Hardeeville, SC
5571	415 US-80 East, Pooler, GA
7068	13180 Atlantic Blvd., Jacksonville, FL
8907	1162 Boone Ave., Ext E, Kingsland, GA
9942	9090 Merrill Road, Jacksonville, FL
10241	13060 Hwy. 251, Darien, GA
10893	815 Elma G. Miles Parkway, Hinesville, GA
11309	462581 SR 200, Yulee, FL
12107	115 Golden Isles Plaza, Brunswick, GA
12792	3527 Hwy. 84 West, Blackshear, GA
12906	8257 E. Main Street, Ridgeland, SC
13106	13404 Sutton Park Drive, Jacksonville, FL
13243	154 S. Main Street, Baxley, GA
14209	201 Museum Street, Hilton Head Island, SC
14614	602 Fair Road, Statesboro, GA
15499	13049 N. Main Street, Jacksonville, FL
16751	184 S. Hwy. 17, East Palatka, FL
19411	2455 SR 207, St. Augustine, FL
23049	496 Jimmy DeLoach Parkway, Savannah, GA
23155	3 Baylor Brook Drive, Okatie, SC
23806	2430 Osborn Rd., St. Mary's, GA
24560	5910 Ogeehee Road, Savannah, GA
25937	4660 Hwy. 17, Richmond Hill, GA
26749	13708 East Oglethorpe Hwy., Midway, GA
26868	7304 Hwy. 21, Port Wentworth, GA
27690	13200 W. Cleveland Street, Nahunta, GA

Schedule B - Rejected Leases

The following Leases, identified by Store Number and Store Address, will not be assumed by Buyer:

Store Number	Store Address
521	7923 White Bluff Road, Savannah, GA
2873	1940 S. 8th Street, Fernandina Beach, FL
6986	11031 Old St. Augustine Rd, Jacksonville, FL
7121	10142 Phillip's Hwy, Jacksonville, FL
10422	542370 US Highway 1, Callahan, FL
15760	4268 Ogeechee Road, Savannah, GA
17831	11761 Beach Blvd Ste 15, Jacksonville, FL
25882	106 N. Duval Street, Claxton, GA

Exhibit B

GROUND LEASE

THIS GROUND LEASE (the "Lease") is made and entered into this 8 day of May, 2018 (the "Effective Date"), by and between PORT WENTWORTH FEE OWNER, LLC, a Delaware limited liability company ("Landlord"), and PREMIER KINGS OF GEORGIA, INC., a Georgia corporation ("Tenant").

ARTICLE I. DEMISE OF PREMISES

Section 1.01. Demise. For and in consideration of the rents, terms, covenants and agreements hereinafter set forth on the part of Tenant and Landlord to be paid, kept, observed and performed, Landlord does hereby demise and lease to Tenant, and Tenant does hereby take and hire from Landlord, upon and subject to the terms and conditions contained herein, that certain tract of land, consisting of approximately 1.05 acres, lying and being within the shopping center commonly known as Waterford Commons located in Chatham County, Georgia (the "Shopping Center"), known as "Outparcel B" on the Site Plan attached hereto as Exhibit "A" and incorporated herein by reference (the "Site"), and as more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference, together with all improvements now located thereon and all appurtenances thereunto belonging (said Site, improvements and appurtenances hereinafter collectively referred to as the "Premises"), subject to all encumbrances of record and as would be shown on a current, accurate ALTA survey.

Section 1.02. Appurtenant Rights and/or Easements. The Premises are leased by Landlord to Tenant together with, but subject to the terms and conditions of this Lease, the rights, privileges and easements appurtenant to the Site created and established by virtue of that certain Declaration of Easements, Covenants, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) dated September 19, 2005, recorded in Deed Book 294Q, Page 361 in the Official Records of the Chatham County Clerk in Chatham County, Georgia, as affected by that certain Amended and Restated Declaration of Easements, Covenants, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) dated March 19, 2007, recorded in Deed Book 322U, Page 457, aforesaid Records, as further affected by that certain First Amendment to Amended and Restated Declaration of Easements, Covenants, Restrictions and Maintenance Responsibilities (Shopping Center and Outparcel Property) dated February 21, 2008, recorded in Deed Book 337V, Page 103, aforesaid Records, and as further affected by that certain Assignment and Assumption of Declarant's Rights dated May 31, 2015, recorded in Deed Book 387Z, Page 942, aforesaid Records (collectively, the "Declaration"). In the event there is any conflict between the rights appurtenant to the Site in the Declaration and the terms of this Lease, the terms of this Lease shall prevail.

Section 1.03. Reservation of Easements. Landlord hereby reserves for the benefit of the property owned by Landlord in the Shopping Center all easements over and across the Site and other rights conferred upon "Declarant" (as defined in the Declaration) pursuant to the Declaration.

ARTICLE II. TERM OF LEASE

Section 2.01. Term of Lease. The term of this Lease (the "Initial Term") shall commence on the Rent Commencement Date (as defined below) and unless sooner terminated or extended under the terms and conditions contained herein, shall continue until 11:59 p.m. (local time) on the day preceding the twentieth (20th) anniversary of the Rental Commencement Date (as hereinafter defined), plus the remainder of the month in which the twentieth anniversary of the Rental Commencement Date occurs if the Rental Commencement Date is not on the first day of a calendar month.

Section 2.02. Extended Term. Provided this Lease has not been terminated for any reason prior to the expiration of the Initial Term or current Extended Term (as defined below), as applicable, unless Tenant has issued a Non-Renewal Notice in accordance with the requirements of this Section 2.02, the Term of this Lease shall automatically be extended for four (4) successive additional periods of five (5) years each (each such additional period being herein referred to as an "Extended Term"). Each Extended Term shall be upon all of the same terms, covenants and conditions of this Lease then applicable except that the Rent (as defined below) during the Extended Terms shall be as set forth in Section 3.03 hereof. The term "Term" or the phrase "Term of this Lease" as used in this Lease shall mean the Initial Term and any Extended Term which may become effective. Tenant shall have the right to cause any or all Extended Terms which have not yet commenced to be terminated by written notice to Landlord (a "Non-Renewal Notice") given not less than one hundred eighty (180) days before the expiration of the Initial Term or the then current Extended Term, as the case may be. Unless Tenant shall send a Non-Renewal Notice to Landlord as provided hereinabove, then, subject to the conditions contained in this Section 2.02, this Lease shall automatically extend as provided herein. All Extended Terms shall be sequential, i.e., Tenant shall not have the right to issue a Non-Renewal Notice for less than all of the Extended Terms which have not yet commenced.

ARTICLE III. RENT AND ADDITIONAL RENT

Section 3.01. Pre-Paid Rent. Within two (2) business days of the Effective Date, Tenant shall deposit Ten Thousand and No/100 Dollars (\$10,000.00) ("Pre-paid Rent") with Laura Kaltz at Fidelity National Title Insurance Company, 5565 Glenridge Connector, Suite 300, Atlanta, Georgia 30342 ("Landlord's Agent") to be held in escrow, whereby such Pre-paid Rent shall be solely applied to (i) the first (1st) month of Rent (as hereinafter defined) commencing on the Rental Commencement Date, and (ii) the first (1st) month of Rent for the second Lease Year (as defined below).

Section 3.02. Rental Payments. Subject to Section 3.01, commencing on the Rental Commencement Date, Tenant covenants and agrees to pay Landlord, in lawful money of the United States of America, the base annual rent (hereinafter referred to as "Rent") specified in Section 3.03 hereunder, plus any and all additional sums and charges that come due under the terms and conditions of this Lease (any and all such sums and charges hereinafter referred to as "Additional Rent"). Rent shall be payable, in advance and without demand, in twelve (12) equal monthly installments for each Lease Year, on the first day of each calendar month during the Term, commencing on the Rental Commencement Date, at the office of Landlord, or at such

other address as Landlord may from time to time designate in writing to Tenant. If the Rental Commencement Date is other than the first day of a calendar month, then Rent for such month shall be prorated on a daily basis and the installment so prorated shall be paid in advance on the Rental Commencement Date.

Section 3.03. Rent. Commencing on the Rental Commencement Date and thereafter during the Term, Tenant shall pay Rent as follows:

<u>Lease Year</u>	<u>Base Annual Rent</u>	<u>Base Monthly Rent</u>
1 – 5	\$60,000.00	\$5,000.00
6 – 10	\$60,000.00	\$5,000.00
11 – 15	\$60,000.00	\$5,000.00
16 – 20	\$60,000.00	\$5,000.00
21 – 25 (1 st Extension)	\$66,000.00	\$5,500.00
26 – 30 (2 nd Extension)	\$72,600.00	\$6,050.00
31 – 35 (3 rd Extension)	\$79,860.00	\$6,655.00
36 – 40 (4 th Extension)	\$87,846.00	\$7,320.50

For purposes of this Lease the term “Lease Year” shall mean each twelve (12) full calendar month period during the Term commencing on the Rental Commencement Date and on each anniversary thereof. In addition, for purposes of this Lease the “Rental Commencement Date” shall mean the date which is the earlier of: (i) the date when Tenant opens for business to the public in the Premises, or (ii) the expiration of the Construction Period (as defined below).

Section 3.04. Additional Rent. In addition to Rent, Tenant shall pay Additional Rent during the Term of any and all other sums and charges required to be paid by Tenant pursuant to this Lease, whether designated as additional rent or not, and such sums and charges shall be collectible when due as Additional Rent as provided herein and shall be subject to all provisions of this Lease as to default in the payment of rent.

ARTICLE IV. TAXES, ASSESSMENTS AND CHARGES

Section 4.01. Taxes and Assessments. Tenant covenants and agrees to discharge and pay before the same become delinquent and before any fine, penalty, or interest may be added for nonpayment, any and all taxes, assessments, license or permit fees, excises, imposts and charges of every nature and classification (all or any one of which are hereinafter referred to as “Taxes”) that at any time during the Term are levied, assessed, charged or imposed upon the Premises, this Lease, the leasehold estate of Tenant created hereby, the Improvements, or any Rent or Additional Rent reserved or payable hereunder, including any gross receipts or other taxes levied upon, assessed against or measured by the Rent or Additional Rent. Unless the creation of separate assessments are not permitted under applicable law, Landlord may, but shall not be obligated to, cause the Improvements to be assessed separately for real estate tax purposes from all other buildings and structures within the Shopping Center and Landlord may, but shall not be obligated to, cause the land within the Shopping Center to be separately assessed for real estate tax purposes from the buildings and improvements within the Shopping Center. For all tax years during the Term for which the Improvements, the other buildings and structures within the

Shopping Center and the land within the Shopping Center are separately assessed for real estate tax purposes in the manner described above, Tenant shall pay to Landlord, in the manner otherwise provided under this Section 4.01, one hundred percent (100%) of the Taxes levied and assessed upon the Improvements.

Landlord shall notify Tenant of Tenant's share of the Taxes and will furnish Tenant with a copy of applicable tax bills and calculation of Tenant's share of Taxes within thirty (30) days after receipt by Landlord thereof. Tenant shall pay its share of the Taxes as set forth above to Landlord, not later than ten (10) days before the taxing authority's delinquency date or ten (10) days after receipt of a bill from Landlord, whichever is later.

