



Bound Reports

1720

Clermont, FL

GROUND SUBLEASE

Between

**COLLEGE STATION RETAIL CENTER, L.L.C.,
a Florida limited liability company,
as Landlord**

and

**CHICK-FIL-A, INC.,
a Georgia Corporation,
as Tenant**

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GROUND SUBLEASE

THIS GROUND SUBLEASE ("Lease") is entered into effective as of the _____ day of _____, 2002 (the "Effective Date"), by and between **COLLEGE STATION RETAIL CENTER, LLC**, a Florida limited liability company, having an office for the transaction of business at 232 Mohawk Road, Clermont, Florida 34711, Attn: Robert M. Shakar (hereinafter referred to as "Landlord") and **CHICK-FIL-A, INC.**, a Georgia corporation, having an office for the transaction of business at 5200 Buffington Road, Atlanta, Georgia 30349-2998 (hereinafter referred to as "Tenant").

W I T N E S S E T H:

In consideration of Ten and no/100 Dollars (\$10.00), and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by Landlord and Tenant, and the mutual covenants contained herein, and intending to be legally bound hereby, Landlord and Tenant hereby agree with each other as follows:

Section 1. Demised Premises: Landlord hereby leases and lets to Tenant, and Tenant hereby takes and hires from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, all that certain tract, piece or parcel of land consisting of approximately 1.1 acres located on S.R. 50 and near the intersection of S.R. 50 and South Hancock Road and lying and being in the City of Clermont, Lake County, Florida, (the "**Land**"), more particularly described or shown on Exhibit "A" attached hereto and by this reference made a part hereof; **TOGETHER WITH** (a) a non-exclusive easement for the purposes of pedestrian and vehicular access, ingress and egress upon, over, through and across the driveways, accessways and sidewalks located from time to time on the adjoining property of Landlord more particularly described or shown on Exhibit "B" attached hereto and by this reference made a part hereof (the "**Adjoining Property**") including, without limitation, those certain access drives shown crosshatched on Exhibit "B" attached hereto and including the curb cuts to such accessways to S.R. 50 (the location of which shall not hereafter be materially altered or relocated without Tenant's prior written consent) together with the right (but not the obligation) to maintain, repair and replace all of such driveways and accessways and sidewalks; (b) a non-exclusive easement upon, over, under and through the **Adjoining Property** for the installation, use, maintenance, repair and replacement of underground utility lines, conduits and facilities to serve the **Land** and the improvements thereon, together with the right to tie into and connect to utility (including storm water drainage and detention) lines, conduits and facilities now or hereafter located on the **Adjoining Property** in order to serve the **Land**; provided, however, the location of such lines, conduits and facilities on the **Adjoining Property** shall be subject to the reasonable approval of Landlord; (c) a non-exclusive easement over and across the **Adjoining Property** for the purposes of passing and discharging storm and surface waters thereon from the **Land** as it may be improved from time to time; (d) any and all buildings, improvements, and structures located on the **Land**; and (e) any and all appurtenances, rights, privileges and easements benefiting, belonging or pertaining to the **Land**, and any right, title and interest of Landlord in and to any land lying in the bed of any street, road or highway in front of or adjoining said **Land**, together with any strips and gores relating to said **Land** (all the foregoing being hereinafter referred to as the "**Demised Premises**"). In the event that Tenant shall at any time obtain a Survey of the **Land**, and provided Landlord has reviewed and approved said Survey (such approval not to be unreasonably withheld, conditioned or delayed), Tenant and Landlord agree to amend this Lease by substituting a description of the **Land** based upon such Survey in place of the description or site plan attached hereto as Exhibit "A".

Section 2. Term: (a) Subject to the terms and conditions set forth herein, the Term of this Lease shall commence on the date which is forty-five (45) days after the expiration of the Inspection Period (as hereinafter defined) (such date being hereinafter referred to as the "Commencement Date"). Landlord hereby covenants that Landlord shall deliver full and exclusive possession of the **Demised Premises** to Tenant on or before the Commencement Date. As provided in Section 3 below, the Rent shall commence to accrue on the date which is the earlier of (i) one hundred twenty (120) days after the Commencement Date or (ii) the date upon which Tenant commences to do business with the public from the **Demised Premises** (hereinafter the "Rental Commencement Date").

(b) The Initial Term of this Lease shall be for the period beginning on the Commencement Date and terminating on the last day of the month which is ten (10) years after the Rental Commencement Date, unless sooner terminated or extended as herein provided. Tenant shall have the right, at its option, to extend the Initial Term of this Lease for four (4) additional, consecutive periods of five (5) years each (the "Option Periods"), at the Rent and upon all of the other terms, conditions, covenants and provisions set forth herein; provided, however, that Tenant may only extend the Term of this Lease by giving Landlord written notice of such extension on or prior to a date which is six (6) months before the expiration of the Initial Term of this Lease or any Option Period, as the case may be. The expression "Term of this Lease" as hereinafter used shall mean and refer to the Initial Term of this Lease and any extensions thereof, as the context may permit or require. The first Lease Year shall include the period from the Commencement Date through the last day of the month which is the twelfth (12th) month after the month in which the Rental Commencement Date occurs.

(c) Notwithstanding any other provision