Section 4.02. General. Tenant shall prepare and file all reports and returns required by law and governmental regulations with respect to any Taxes and shall furnish copies thereof to Landlord, if requested by Landlord. Tenant shall promptly forward to Landlord copies of any bill or assessment respecting any Taxes upon Tenant's receipt thereof from the taxing authority. Likewise, Landlord shall promptly furnish to Tenant copies of any bill or assessment respecting any Taxes upon Landlord's receipt thereof from the taxing authority. Upon request of Landlord, Tenant agrees to furnish and deliver to Landlord receipts evidencing the payment of any Taxes payable by Tenant as provided in Section 4.01 hereof. Any Taxes for the year in which the Term of this Lease commences and the year in which it terminates or expires shall be prorated on a daily basis between Landlord and Tenant. If Tenant fails to pay any Taxes when due, Landlord, without declaring a default hereunder and without relieving Tenant of any liability hereunder, may, but shall not be obligated to, pay any such Taxes and any amount so paid by Landlord, together with all costs and expenses incurred by Landlord in connection therewith, shall constitute Additional Rent hereunder and shall be paid immediately by Tenant to Landlord on demand with Default Interest thereon in the manner provided in Section 15.05 hereof. Tenant's obligation to pay Taxes which accrue during the Term shall survive any termination of this Lease.

Section 4.03. Impact Fees. Tenant covenants and agrees that it shall pay any charges in the nature of impact fees, environmental fees and other similar charges necessary to bring all utilities to the boundary line of the Site.

Section 4.04. Utility Charges. Tenant covenants and agrees that it shall pay when due all charges for all public or private utility services including, but not limited to, water, sewer, gas, light, heat and air conditioning, telephone, electricity, cable television, trash removal, power and other utility and communications services that at any time during the Term are rendered or become due and payable with respect to the Premises. Tenant shall, at its sole cost and expense, obtain all necessary permits and approvals and install all meters, wires, conduits, transformers, and other equipment required for supplying such utility services to the Premises, and Tenant shall pay all tap and connection fees pertaining to such utilities. Landlord shall have no responsibility and shall bear no cost with respect to the installation, maintenance, or repair of such lines.

Section 4.05 Reimbursement Obligations.

(a) Tenant shall be responsible for Landlord's pro-rata share of the Reimbursement Obligations (as defined in the Declaration) set forth in Section 5 of the Declaration.

(b) Tenant shall pay to Landlord its share of the Reimbursement Obligations in equal monthly installments in advance of the first day of each calendar month as Additional Rent. Within one hundred twenty (120) days after the end of each calendar year, Landlord shall furnish Tenant with a written statement providing reasonable detail of the actual costs of the Reimbursement Obligations paid or incurred during the preceding calendar year and showing the calculation of the pro rata share allocated to the Site. Any overpayments of Reimbursement Obligations as may be reflected in said statement shall be applied against Tenant's next due installments of Reimbursement Obligations. Any deficiency in the total monthly payments for the year in relation to its share of actual costs shall be paid by Tenant to Landlord within thirty (30) days after such Tenant's receipt of the annual statement.

ARTICLE V. NET LEASE; NON-TERMINATION

Section 5.01. Net Lease. Except as otherwise provided to the contrary herein, this Lease is a net lease and Rent and Additional Rent shall be paid without notice, demand (except as expressly provided herein in the case of certain Additional Rent), counterclaim, setoff, recoupment, deduction or defense and, without abatement, suspension, deferment, diminution or reduction. It is the purpose and intent of Landlord and Tenant that Rent and Additional Rent (where payable to Landlord) shall be absolutely net to Landlord, so that this Lease shall yield, net to Landlord, the Rent specified in Section 3.03 hereof throughout the Term, and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Premises which may arise and become due as specified in Sections 4.01, 4.02, 4.03, 4.04 and 4.05, or elsewhere in this Lease during the Term shall be paid by Tenant, and that Landlord shall be indemnified and saved harmless by Tenant from and against the same.

Section 5.02. Non-Termination. Except as otherwise expressly provided in this Lease, this Lease shall not terminate nor shall Tenant have any right to terminate this Lease or be entitled to the abatement of any Rent or Additional Rent hereunder or any reduction thereof, nor shall the obligations of Tenant under this Lease be otherwise affected, by reason of (a) any damage to or destruction of all or any portion of the Premises from whatever cause, (b) the prohibition, limitation or restriction of or interference with Tenant's use of all or any portion of the Premises, or (c) for any other cause, whether similar or dissimilar to the foregoing.

ARTICLE VI. PERMIT/LIMITED DILIGENCE PERIOD; PREMISES;
CONSTRUCTION OF IMPROVEMENTS

Section 6.01. Intentionally Omitted.

Section 6.02. Permit/Limited Diligence Period. Tenant shall have a period of seventy five (75) days following the Effective Date (the "Permit/Limited Diligence Period") to obtain any and all permits, licenses or governmental approvals (the "Permits") which are necessary, in Tenant's sole discretion, to construct and operate a Burger King restaurant on the Site, and also to obtain a geotechnical report reflecting soil conditions reasonably sufficient to support the contemplated Burger King development, a Phase I environmental report which reveals no evidence of material adverse environmental conditions (ie, a Phase II is not needed or recommended), an ALTA survey, and a leasehold title commitment evidencing good title to the Premises ("Basic Diligence Items"), Tenant agrees to use commercially diligent efforts to obtain such Permits and Basic Diligence Items in an expeditious manner and shall immediately notify Landlord of receipt thereof. In the event Tenant fails to obtain all Permits or is unable to in good faith obtain the Basic Diligence Items during the Permit/Limited Diligence Period, Landlord shall be entitled (without obligation) to a period of seventy five (75) days after the Permit/Limited Diligence Period ("Landlord Permit/Limited Diligence Period") in which to pursue the Permits or obtain the Basic Diligence Items on Tenant's behalf. If Landlord does not elect to exercise the Landlord Permit/Limited Diligence Period, or Landlord is unable to obtain all Permits and/or Basic Diligence Items on behalf of Tenant during the Landlord Permit/Limited Diligence Period, Tenant shall have the right to terminate this Lease and neither party shall have further obligations, rights, remedies or claims of liability to the other hereunder, except for such obligations that expressly survive termination of this Lease. If Tenant terminates this Lease during the Permit/Limited Diligence Period for any reason other than failure to secure the Permits or because of failure to obtain the Basic Diligence Items, and provided Landlord is not then in default under any provision of this Lease that provides Tenant the right to terminate, Tenant shall pay Landlord, within thirty (30) days of such termination, a termination fee of \$25,000.00, and neither party shall have further obligations, rights, remedies or claims of liability to the other hereunder, except for such obligations that expressly survive termination of this Lease.

Section 6.03. Condition and Suitability of the Premises. TENANT AGREES THAT TENANT IS LEASING THE PREMISES "AS IS," AND LANDLORD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO FITNESS, MERCHANTABILITY, USE OR CONDITION OF THE PREMISES. Tenant leases the Premises without representation or warranty by Landlord, express or implied, in fact or by law, and without recourse, with respect to (a) the condition of the Premises, including, but not limited to the soil and subsurface conditions thereof, and (c) access to or from the Premises.

Section 6.04. Intentionally Omitted.

Section 6.05. Use of the Premises. Tenant agrees that, subject to the limitations of this Lease, it will construct and open for business on the Site a Burger King restaurant with a drive through service (the "Permitted Use"), and shall thereafter use and operate the Premises for the Permitted Use and for no other purpose whatsoever without the prior written consent of Landlord, not to be unreasonably withheld, provided any such use is not prohibited by any other existing uses within the Shopping Center at that time or as set forth in the Declaration.

Section 6.06. Tenant Exclusive. Landlord agrees that, commencing on the Effective Date and for a period of fifteen (15) years thereafter or until a Burger King restaurant ceases to operate on the Site for a period of more than seventy-five (75) days consecutively, whichever occurs first, Landlord, for itself and for its successors and assigns, shall not allow (i) any portion of that certain adjacent property located in the Shopping Center as depicted on Exhibit "D" attached hereto and incorporated herein (the "Adjacent Property") to be leased, used or occupied by or as a McDonald's, Hardee's or Wendy's; nor (ii) any portion of the Adjacent Property to be leased, used or occupied as "a business selling or serving hamburgers as a principal menu item". For purposes of this Lease, "a business selling or serving hamburgers as a principal menu item" means a quick serve restaurant deriving fifty (50%) or more of its food and beverage gross sales from the sale of hamburgers.

Section 6.07. Restricted Uses. Notwithstanding anything else to the contrary provided in this Lease, in no event shall Tenant use the Premises for any of the purposes set forth in Exhibit "C" attached hereto and by reference made a part hereof.

Section 6.08. Construction of Improvements. The layout of the Site and all buildings, signs, landscaping and related improvements (the "Improvements") constructed upon the Site by Tenant shall be initially constructed in substantial accordance with plans for such work approved by Landlord as provided herein. Within forty five (45) days following the Effective Date and prior to the commencement of the construction and installation of any Improvements whatsoever on the Site or any part thereof, Tenant shall deliver to Landlord a site plan, scaled elevations, exterior design concepts, material selection and color for the exterior surfaces of the proposed Improvements, including signage and landscaping plans. Landlord shall either approve, disapprove, or make recommendations for changes in such plans or any revisions thereto within fifteen (15) days of the receipt thereof. Failure to approve, disapprove, or make recommendations for changes within said fifteen (15) day period shall constitute an approval of such plans as submitted. Any disapproval or recommendation for change shall specify with particularity the reason therefor. Upon submission of any disapproval or recommendation for change, Landlord shall consult with Tenant and both parties shall use good faith efforts to establish approved plans for the proposed work. Landlord shall exercise its discretion with respect to approval or disapproval of any such plans in a reasonable and uniform manner for the mutual benefit of the Shopping Center and all of the occupants thereof, and consistent with the Declaration.

Tenant shall have the lesser of (i) one hundred twenty (120) days following receipt of the Permits, or (ii) one hundred twenty (120) days following the expiration of the Permit/Limited Diligence Period in order to construct and install the Improvements on the Site substantially in accordance with the mutually approved plans, except in the case of changes required to comply with applicable governmental laws, ordinances or regulations (the "Construction Period").

Upon the completion of the initial construction and installation of any such Improvements, except in the case of changes required to comply with applicable governmental laws, ordinances or regulations, the same shall not be thereafter changed or altered without the prior written consent of Landlord if such changes or alterations would materially and substantially modify the site layout, building and landscaping materials, elevations, or exterior

appearance of the Improvements, or add to the footprint of the building, which approval shall be sought pursuant to the terms set forth above and, subject to the requirements of the other provisions of this Lease, which approval shall not be unreasonably withheld in accordance with the criteria set forth above. The approval of any plans and specifications hereunder by Landlord shall not impose any liability or responsibility whatsoever upon Landlord with respect to the compliance or non-compliance of any such plans and specifications, or any improvements erected or installed in accordance therewith, with applicable zoning ordinances, building codes, or other applicable governmental laws, ordinances, or regulations.

All buffer strips and other undeveloped land areas on the Site, if any, shall be landscaped by the Tenant with trees, shrubs, or suitable ground cover (which may include grass) in a uniform manner consistent with standards of first class shopping center development and in accordance with governmental requirements.

Within forty five (45) days after Tenant's completion of the Improvements, Tenant shall deliver to Landlord, at Tenant's expense, copies of the following items: (a) an "as-built" survey of the Improvements, certified by a registered land surveyor licensed by the State of Georgia, showing the Improvements and utility easements in place in relation to the boundaries of the Site; (b) an A.I.A. form architect's certificate of completion, certifying that the Improvements have been constructed and completed in substantial compliance with the approved plans and specifying the particularities of any variation therefrom; (c) a final contractor's affidavit and waiver of liens with respect to the Premises executed by the general contractor(s) performing work or supplying labor or materials in connection with the Improvements; and (d) a certificate of occupancy for the Premises by the appropriate governmental authorities.

Section 6.09. Tenant's Signage. Tenant shall be entitled to install signage on the Premises, subject to compliance with all applicable signage ordinances and Tenant obtaining all applicable governmental approvals, and further subject to Landlord's approval of the dimensions, design and materials for such signage, which approval shall not be unreasonably withheld and may be conditioned upon the conformity of such signage with reasonable uniform signage criteria to be developed for the Shopping Center by Landlord. Tenant shall maintain all such signage in good condition and repair at all times. If any damage is done to Tenant's signage, Tenant shall repair (or commence to repair and proceed diligently to complete) same within ten (10) days or Landlord shall have the right to repair such sign and bill Tenant for the cost of the repairs. Tenant shall remove such signage at the expiration or sooner termination of this Lease and shall repair any damage caused by such removal.

Section 6.10. Recapture. Notwithstanding anything in this Lease to the contrary, in the event Tenant has not commenced construction of the Improvements within eight (8) months of the Effective Date in accordance with approved plans, Landlord shall have the right to terminate this Lease, and Tenant shall pay Landlord a termination fee of \$35,000.00 to compensate Landlord for Landlord's damages as a result of Tenant's failure to commence construction of the Improvements, the parties agreeing that Landlord's damages in the event Tenant fails to commence construction of the Improvements within eight (8) months of the Effective Date are difficult to ascertain at this time and the amount set forth herein is a reasonable estimate of those damages and represents full and liquidated damages.

ARTICLE VII. COMPLIANCE WITH LAW; LIENS AND ENCUMBRANCES

Section 7.01. Compliance with Laws. Tenant, at its sole cost and expense, shall comply with and cause the Premises and any and all Improvements located thereon to comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances or recommendations affecting the Premises or any part thereof, or the use thereof, whether foreseen or unforeseen, including those which require "Repairs", as that term is defined in Section 8.01 hereof, or any structural changes in the Improvements.

Section 7.02. Tenant's Agreement Relating to Hazardous Substances. Tenant hereby covenants that Tenant and its agents, employees and contractors will not generate, store, use, treat or dispose of any "Hazardous Substances" (as defined below) in, on or at the Premises or any part of the Improvements, except for Hazardous Substances as are commonly legally used or stored (and in such amounts as are commonly legally used or stored) as a consequence of using the Premises for the Permitted Use, but only so long as Tenant strictly complies or causes compliance with all laws, statues, rules, orders, regulations, ordinances and decrees concerning the use or storage of such Hazardous Substances. Tenant further covenants that neither the Premises nor any part of the Improvements shall ever be used by Tenant or its agents, contractors or employees as a dump site or storage site (whether permanent or temporary) for any Hazardous Substances during the Term.

Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Landlord by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release if caused or permitted in whole or in part by Tenant, its agents, contractors, employees, representatives, licensees, subtenants or concessionaires on or from, the Premises, the Improvements or the Shopping Center of any Hazardous Substance, including, without limitation, any losses, liabilities, including without limitation strict liability, damages, injuries, expenses, including without limitation reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, as same may be amended ("CERCLA"), any so called federal, state or local "Superfund" or "Superlien" laws, or any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance.

Landlord shall indemnify and hold Tenant harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any kind whatsoever paid, incurred or suffered by, or asserted against, Tenant by any entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release if caused solely by Landlord or Landlord's agents, in the Shopping Center of any Hazardous Substance.

For purposes of this Lease, "Hazardous Substances" shall mean and include those elements or compounds which are contained in the lists of hazardous substances or wastes now or hereafter adopted by the United States Environmental Protection Agency (the "EPA") or the lists of toxic pollutants designated now or hereafter by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious or radioactive by CERCLA or any Superfund law or any Superlien law or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

Landlord shall have the right but not the obligation, and without limitation of Landlord's rights under this Lease, to enter onto the Premises or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Substance following receipt of any notice from any person or entity (including without limitation the EPA) asserting the existence of any Hazardous Substance in, on or at the Premises or any part thereof which, if true, could result in an order, suit or other action against Tenant and/or Landlord; provided, however, Landlord agrees that, except in the case of an emergency, Landlord will take such action only after written notice to Tenant of the alleged existence of Hazardous Substances and, in the event Landlord is claiming indemnity by Tenant pursuant to the terms hereof, should Tenant fail within a reasonable period of time following receipt of such notice to commence, or fail to thereafter diligently pursue to completion, the appropriate action to clean-up, remove, resolve or minimize the impact of such Hazardous Substances. All reasonable costs and expenses incurred by Landlord in the exercise of any such rights, which costs and expenses result from the violation of the covenants and agreements of Tenant contained in the first paragraph of this Section 7.02, shall be deemed Additional Rent under this Lease and shall be payable by Tenant upon demand.

This Section 7.02 shall survive cancellation, termination or expiration of this Lease.

Section 7.03. Liens and Encumbrances. Tenant shall not create or permit to be created or to remain, and shall promptly discharge, at its sole cost and expense, any lien, encumbrance or charge (all or any one of which hereinafter referred to as "Lien") upon the Premises, or any part thereof or upon Tenant's leasehold estate hereunder, that arises from the use or occupancy of the Premises by Tenant or by reason of any labor, service or material furnished or claimed to have been furnished to or for the benefit of Tenant or by reason of any construction or repairs by or at the direction of Tenant of all or any part of the Improvements.

Notice is hereby given that Landlord shall not be liable for the cost and expense of any labor, services or materials furnished or to be furnished with respect to the Premises at or by the direction of Tenant or anyone holding the Premises or any part thereof by, through or under Tenant and that no laborer's, mechanic's or materialman's or other lien for any such labor, service or materials shall attach to or affect the interest of Landlord in and to the Premises. Nothing contained in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any

materials for any improvements or Repairs to or of the Premises or any part thereof, nor as giving Tenant any right, power or authority on behalf of Landlord to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any Lien against the Premises or any part thereof.

If Tenant fails to discharge any Lien created or established in violation of Tenant's covenant herein, and if such failure continues for a period of thirty (30) days after receipt by Tenant of notice of the existence of the Lien, Landlord, without declaring a default hereunder and without relieving Tenant of any liability hereunder, may, but shall not be obligated to, discharge or pay such Lien (either by paying the amount claimed to be due or by procuring the discharge of such Lien by deposit or by bonding proceedings), and any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith shall constitute Additional Rent hereunder and shall be paid immediately by Tenant to Landlord upon demand by Landlord, with Default Interest thereon from the date of demand by Landlord.

ARTICLE VIII. REPAIRS AND ALTERATIONS.

Section 8.01. Maintenance and Repair. Tenant, at all times during the Term, at its expense, shall keep the Premises, including, without limitation, the Improvements, in good order, condition and repair, ordinary wear and tear excepted, and shall promptly make or cause to be made any and all necessary repairs, replacements, or renewals (all or any one of which herein referred to as "Repairs"). All Repairs shall be at least equal in quality and class to the original work or to a lesser standard approved in writing by Landlord. The term "Repairs" includes, without limitation, all necessary repairs and replacements of the Premises, structural or otherwise, ordinary or extraordinary, foreseen and unforeseen, including but not limited to the roofs, foundations, all interior and exterior walls, all structural and exterior portions of the buildings and other improvements, exterior and interior windows, doors and entrances, signs, floor coverings, columns and partitions, lighting, heating, plumbing and sewerage facilities, and air conditioning equipment. Landlord shall not be required to make any repairs of any kind or nature in, on or to the Premises during the Term.

Section 8.02. Alterations. Tenant shall have the right to make any modifications, alterations or additions to the Improvements subsequent to the initial construction of such Improvements as may be necessary for the proper conduct of its business and use of the Premises as permitted herein. Any such alterations shall be expeditiously completed by Tenant in a good and workmanlike manner in compliance with the Declaration and all applicable laws, rules, regulations, and ordinances, then in effect.

ARTICLE IX. DAMAGE AND DESTRUCTION.

Section 9.01. Notice. In the event of any material damage to or destruction of all or any part of the Premises, Tenant will promptly give written notice thereof to Landlord, which notice shall generally describe the nature and extent of such damage or destruction. There shall be no abatement of or adjustment to Rent or Additional Rent under this Lease as a result of any damage or destruction.

Section 9.02. Restoration. Subject to the following grammatical paragraph, in the event of any damage to or destruction of all or any part of the Improvements and whether or not the insurance proceeds on account of such damage or destruction shall be sufficient for the purpose, or in the event of any condemnation of the Premises of the character described in Section 16.02 hereof and whether or not the proceeds of any award received on account of such condemnation shall be sufficient for the purpose, Tenant, at its sole cost and expense, shall promptly commence and shall thereafter diligently and continuously prosecute to completion the restoration, replacement or rebuilding of the Improvements and/or the Premises, as the case may be, as nearly as practicable to its value, architectural condition and character as existed immediately prior to such damage, destruction or condemnation (but with such changes in the design, type or character of the Improvements as Tenant may deem desirable, subject to the prior written approval of Landlord, of any such changes, which approval shall not be unreasonably withheld so long as the Improvements have an architectural style which is similar to, and a level of quality which is at least equal to, the Improvements originally constructed by Tenant and are not inconsistent with the terms of the Declaration) so as to permit resumption of the use of the Premises for the Permitted Use to as nearly the same degree as possible (pending completion of the work, such restoration, replacement or rebuilding, together with any temporary repairs and property protection, are herein collectively referred to as "Restoration").

In the event damage to or destruction of a substantial portion of the Improvements occurs within the last year of the Term, Tenant shall have the right, at its election and in lieu of fulfilling its obligations under this Section 9.02, to terminate this Lease upon thirty (30) days' prior written notice to Landlord by paying to Landlord, simultaneously with such notice, a sum equal to all Rent and Additional Rent due from Tenant to Landlord to such termination date and paying or assigning to Landlord all insurance proceeds due on account of any damage or destruction of the Premises or any part thereof less and excepting only the amount actually expended by Tenant in demolishing and removing all damaged Improvements and in clearing and cleaning the surface area of the Site, and by surrendering the Premises to Landlord, on or before the effective date of such termination, in a clean and sightly condition, free of any and all debris and free of damaged Improvements. Tenant's obligation to demolish and remove Improvements damaged prior to the termination of this Lease shall survive any termination of this Lease.

Section 9.03. Application of Proceeds. Except as otherwise provided in Section 9.02 hereof, insurance proceeds received on account of any damage to or destruction of the Premises or any part thereof shall be applied to pay for the cost of Restoration. To the extent any such proceeds shall be inadequate to pay such cost, it shall be Tenant's sole cost and obligation to pay all costs of Restoration.

ARTICLE X. INSURANCE

Section 10.01. Tenant's Insurance. Commencing on the Effective Date of this Lease (with regard to the insurance required by subsection (b) below) and on the date Tenant shall commence construction of any Improvements on the Site (with regard to the insurance required by subsections (a) and (c) below), and at all times thereafter through and during the Term, Tenant shall keep the Premises insured against the risks and hazards and with coverage in amounts not less than those specified as follows:

(a) Insurance against the risks customarily included under "special form" policies with respect to improved properties similar to the Premises in an amount equal to the "full insurable value" (which as used herein shall mean the full replacement value, including the costs of debris removal, which amount shall be determined annually) of the Improvements, and which amount shall be sufficient to prevent either Landlord or Tenant from becoming a coinsurer of any loss; and

(b) Commercial general public liability insurance (including, but not limited to, coverage for any construction on or about the Premises) covering the legal liability of Tenant against all claims for any bodily injury or death of persons and for damage to or destruction of property occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways and arising out of the use or occupation of the Premises by Tenant; such insurance to provide for a limit of not less than Three Million and No/100 Dollars (\$3,000,000.00) for personal injury or death to any one person, for a limit of not less than Five Million and No/100 Dollars (\$5,000,000.00) for personal injury or death to any number of persons arising out of any one occurrence, and for a limit of not less than One Million and No/100 Dollars (\$1,000,000.00) in respect of any instance of property damage. Commencing on the fifth (5th) anniversary of the Rental Commencement Date, and continuing thereafter on the fifth (5th) anniversary of the previous "Adjustment Date" (as defined below) during the Term (each of such dates being referred to in this Section 10.01 and in Section 10.02 below as an "Adjustment Date"), the aforesaid minimum amounts of insurance coverage shall be increased to such limits as are then prevailing within the restaurant industry.

(c) Business interruption insurance sufficient to cover Rent payable under this Lease for a period of not less than one (1) year.

Section 10.02. Requirements. All insurance required under Section 10.01 hereof shall be written by companies of recognized financial standing which are authorized to do insurance business in the State of Georgia and shall provide that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by Landlord of written notice thereof. All liability policies shall name Landlord, any mortgagee of Landlord, and any other party designated by Landlord as additional insureds. Tenant's casualty policy shall expressly provide (a) an effective waiver by the insurer of all rights of subrogation against Landlord, and (b) that during construction of any Improvements on the Premises such policy shall be in "builder's risk" form. A copy of each policy required to be carried by Tenant hereunder or of an acceptable certificate of insurance in force, issued by the insurer as provided in Section 10.01 hereof, shall be delivered to Landlord on or before the date Tenant is required to obtain the applicable insurance, and with respect to renewal or replacement policies, not less than ten (10) days prior to expiration of the policy being renewed or replaced. Tenant may obtain the insurance required hereunder by endorsement to blanket insurance policies, provided that said policies fulfill the requirements of this Section 10.02, that said policies reference the Premises, and that Landlord receives satisfactory written proof of coverage. Tenant shall permit the Landlord to examine all policies evidencing the insurance required to be maintained under this Lease.

Section 10.03. Mutual Release and Waiver of Subrogation. Landlord and Tenant hereby release each other and anyone claiming through or under the other by way of subrogation or otherwise from any and all liability for any loss or damage to property, whether caused by the negligence or fault of the other party, to the extent of any recovery made by the parties hereto for such loss or damage under any casualty insurance policy now or hereafter issued covering the property of such party. In addition, Landlord and Tenant shall cause each such insurance policy carried by them to be written to provide that the insurer waives all rights of recovery by way of subrogation.

ARTICLE XI. INDEMNIFICATION

Section 11.01. Indemnification by Tenant. Tenant covenants and agrees to pay, defend, indemnify and save harmless Landlord from and against any and all liability, loss, damage, cost, expense (including without limitation all attorneys' fees and expenses of Landlord), causes of action, suits, claims, demands or judgments of any nature whatsoever based upon, arising from or connected in any manner with (a) injury to or the death of any person or damage to any property occurring on the Premises, (b) the use, non-use, condition, possession, construction, operation, maintenance, management or occupation of the Premises or any part thereof, or (c) any negligence or intentional misconduct on the part of Tenant or its agents, contractors, servants or employees or the negligence or intentional misconduct on the part of Tenant's licensees or invitees while they are located at the Premises. If any action or proceeding should be brought against Landlord based upon any such claim, Tenant, upon notice from Landlord, shall cause such action or proceeding to be defended at Tenant's expense by counsel selected by Tenant and reasonably satisfactory to Landlord. The agreement of indemnification set forth in this Section 11.01 shall not extend to claims for loss or damage to property caused by or resulting from the negligence of Landlord, its agents or employees, unless such claims are covered by the casualty insurance required to be maintained by Tenant under Section 10.01(a) above. The obligations of Tenant under this Section 11.01 shall commence to accrue on the Effective Date of this Lease and shall survive any termination of this Lease and any permitted transfer or assignment by Landlord or Tenant of this Lease or any interest hereunder.

Section 11.02. Release of Landlord. Landlord shall not in any event whatsoever be liable for any injury or damage to the Premises or the Tenant or to any concessionaires, subtenants or other persons claiming through or under Tenant, or their respective agents, employees, licensees, invitees, guests or other such persons or to any property of any such persons as a result of Tenant's use, occupancy, or possession of the Premises, unless caused by Landlord's negligence, in which case Landlord's liability shall be limited to damages not covered by insurance carried by Tenant or insurance which Tenant is required to carry by this Lease and applicable law. Tenant shall not make any claim or demand upon or institute any action against the Landlord as a result of such injury or damage.

ARTICLE XII. OWNERSHIP OF IMPROVEMENTS

Section 12.01. Title to Improvements. Title to the Improvements during the Term shall be in Tenant, and Tenant alone shall be entitled to deduct all depreciation on Tenant's income

tax returns for such Improvements during the Term. Notwithstanding such title, the terms and conditions of this Lease shall govern the construction, use, and operation of the Improvements and the exercise of Tenant's rights with respect thereto; and Tenant's right, title, interest, and estate in and to the Improvements shall not be separable from the leasehold estate granted Tenant hereunder. Upon the termination or expiration of this Lease, title to the Improvements shall vest in and become the full and absolute property of Landlord without need of any further action being taken by Tenant or Landlord, and Tenant shall immediately surrender possession of the Improvements upon such termination or expiration as provided in Section 12.02 hereof. The value or cost of the Improvements constructed by Tenant shall not in any way constitute a substitute for or a credit against any obligation of Tenant under this Lease to pay Rent or Additional Rent.

Section 12.02. Surrender. Upon the termination or expiration of this Lease, Tenant shall peaceably quit and surrender the Premises, and any and all fixtures, machinery and equipment constructed, installed or placed by Tenant thereon which is necessary to the operation of the Improvements, to Landlord in good order and condition, ordinary wear and tear excepted. In the event Tenant is not then in default under this Lease, Tenant shall have the right upon the termination or expiration of this Lease to remove from the Premises all personal property and trade fixtures used in Tenant's business, and placed, installed or used by Tenant thereon, such as installed food service equipment, as distinguished from fixtures, machinery and equipment used in and necessary to the operation of the Improvements or Premises such as HVAC systems; provided, however, that Tenant shall repair, at its sole cost and expense, any damage to the Premises or to the Improvements caused by such removal. In no event shall any machinery and equipment used in and necessary to the operation of the Improvements or Premises be removed by Tenant unless same is promptly replaced with comparable or better such machinery or equipment or unless same is damaged and is required to be removed by Tenant pursuant to Section 9.02 hereof.

ARTICLE XIII. ASSIGNMENT AND SUBLETTING

Section 13.01. No Assignment or Subletting. Except as expressly herein provided, neither this Lease nor the interest of Tenant in this Lease or in the Premises, or any part thereof, shall be sold, assigned or otherwise transferred by Tenant, whether by operation of law or otherwise, and the Premises shall not be sublet in whole or in part, without the express prior written consent of Landlord, such consent not to be unreasonably withheld. For purposes hereof, the transfer of any voting capital stock of Tenant or the voting capital stock of any corporate entity which directly or indirectly controls Tenant or any interest in any non-corporate entity which directly or indirectly controls Tenant, which transfer results in a change in the direct or indirect voting control of Tenant (whether such transfer occurs at one time or at intervals so that, in the aggregate, such a transfer shall have occurred) shall be deemed to be an assignment governed by the provisions of this Section 13.01. The preceding sentence shall not apply to, and Tenant shall not be in default under this Section 13.01 as a result of, an offering of voting stock to the public pursuant to a registered securities offering, the transfer of voting stock which is listed on a national securities exchange or on the NASDAQ national market system both before and after the transfer (regardless of whether such transfer is made on a national securities exchange or through the NASDAQ national marketing system), the transfer of voting stock to

employees of the applicable corporate entity pursuant to a bona fide employee stock ownership plan or other bona fide arrangement with one or more employees, or any transfer of voting stock by gift, bequest or inheritance.

Section 13.02 Tenant's Notice. Should Tenant desire to assign this Lease or any right or interest herein or sublet the Premises or any part thereof and such assignment or sublease requires Landlord's prior consent hereunder, Tenant shall give Landlord written notice of such desire, which notice shall contain (i) the name and address of the proposed subtenant or assignee and its form of organization, (ii) the material terms and conditions of the proposed sublease or assignment (including, without limitation, the financial terms of such proposed subletting or assignment and the proposed commencement date of the proposed sublease or assignment), (iii) in the case of a proposed assignment, financial statements for the three (3) most recently completed fiscal years of the proposed assignee and such other financial information as Landlord shall reasonably request (or if the proposed assignee has not been existent for at least three (3) years, such financial statements as are available), and (iv) a description of any proposed remodeling or renovation to the exterior of the Improvements to be conducted by the proposed assignee or subtenant, together with the request that Landlord approve such assignment or sublease. Landlord shall have a period of thirty (30) days following receipt of such written notice within which to notify Tenant in writing that Landlord elects either (a) to permit Tenant to assign this Lease or sublet the Premises, or (b) to withhold consent to Tenant's assigning or subleasing such space and to continue this Lease in full force and effect as to the entire Premises. The failure of Landlord to notify Tenant in writing of such election within the thirty (30) day period described above shall be deemed an election to withhold consent to such proposed assignment or sublease.

Section 13.03. Terms of Landlord Consent. Any consent given by Landlord to any assignment or subletting shall apply only to the specific transaction thereby authorized and shall not relieve Tenant or any approved successor of Tenant from the requirement of obtaining the prior written consent of Landlord to any further transfer or subletting. No consent by Landlord to any assignment of this Lease or of Tenant's interest under this Lease or in the Premises, or any part thereof, or to any sublease shall be effective unless and until there shall have been delivered to Landlord a written agreement, in a form reasonably acceptable to Landlord, executed by Tenant and the proposed assignee or subtenant, as the case may be, wherein and whereby any assignee legally binds itself to pay the Rent and Additional Rent due under this Lease and to observe and perform all of the other terms, conditions and provisions of this Lease on the part of Tenant to be observed or performed, and any subtenant acknowledges the right of Landlord to continue or terminate any sublease, in Landlord's sole discretion, upon termination of this Lease, and such subtenant agrees to recognize and attorn to Landlord in the event that Landlord elects to continue such sublease.

Section 13.04. No Release. Any person or entity who shall, by operation of law or otherwise, become an assignee of this Lease or become vested with a leasehold interest hereunder shall be bound by and be liable upon all the terms, covenants, provisions and conditions contained in this Lease during the Term, whether or not of the nature of covenants ordinarily running with the land, but neither Tenant nor any subsequent Tenant whose interest is

assigned or divested shall be relieved of liability hereunder other than by an express release from liability executed in writing by Landlord.

Section 13.05. Permitted Assignment. Notwithstanding the provisions above to the contrary, Tenant shall have the right, without Landlord's prior consent, to assign this Lease to an entity controlled by or under the direct control of the majority owners of Tenant. No such permitted assignment shall be deemed to release Tenant from its obligation to observe and perform all of the terms, covenants and provision on the Tenant's part to be observed and performed under this Lease. Any permitted assignee or successor in interest must execute and deliver to Landlord a written assumption agreement for the benefit of Landlord, in a form reasonably acceptable to Landlord, whereby such assignee legally binds itself to pay the Rent and Additional Rent due under this Lease and to observe and perform all of the other terms, conditions and provisions of this Lease on the part of Tenant to be observed or performed.

ARTICLE XIV. BROKERAGE PROVISIONS.

Section 14.01. Brokers. Landlord and Tenant represent and warrant that no broker, commission agent, real estate agent or salesman has participated in the negotiation of this Lease, its procurement or in the procurement of Landlord or Tenant except for Colliers International and Mopper-Stapen, Inc. d/b/a NAI Mopper Benton (individually and collectively, "Broker"), which have acted as Landlord's and Tenant's brokers, respectively, with regard to this Lease. Broker's fee, if any, shall be paid pursuant to a separate agreement between Landlord and Broker. No other person, firm, corporation or other entity is or shall be entitled to the payment of any fee, commission, compensation or other form of remuneration in connection herewith in any manner. Landlord shall and does hereby indemnify and agree to hold Tenant harmless from and against any claims, demands, actions and judgments of any and all brokers, agents and other intermediaries (other than Broker) alleging a commission, fee or other payment to be owing by reason of Landlord's dealings, negotiations or communications in connection with this Lease or the demise of the Premises. Likewise, Tenant shall and does hereby indemnify and agree to hold Landlord harmless from and against any claims, demands, actions and judgments of any and all brokers, agents and other intermediaries (other than Broker) alleging a commission, fee or other payment to be owing by reason of Tenant's dealings, negotiations or communications in connection with this Lease or the demise of the Premises. The terms of this Section 14.01 shall survive any termination of this Lease.

ARTICLE XV. DEFAULT

Section 15.01. Events of Default. The occurrence of any of the following acts, events or conditions, notwithstanding the pendency of any proceeding which has or might have the effect of preventing Tenant from complying with the terms, conditions or covenants of this Lease, shall constitute an "Event of Default" under this Lease:

- (a) The Rent, Additional Rent or any other sum of money payable under this Lease is not paid when due and such failure shall continue for ten (10) days after the due date;

(b) The failure or refusal of Tenant, at any time during the Term, to fulfill or perform any other covenant, agreement or obligation of Tenant hereunder if such failure or refusal shall continue without correction for a period of thirty (30) consecutive calendar days from and after notice thereof to Tenant by Landlord, provided that if such covenant, agreement or obligation shall be of such nature that it can be fulfilled or performed and if Tenant in good faith commences to fulfill or perform same within said thirty (30) day period, but due to the nature of same it could not be reasonably fulfilled or performed within said thirty (30) day period exercising due diligence, an Event of Default shall not be deemed to have occurred if Tenant is then diligently pursuing the fulfillment or performance of the covenant, agreement or obligation and shall thereafter continuously and diligently proceed therewith until completion;

(c) The initiation of any proceeding whereupon the estate or interest of Tenant in the Premises, or any portion thereof, or in this Lease is levied upon or attached if such proceeding is not vacated, discharged or bonded within thirty (30) days after the date of notice to Tenant of such levy or attachment;

(d) The entry of any decree or order for relief by a court having jurisdiction in the Premises in respect of Tenant in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Tenant or for any substantial part of the assets of Tenant, or the entry of any decree or order with respect to winding-up or liquidation of the affairs of Tenant, if any such decree or order continues unstayed and in effect for a period of thirty (30) consecutive days;

(e) The commencement by Tenant of a voluntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by Tenant to the appointment of or possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Tenant or for any substantial part of the assets of Tenant, or any assignment made by Tenant for the benefit of creditors;

(f) Any sale, assignment, mortgage, pledge, hypothecation or other transfer of this Lease or any interest of Tenant hereunder or in the Premises or any sublease of the Premises without full compliance with any and all requirements therefor set forth in Section 13.01 or 13.02, as the case may be, of this Lease; or

(g) Tenant's failure to open for business in the Premises as required by this Lease, or Tenant's failure to operate at the Premises, except as expressly permitted herein, for a period of thirty (30) consecutive days following Landlord's written notice to Tenant of such default, unless Tenant's failure is the result of casualty or condemnation or remodeling.

Section 15.02. Remedies. Upon the occurrence of an Event of Default, Landlord shall have the option to do and perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted it by law or in equity or by this Lease:

(a) Landlord, with or without terminating this Lease, may reenter the Premises and perform, correct or repair any condition which shall constitute a failure on Tenant's part to keep, observe, perform, satisfy, or abide by any term, condition, covenant, agreement, or obligation of this Lease, and Tenant shall fully reimburse and compensate Landlord on demand for all costs and expenses incurred by Landlord in such performance, correction or repair, including, without limitation, accrued interest as provided in the next sentence. All sums so expended to cure Tenant's default shall accrue Default Interest from the date of demand until date of payment at the rate specified in Section 15.05 hereof.

(b) Landlord, with or without terminating this Lease, may immediately or at any time thereafter demand in writing that Tenant vacate the Premises and thereupon Tenant shall vacate the Premises and remove therefrom all property thereon belonging to or placed on the Premises by, at the direction of, or with consent of Tenant within five (5) business days of receipt by Tenant of such notice from Landlord, whereupon Landlord shall have the right to reenter and take possession of the Premises. Any such demand, reentry and taking possession of the Premises by Landlord shall not of itself constitute an acceptance by Landlord of a surrender of this Lease or of the Premises by Tenant and shall not of itself constitute a termination of this Lease by Landlord.

(c) Landlord, with or without terminating this Lease, may immediately or at any time thereafter reenter the Premises and remove therefrom Tenant and all property belonging to or placed on the Premises by, at the direction of, or with consent of Tenant. Any such reentry and removal by Landlord shall not of itself constitute an acceptance by Landlord of a surrender of this Lease or of the Premises by Tenant and shall not of itself constitute a termination of this Lease by Landlord.

(d) Landlord, with or without terminating this Lease, may terminate Tenant's right of possession and immediately or at any time thereafter relet the Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term), at such rental or rentals and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, and Landlord may make any alterations, redecorations or repairs to the Premises which it may deem reasonably necessary or proper to facilitate such reletting; and Tenant shall pay all reasonable costs of such reletting including but not limited to the reasonable cost of any such alterations, redecorations and repairs made to the Premises, reasonable attorneys' fees, reasonable brokerage commissions and lease assumptions; and if this Lease shall not have been terminated, Tenant shall continue to pay all Rent, Additional Rent and all other charges due under this Lease up to and including, without limitation, the date of beginning of payment of rent by any subsequent tenant of part or all of the Premises, and thereafter Tenant shall pay monthly during the remainder of the Term the difference, if any, between the rent and other charges collected from any such subsequent tenant or tenants

and the Rent, Additional Rent and other charges reserved in this Lease, but Tenant shall not be entitled to receive any excess of any such rents collected over the Rent and Additional Rent reserved herein.

(e) Landlord shall be entitled to bring suit against Tenant for the performance of any non-monetary covenant or obligation of Tenant or to seek injunctive or other equitable relief with respect to any such default. In addition, Landlord shall be entitled to sue for and recover any actual damages incurred by Landlord as a result of any non-monetary default, and pursuit of any of the other remedies provided for in this Section 15.02 shall not preclude pursuit of any such claim for actual damages.

(f) Landlord may immediately or at any time thereafter terminate this Lease, and this Lease shall be deemed to have been terminated upon receipt by Tenant of written notice of such termination. Upon such termination, Landlord shall have and retain full right to sue for and recover from Tenant all damages Landlord may suffer by reason of such termination, all arrearages in Rent, costs, charges, Additional Rent, and reimbursements, the cost (including, without limitation, court costs and attorneys' fees) of recovering possession of the Premises, and the cost of any alteration or redecoration of or repair to the Premises and Improvements which is reasonably necessary or proper to prepare the same for reletting. Tenant shall immediately surrender and deliver up the Premises to Landlord upon any such termination by Landlord, and upon any failure by Tenant in so doing, Landlord shall have the right to recover possession by summary proceedings or otherwise.

Section 15.03. Reentry by Landlord. No reentry or taking possession of the Premises by Landlord or any other action taken by or on behalf of Landlord shall be construed to be an acceptance of a surrender of this Lease or an election by Landlord to terminate this Lease.

Section 15.04. General. No course of dealing between Landlord and Tenant or any failure or delay on the part of Landlord in exercising any rights of Landlord under Section 15.02 hereof or under any other provisions of this Lease shall operate as a waiver of any rights of Landlord hereunder, at law or in equity or under any other provisions of this Lease, nor shall any waiver of an Event of Default on one occasion operate as a waiver of any subsequent Event of Default or of any other Event of Default. No express waiver shall affect any condition, covenant, rule, or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated. The exercise by Landlord of any one or more of the rights and remedies provided in this Lease shall not prevent the subsequent exercise by Landlord of any one or more of the other rights and remedies herein provided. All remedies provided for in this Lease are cumulative and may, at the election of Landlord, be exercised alternatively, successively, or in any other manner and are in addition to any other rights provided for or allowed by law or in equity.

Section 15.05 Default Interest and Late Charges. Any Rent or Additional Rent not paid within ten (10) days after the due date thereof shall bear interest at a rate of interest equal to the rate of interest announced by Wells Fargo in Atlanta, Georgia as its base rate or reference rate (which rate shall change automatically and simultaneously from time to time with each change in

the announced base rate or reference rate) plus four percent (4%) per annum ("Default Interest"), but in no event in excess of the maximum lawful rate, from the original due date until paid-in-full. In addition, Tenant acknowledges that late payments by Tenant to Landlord of amounts due from Tenant under this Lease will cause Landlord to incur costs not otherwise contemplated by this Lease, the exact amount of which is extremely difficult or impracticable to determine. Such costs include, but are not limited to, processing and accounting charges and, late charges that may be imposed on Landlord by the terms of any encumbrance or notes secured by any encumbrance covering the Premises. Therefore, if an installment of Rent or Additional Rent due from Tenant is not received by Landlord within ten (10) days after the applicable due date a late charge will be assessed pursuant to this Section 15.05 equal to Five Hundred Dollars (\$500.00) for each such occurrence. The parties acknowledge that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver by Landlord of Tenant's default with respect to the overdue amount, and shall not prevent Landlord from exercising any of the other rights and remedies available to Landlord for any other event of Default under this Lease.

Section 15.06. Attorneys' Fees. In the event of any action or dispute between the parties arising out of this Lease which results in litigation or dispute resolution or on account of any default of a party's obligations hereunder, the losing or defaulting party, as the case may be, shall pay the prevailing or non-defaulting party as the case may be, the reasonable cost (including reasonable attorney's fees) incurred in bringing or defending such action, enforcing any judgment granted therein and/or enforcing its remedies hereunder.

ARTICLE XVI. CONDEMNATION

Section 16.01. Material Condemnation. If, during the Term, all or such portion of the Premises is condemned or taken by the United States or any other legal entity having the power of eminent domain with respect thereto:

- (a) which part so taken includes the building (or any part thereof) to be located on the Premises; or
- (b) which results in a reduction of twenty-five percent (25%) or more of the parking area within the permitted parking area; or
- (c) which eliminates or materially adversely affects access to public streets securing the Premises;

then Tenant may, at its election, terminate this Lease by giving Landlord notice of the exercise of Tenant's election within thirty (30) days after Tenant shall receive notice of such taking, which notice shall include the condemning authority's official notice or a reasonably detailed account thereof. In the event of termination by Tenant under the provisions of this Section 16.01, this Lease and the Term hereof shall terminate as of the date that title to the Premises or portion thereof vests in such condemning authority; provided, however, that such termination shall not benefit such condemning authority and shall be without prejudice to the rights of either Landlord or Tenant to recover just and adequate compensation from the condemning authority.

Section 16.02. Partial Condemnation. If, during the Term, any portion of the Premises is condemned or taken by the United States or any other legal entity having the power of eminent domain with respect thereto in respect of which Tenant shall not have the right to terminate this Lease, or having such right shall not elect to terminate this Lease, then Tenant shall (subject to the last sentence of this Section) forthwith cause the Premises to be restored, by effecting Restoration as provided in Section 9.02 hereof. From and after the date of such taking, Rent shall be equitably reduced taking into account all of the relevant factors and circumstances; provided, however, there shall be no reduction whatsoever in Rent in the event of a taking without compensation to Landlord of any portion of the Site for the widening of roads or rights-of-way adjoining the Site or for the purpose of construction of acceleration or deceleration lanes adjoining the Site, unless such taking shall reduce the area of the Site used for parking. In the event such partial condemnation occurs within the last year of the Term, Tenant shall have the right, at its election and in lieu of fulfilling its obligations under this Section 16.02, to terminate this Lease upon thirty (30) days prior written notice to Landlord and satisfaction of the following conditions: (a) by paying to Landlord, on the effective date of such termination, a sum equal to all Rent and Additional Rent due from Tenant to Landlord to such date; (b) by releasing to Landlord all of the right and interest of Tenant in and to any condemnation award made in connection with such condemnation proceeding; and (c) by surrendering the Premises to Landlord on the effective date of such termination in a clean and sightly condition, free of any and all debris.

Section 16.03. Awards. Landlord and Tenant hereby agree to petition the court in any condemnation proceeding to make separate awards to Landlord and Tenant, if said separate awards are not prohibited by law. In the event such court is prohibited by law from making separate awards to Landlord and Tenant or declines to do so and if all of the Premises or such portion is condemned as to render the remaining portion thereof to be of substantially no commercial value for the Permitted Use, the award shall be divided between Landlord and Tenant so that each party shall receive that portion of the award which bears the same proportion of the total award as the value of such party's interests in the Premises bears to the total value of all interests in the Premises. The value of Landlord's interests shall include the value of the land; the value of Landlord's interest in this Lease had the Premises not been condemned, including the right to receive payment of all sums required to be paid by Tenant to Landlord hereunder for the remainder of the Term; and the value of Landlord's residual right to the Improvements upon termination of this Lease. The value of the Tenant's interests shall include: the value of the Improvements reduced by the value of Landlord's reversionary interest therein; and the value of Tenant's leasehold estate hereunder had the Premises not been condemned, including the right to use and occupy the Premises for the remainder of the Term subject to the obligation of Tenant to pay Rent and Additional Rent hereunder.

In the event such court is prohibited by law from making separate awards to Landlord and Tenant or declines to do so and the remaining portion of the Premises after such condemnation is of some commercial value for the Permitted Use, the award shall be divided between Landlord and Tenant as follows: Landlord shall receive such portion of the award as shall represent the value of the part of the land so taken; Tenant shall receive such portion of the award as shall represent the value of the Improvements so taken and shall apply such portion of the award to the costs of Restoration as provided in Section 16.02 hereof; and if there shall

remain any balance of the award after Restoration as aforesaid, said balance shall belong to Landlord.

Section 16.04. Taking for Temporary Use. If there is a temporary taking of all or any portion of the Premises, Tenant shall give prompt notice thereof to Landlord, and the Term of this Lease shall not be reduced or affected in any way. In such case, Tenant shall continue to pay the full Rent and Additional Rent and other sums and charges provided to be paid by Tenant hereunder. Tenant shall be entitled to the entire award for such taking (whether paid by way of damages, rent or otherwise) unless the period of occupation and use by the condemning authority shall extend beyond the date of expiration of the Term of this Lease, in which case the award made for such taking shall be apportioned between Landlord and Tenant as of the date of such expiration. In any proceeding for such temporary taking, Landlord shall have the right to intervene and participate, but no award or settlement shall be made without Tenant's written approval; provided that if such intervention shall not be permitted, Tenant shall, at Tenant's expense, consult with Landlord, its attorneys and experts, and shall cooperate with Landlord in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Premises, Tenant will, at its sole cost, repair and restore the Improvements then upon the Premises to the condition, as nearly as may be reasonably possible, in which such Improvements were at the time of such taking. Tenant shall not be required to make such repairs and restoration if the Term of this Lease shall expire prior to the date of termination of the temporary taking, and in any such event, Landlord shall be entitled to recover all damages and awards arising out of the failure of the condemning authority to repair and restore the Improvements at the expiration of such temporary taking. Any recovery or sum received by Tenant as an award or compensation for physical damage to the Premises caused by and during the temporary taking shall be used to the extent necessary for the purpose of repairing or restoring such damage as required hereinabove.

ARTICLE XVII. MISCELLANEOUS.

Section 17.01. No Waiver. Failure of Landlord to insist upon the strict performance by Tenant of any term, condition or covenant on Tenant's part to be performed pursuant to the terms of this Lease or to exercise any option, right, power, or remedy contained in this Lease shall not be or be deemed to be a waiver of such performance or relinquishment of such right now or at any time subsequent hereto. The receipt by Landlord of any Rent or Additional Rent required to be paid by Tenant hereunder with knowledge of any Event of Default by Tenant shall not be or be deemed to be a waiver of such Event of Default. No waiver by Landlord of any provision of this Lease shall be or be deemed to have been made unless expressed in writing and signed by Landlord.

Section 17.02. Waiver of Redemption. Tenant hereby waives and surrenders any right or privilege under any present or future constitution, statute or law to redeem the Premises or to continue this Lease after the termination of this Lease for any reason, and the benefits of any present or future constitution, statute or rule of law which exempts property from liability for debt or for distress for rent.

Section 17.03. Estoppel Certificates. Within ten (10) days of Tenant's receipt of a written request from Landlord, Tenant shall from time to time execute, acknowledge and deliver to Landlord and to any mortgagee of or prospective purchaser from Landlord, a written certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications), (b) the dates to which Rent and Additional Rent payable by Tenant hereunder have been paid, and (c) that no notice has been received by Tenant of any default or Event of Default by Tenant hereunder which has not been cured, except as to any default or Event of Default specified in said certificate.

Upon written request of Tenant, Landlord shall from time to time execute, acknowledge and deliver to Tenant a written certificate certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications), (b) the dates to which Rent and Additional Rent payable by Tenant hereunder have been paid, and (c) whether or not, to the knowledge of Landlord, a default or Event of Default by Tenant has occurred under this Lease which has not been cured (and if so, specifying the same).

Section 17.04. Quiet Enjoyment. If and so long as Tenant shall pay, when due, the Rent and Additional Rent reserved or payable under this Lease and shall observe all terms, conditions and covenants and other obligations required to be observed by Tenant under this Lease, Landlord shall not interfere with the peaceful and quiet occupation and enjoyment of the Premises by Tenant, which occupation and enjoyment shall be without hindrance or ejection by Landlord; provided, however, that this Section 17.04 shall not abrogate or diminish, in any way, the approval and inspection rights granted Landlord under this Lease.

Section 17.05. Transfer by Landlord. In the event Landlord shall transfer or assign or otherwise dispose of its interest in the Premises or in this Lease, Landlord shall thereupon be released and discharged from any and all liabilities and obligations under this Lease (except those accruing prior to such transfer, assignment or other disposition) and such liabilities and obligations thereafter accruing shall be binding upon the assignee of Landlord's interest under this Lease.

Section 17.06. Landlord's Liability. Landlord shall have no personal liability with respect to any of the provisions of this Lease. If Landlord is in default with respect to its obligations under this Lease, Tenant shall look solely to the equity of Landlord in and to the Shopping Center for satisfaction of Tenant's remedies, if any. It is expressly understood and agreed that Landlord's liability under the terms of this Lease shall in no event exceed the amount of its interest in and to said Shopping Center. In no event shall any partner of Landlord nor any joint venturer in Landlord, nor any officer, director or shareholder of Landlord or any such partner or joint venturer of Landlord be personally liable with respect to any of the provisions of this Lease.

Section 17.07. Mortgaging Landlord's Interest. This Lease is and shall be subordinate and subject to any mortgage, pledge, deed to secure debt, deed of trust, or any other hypothecation for security which has been or which hereafter may be placed upon the Premises.

Any provision, term or condition of this Lease which is or which may appear to be to the contrary notwithstanding, Landlord shall, at all times and from time to time after the Effective Date of this Lease, have the express right, power and privilege of pledging, conveying, assigning or mortgaging Landlord's interest in and to the Premises and/or Landlord's reversionary right to the Improvements, for the purpose of obtaining financing, credit, or as security for any financing or extension of credit. Tenant hereby agrees that upon request from Landlord, or from the holder or proposed holder of any mortgage, pledge, deed to secure debt or deed of trust which encumbers or will encumber Landlord's interest in the Premises, including the current holder of the mortgage encumbering the Premises, which Landlord shall use reasonable efforts to procure within thirty (30) days of the Effective Date, Tenant shall execute a subordination, non-disturbance and attornment agreement in a commercially reasonable form subordinating this Lease to the interest of such holder and its heirs, successors and assigns. The holder or proposed holder of any such mortgage, pledge, deed to secure debt or deed of trust shall agree in such subordination, non-disturbance and attornment agreement that, so long as Tenant complies with all of the terms and conditions of this Lease and is not in default hereunder beyond the period for cure of such default as provided herein, such holder or any person or entity acquiring the interest of Landlord under this Lease as a result of the enforcement of such mortgage, pledge, deed to secure debt or deed of trust shall not take any action to disturb Tenant's possession of the Premises during the remainder of the Term and shall recognize all of Tenant's rights under this Lease despite any foreclosure or other action by such holder. Alternatively, the person or entity accepting such pledge, conveyance, assignment or mortgage as security may elect to take subject to the rights of Tenant and its successors and permitted assigns under this Lease. In any event, Tenant, in the event of any foreclosure or deed in lieu of foreclosure or other final conveyance and transfer of Landlord's interest as aforesaid, shall recognize and attorn to the grantee thereof as "landlord" under this Lease. Likewise, and to similar effect, Landlord, at all times and from time to time after the date of this Lease, shall have the express right, power and privilege of assigning Landlord's interest in this Lease or in the Rent and Additional Rent to be paid hereunder.

Section 17.08. Mortgaging Tenant's Interest. Landlord hereby grants to Tenant and its successors and assigns approved by Landlord in accordance with this Lease, the right, without Landlord's prior written consent, to mortgage its interests in, to or under this Lease, or any part or parts thereof, and otherwise to assign and/or convey all or any part of Tenant's interest in or rights under this Lease to any institutional lender(s) solely as collateral for loans, and, in such event, the mortgagee or assignee shall have all the rights of Tenant hereunder. Notwithstanding anything contained herein to the contrary, Landlord's fee interest in the Premises will not become, in any respect whatsoever subject to, considered a part of, or become subordinate to any mortgage of the Tenant, its successors and/or assigns. Nor will the Landlord's fee interest become subordinate to any subtenant of Tenant. If Tenant mortgages Tenant's leasehold estate to an institutional lender and the mortgagee or holders of the indebtedness secured by the leasehold mortgage or trust deed notify Landlord, in accordance with the notice provisions of this Lease, of the execution of such mortgage or trust deed and name the place for service of notice upon such institutional mortgagee or holder of indebtedness, then, in such event, Landlord agrees that for the benefit of such mortgagees or holders of indebtedness from time to time:

(a) Landlord will give to any such mortgagee or holder of indebtedness simultaneously

with service on Tenant, a duplicate of any and all notices or demands given by Landlord to Tenant. Landlord will deliver such notices in the manner and subject to the terms of the notice provisions of this Lease.

- (b) Such mortgagee or holder of indebtedness will have the privilege of performing any of Tenant's covenants under this Lease, curing any Tenant default or exercising any election, option or privilege conferred upon Tenant by the terms of this Lease.
- (c) Landlord will not terminate this Lease or Tenant's right of possession for any Tenant default if, within a period of ten (10) days after the expiration of any applicable period of time within which Tenant might cure such default under the provisions of this Lease, such mortgagee or holder of indebtedness commences in good faith to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to complete such cure and actually cures such default within an additional ten (10) days.
- (d) Except for the termination rights contained in this Lease, no negotiated termination of this Lease will be effective unless joined in by any such mortgagee or holder of the indebtedness.
- (e) No liability for the payment of rent or the performance of any of Tenant's covenants and agreements will attach to or be imposed upon any mortgagee, trustee under any trust deed or holder of any indebtedness secured by any mortgage or trust deed upon the leasehold estate, unless such mortgagee, trustee or holder of indebtedness forecloses its interest and becomes the Tenant under this Lease or otherwise enters into possession of the Premises, in which instance such mortgagee, trustee, or holder of indebtedness shall bring rent current hereunder within fifteen (15) days.

Section 17.09. Separability. Each and every covenant and agreement contained in this Lease shall be for any and all purposes hereof construed as separate and independent, and the breach of any covenant by either party shall not discharge or relieve the other party from its obligation to perform each and every covenant and agreement to be performed under this Lease. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate applicable law and shall be limited to the extent necessary to render this Lease valid and enforceable. If any term, provision or covenant of this Lease or the application thereof to any person or circumstance shall be held to be invalid, illegal or unenforceable, by a court of last resort having jurisdiction in the Premises, the validity of the remainder of this Lease shall not be affected, this Lease shall not terminate, and there shall be substituted for such illegal, invalid or unenforceable provision a like provision which is legal, valid and enforceable within the limits established by such court's final opinion and which most nearly accomplishes and reflects the original intention of the parties.

Section 17.10. Notices, Demands and Other Instruments. All notices, demands, requests, consents, and approvals desired, necessary, required or permitted to be given pursuant to the terms of this Lease shall be in writing and shall be deemed to have been properly given if delivered personally or by courier with a signed receipt, delivered by a recognized national

overnight delivery service, or sent, postage prepaid, by first class registered or certified United States mail, return receipt requested, addressed to each party hereto at the following address:

Landlord: Port Wentworth Fee Owner, LLC
c/o JDH Capital, LLC
3735-B Beam Road
Charlotte, North Carolina 28217
Attention: Gary J. Davies

Tenant: Premier Kings of Georgia, Inc.
3300 Eastern Boulevard
Montgomery, Alabama 36116
Attention: Legal Dept.

or at such other address in the United States as Landlord or Tenant may from time to time designate by like notice. Additionally, Tenant agrees to send copies of all notices required or permitted to be given to Landlord to each holder of a mortgage, deed to secure debt, deed of trust or similar financing instrument encumbering Landlord's interest in the Premises that notifies Tenant in writing of its interest and the address to which notices are to be sent. Any such notice, demand, request or other communication shall be considered given or delivered, as the case may be, on the date of personal or courier delivery or within three (3) days of the date of deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand, request or other communication.

Section 17.11. Successors and Assigns. Each and every covenant, term, condition and obligation contained in this Lease shall apply to and be binding upon and inure to the benefit or detriment of the respective legal representatives, heirs, successors and permitted assigns of Landlord and Tenant. Whenever reference to the parties hereto is made in this Lease, such reference shall be deemed to include the legal representatives, successors, heirs and permitted assigns of said party the same as if in each case expressed. The term "person" when used in this Lease shall mean any individual, corporation, partnership, firm, trust, joint venture, business association, syndicate, government or governmental organization or any other entity.

Section 17.12. Headings. The headings to the various Articles and Sections of this Lease have been inserted for purposes of reference only and shall not limit or define or otherwise affect the express terms and provisions of this Lease.

Section 17.13. Counterparts. This Lease may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which may be annexed to one another and shall constitute one instrument.

Section 17.14. Applicable Law. This Lease shall be construed under and enforced in accordance with the laws of the State of Georgia.

Section 17.15. Entire Agreement; Amendments. This Lease sets forth the entire understanding and agreement of Landlord and Tenant with respect to the Premises; all courses of dealing, usage of trade and all prior representations, promises, understandings and agreements, whether oral or written, are superseded by and merged into this Lease. No modification or amendment of this Lease shall be binding upon Landlord and Tenant, or either, unless in writing and fully executed.

Section 17.16. Relationship of the Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or any third party, as creating the relationship of principal and agent or a partnership or joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

Section 17.17. Time is of Essence. Time is of the essence of this Lease. Whenever a day certain is provided for the payment of any sum of money or the performance of any act or thing, the same enters into and becomes a part of the consideration for this Lease.

Section 17.18. Memorandum of Lease. Landlord and Tenant hereby agree that this Lease shall not be recorded in the public records of Chatham County, Georgia. Landlord and Tenant shall, upon request of either party, execute a Memorandum of Lease, wherein a legal description of the Premises, the Term and certain other terms and provisions hereof, excepting, however, the provisions hereof relating to the amount of Rent, Additional Rent or any other sum payable hereunder, may be set forth. The Memorandum of Lease may be filed for record with the Official Records of Chatham County, Georgia promptly after (and not before) expiration of the Permit/Limited Diligence Period. Any and all recording costs and taxes, if any, required in connection with the recording of the Memorandum of Lease shall be at the sole cost and expense of the requesting party.

Section 17.19. Approval and Inspection Rights. Tenant expressly acknowledges and agrees that Landlord has the right, but not the duty, at all times and from time to time upon reasonable notice to Tenant and during normal business hours, to enter upon the Premises and any portion thereof to determine to Landlord's satisfaction whether the terms, covenants and conditions of this Lease, including Tenant's performance obligations, are being kept and observed. Tenant agrees that other than as provided herein to the contrary, any failure of Landlord to approve or disapprove anything or undertaking where Landlord's approval or disapproval is required shall not be a waiver or abatement of Landlord's right to give or withhold such approval as to the specific thing or undertaking involved, nor as to any future or other instance where Landlord has such right. Tenant agrees that any failure of Landlord to exercise any right of inspection shall not be or be deemed to be a waiver of the right of inspection, which is and shall be continuing, nor shall Landlord ever be accountable or liable to Tenant or to any other person for exercising or not exercising its right of inspection.

Section 17.20. Holding Over, No Extension, Month-to-Month Tenancy and Holdover Rent. In the event Tenant shall hold the Premises after the expiration of the Term, without the express written consent of the Landlord, such holding shall be deemed to have created a tenancy

from month to month which shall be terminable upon thirty (30) days' written notice by either party to the other, and which shall be on a monthly rental basis and otherwise subject to all terms and provisions of this Lease, except as contemplated to the contrary in this Section 17.20. Monthly rental during the period of Tenant's occupancy shall be one-twelfth (1/12) of the amount equal to the product of the total rental payable by Tenant to Landlord during the last twelve (12) month period of the Term, including but not limited to, Rent, Additional Rent and all other additional charges provided by this Lease, multiplied by 1.50.


If the Tenant fails to surrender the Premises upon the expiration of the Term, then Tenant shall, in addition to any other liabilities to Landlord accruing therefrom, indemnify and hold Landlord harmless from any loss or liability resulting from such failure, including, without limitation, any claims made by any succeeding tenant founded on such failure.

(SIGNATURES APPEAR ON THE FOLLOWING PAGE)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease, have affixed their seals hereunto and have delivered same, in duplicate originals, as of the day, month and year first above written.

"LANDLORD":

PORT WENTWORTH FEE OWNER, LLC,
a Delaware limited liability company

By: 
Name: GARY S. DAVIES
Its: Manager

"TENANT":

PREMIER KINGS OF GEORGIA, INC.,
a Georgia corporation

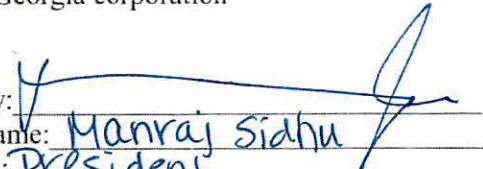
By: 
Name: Manraj Sidhu
Its: President

EXHIBIT "A"

SITE PLAN

[See Attached]

EXHIBIT "B"

LEGAL DESCRIPTION

Outparcel B:

BEING all of that certain piece or parcel of real property located in Port Wentworth, Georgia, containing approximately 1.052 acres, and being more particularly described as follows:

To find the Beginning Point commence at calculated point located in the easterly margin of the right-of-way of State Highway 21 (variable width right-of-way) and marking the northwesterly corner of the property now or formerly owned by Coldbrook Station, LLC (PIN 7-0037-01-036) (the "Coldbrook Property") (said point being 0.39 feet northerly and 0.20 feet westerly of an iron rod), and proceed with the easterly margin of the right-of-way of Highway 21 the following three (3) courses and distances: (1) North 17-16-49 West 69.18 feet to a calculated point, (2) North 83-48-14 West 30.12 feet to a calculated point, and (3) North 17-31-45 West 164.16 feet to a calculated point, said point being the Beginning Point; thence from said point and place of BEGINNING continuing with the easterly margin of the right-of-way of Highway 21 North 17-31-45 West 156.10 feet to a calculated point; thence leaving the easterly margin of the right-of-way of Highway 21 the following three (3) courses and distances: (1) North 79-16-35 East 304.85 feet to a calculated point, (2) South 10-43-25 East 155.00 feet to a calculated point, and (3) South 79-16-35 West 286.35 feet to the point and place of BEGINNING.

EXHIBIT "C"

USE RESTRICTIONS

1. During the term of this Lease, no portion of the Premises shall be used for any of the following purposes:

(a) Any use which is illegal or dangerous, which constitutes a public or private nuisance, or which creates vibrations or offensive odors, fumes, dust or vapors, other than normal cooking odors, which are noticeable outside of any building on the Site, or any noise or sound which can be heard outside of any building in the Shopping Center and which is offensive due to intermittency, beat, frequency, shrillness or loudness;

(b) Any operation primarily used as a warehouse operation (which shall not include storage incidental to a retail operation constructed on the same premises), any drilling for and/or removal of subsurface conditions, any manufacturing or industrial operation, any processing or rendering plant, or any lumber yard;

(c) The storage of explosives or other unusually hazardous materials (other than materials sold or used in the normal course of business, provided that the same are handled in accordance with all governmental rules, regulations, and requirements applicable thereto);

(d) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

(e) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage dumpsters or compactors which are screened from public view);

(f) Any automobile, truck, boat, trailer, RV or other motorized vehicle sales, rental, leasing, display or repair facility, including any quick lube change service, or tire, battery and accessory facility;

(g) Any funeral parlor or mortuary;

(h) Any adult book store or establishment selling or exhibiting pornographic materials;

(i) Any massage parlor (provided that nothing herein shall restrict massage services in connection with operation of a physical therapy clinic or health care facility) or any establishment selling or exhibiting paraphernalia for use with illicit drugs, or any so-called "head shop"; or

(j) Any off-track betting parlor or other gambling establishment; provided lottery sales departments incidental to the operation of a permitted use shall be permitted to the extent operated, or authorized by the appropriate governmental authority.

2. In addition to the restrictions set forth in Paragraph 1 above, the Premises shall be subject to the following restrictions:

(a) The Premises shall not be used for the operation of automobile or trailer sales and services related to such businesses (including, but not limited to, gas stations and auto repair, sales or storage; or

(b) The Premises shall not be used for the operation of an extended-stay hotel.

Nothing contained in this Exhibit "C" shall be deemed to grant Tenant any right or privilege to operate within the Premises in any manner inconsistent with Tenant's Permitted Use as described in Section 6.05 of the Lease.

FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE (this "Amendment") is made as of the 3 day of August 2018, between PORT WENTWORTH FEE OWNER, LLC, a Delaware limited liability company ("Landlord"), and PREMIER KINGS OF GEORGIA, INC., a Georgia corporation ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to that certain Ground Lease dated May 8, 2018 (the "Lease"), pursuant to which Tenant agreed to lease a certain tract of land consisting of approximately 1.05 acres located in Chatham County, Georgia, as more particularly described in the Lease (the "Premises"); and

WHEREAS, Landlord and Tenant have agreed to modify and amend certain terms and conditions of the Lease;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant, intending to be legally bound, hereby agree as follows:

1. Recitals. The recitals set forth above are incorporated herein.
2. Capitalized Terms. All terms used in this Amendment with an initial capital letter which are not otherwise defined herein shall have the meanings given to such terms in the Lease.
3. Permit/Limited Diligence Period. The definition of "Permit/Limited Diligence Period" set forth in Section 6.02 of the Lease is hereby amended to delete "seventy five (75) days" therefrom and to insert the following in lieu thereof: "one hundred twenty (120) days".
4. Construction of Improvements. The second paragraph of Section 6.08 is hereby deleted in its entirety and replaced with the following:


"Tenant shall have the lesser of (i) one hundred eighty (180) days following receipt of the Permits, or (ii) one hundred eighty (180) days following the expiration of the Permit/Limited Diligence Period in order to construct and install the Improvements on the Site substantially in accordance with the mutually approved plans, except in the case of changes required to comply with applicable governmental laws, ordinances or regulations (the "Construction Period")."
5. Governing Law. This Amendment shall be governed, construed and interpreted in accordance with the laws of the State of Georgia.
6. Successors and Assigns. This Amendment shall inure to the benefit of and shall be binding upon Landlord, Tenant, and their respective successors and assigns.
7. Execution Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original and together which shall constitute one and the same instrument.

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IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed in their names and their seals to be hereunto affixed and attested by their officers thereunto duly authorized the day and year first above written.

LANDLORD

PORT WENTWORTH FEE OWNER, LLC,
a Delaware limited liability company

BY: 
Name: Gary J. Davies
Title: Vice President

TENANT

PREMIER KINGS OF GEORGIA, INC.,
a Georgia corporation

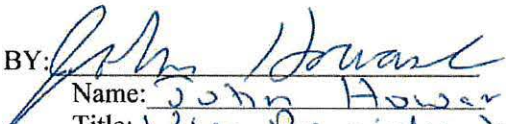
BY: 
Name: John Howard
Title: Vice President / General Counsel

Exhibit C

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT is made and entered into by and between Premier Holdings of Georgia, LLC, a Georgia limited liability company hereinafter called the "Developer") and Premier Kings of Georgia Inc., a Georgia corporation (hereinafter called the "Owner/Operator") on or about May 17, 2019, 2019.

WITNESSETH:

WHEREAS, Developer and Owner/Operator desire to establish in writing their agreement concerning their relationship, obligations and rights with respect to the development of a Burger King restaurant on certain property located Chatham County, Georgia which is described on Exhibit "A" and to be known as Burger King Store No. 26868, 7304 Highway 21, Port Wentworth, Georgia 31407 (the "Premises").

WHEREAS, Developer and Owner/Operator acknowledge that this Development Agreement is made subject to the provisions hereof, and the terms and conditions of any bank loan, the proceeds of which will be used to construct the improvements on the Premises (hereinafter called the "Bank Loan").

WHEREAS, Developer and Owner/Operator acknowledge that the development of the Premises is made subject to the provisions hereof, all matters of record, and the terms and conditions of that certain franchise agreement entered into between Owner/Operator and Burger King Corporation (hereinafter called the "Franchise Agreement").

NOW, THEREFORE, in consideration of the payments hereinafter agreed to be paid and the mutual covenants and agreements hereinafter set forth and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner/Operator agree as follows:

1. Development of the Premises: Developer, for and in consideration of the fees, covenants, agreements and stipulations hereinafter mentioned, reserved and contained, to be paid, kept and performed by Owner/Operator, by these presents does hereby agree to construct a Burger King restaurant on the Premises described on Exhibit "A" for the use and benefit of the Owner/Operator upon the terms and conditions hereinafter set forth and in compliance with the Project #18-021-04 including all plans and specifications (and appendices and addendums thereto) for the Project, as provided, updated, and supplemented by Hendon + Huckestein Architects, PC (the "Plans and Specifications"), which are incorporated herein by reference (collectively, the "Project").

2. Term: The term of the Development Agreement shall commence on the date hereof and shall terminate twenty (20) years from the date hereof (the "Termination Date").

3. Development Fee. Owner/Operator agrees to pay to Developer, without deduction, set off or abatement, and without previous notice or demand therefor, a monthly development fee on the first day of each month commencing on June 1, 2019, and continuing through the Termination Date, equal to (a) the Developer's debt service payment associated with the development of the Project, including without limitation under the Bank Loan, plus (b) an administrative/overhead/profit fee of \$100.00.

4. Costs and Expenses. Each Party agrees to pay its own costs and expenses incurred in connection with the proposals, responses, and negotiation of the transactions contemplated herein, including all costs and expenses incurred in connection with the preparation of any studies or reports, surveys, or approvals for this Agreement or otherwise.

5. Assignment. This Agreement is not assignable, except that the Developer shall have the right at any time to assign all its rights and obligations in and to the Project and to transfer this Agreement or any part thereof to any affiliate of the Developer that agrees to assume assigned obligations of the Developer in and to the

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Project; and if so assigned, the Developer shall continue to be responsible for the performance of the obligations of the Developer under this Agreement.

6. Section Titles and Headings. The section titles and headings are for convenience only and do not define, modify, or limit any of the terms and provisions hereof.

7. Survival of Representations and Warranties. The representations, warranties, and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties, and covenants relate.

8. Waivers. Waiver of any of the obligations of any Party under this Agreement shall be effective only when stated in writing and signed by the waiving Party. No delay or omission to exercise any right or power by any Party shall be construed to be a waiver. In the event any provision is waived by a Party, such waiver shall not be deemed to waive any other provision.

9. Time is of the Essence. The Parties acknowledge and agree that time is of the essence in performing their respective duties under this Agreement.

10. Notices. All notices required by, or arising out of, or related to this Agreement shall be sent by United States Mail, first class postage affixed, addressed to the receiving Party as described below:

PREMIER HOLDINGS OF GEORGIA, LLC
3300 Eastern Blvd
Montgomery AL 36116

PREMIER KINGS OF GEORGIA, INC.
3300 Eastern Blvd
Montgomery AL 36116

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section.

11. Entire Agreement; Amendment. This Agreement is the entire agreement and supersedes all prior and collateral communications and agreements of the Parties relating to the subject matter. This Agreement may be amended only by a written modification executed by each of the Parties' duly authorized representatives. The terms and provisions of this Agreement shall run with the land for as long as this Agreement remains in effect and shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

12. Severability. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect and for any reason whatsoever, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, and in the event any such provision is held to be invalid, illegal or unenforceable, those Parties affected by such event shall exercise their best efforts to agree upon a provision in substitution for such invalid, illegal or unenforceable provision that is as near in economic benefit as possible to the provision found to be invalid, illegal or unenforceable.

13. No Third-Party Beneficiaries. Other than as set forth in this Agreement, this Agreement shall not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.

14. Governing Law. The governing law of this Agreement shall be the law of the State of Alabama without regard to conflicts of law provisions.

15. Construction. In this Agreement, unless the context indicates otherwise, the singular includes the plural and the plural the singular, references to statutes, sections or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section or regulation referred to; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation" or "but not limited to" or words of similar import; references to exhibits, attachments or appendices are to those of this Agreement unless otherwise indicated and shall be deemed to include all subsequent modifications thereto; references to agreements and other contractual instruments shall be deemed to include all exhibits, attachments and appendices attached thereto and all subsequent amendments and other modifications to such instrument; and references to Parties include their respective successors and permitted assigns.

16. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

[Execution begins on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed in their respective names by their respective authorized representatives as of the day and year first above written.

DEVELOPER:

Premier Holdings of Georgia, LLC

Manraj Sidhu, Manager

OWNER/OPERATOR:

Premier Kings of Georgia Inc.

Manraj Sidhu, President

Exhibit "A"

LEGAL DESCRIPTION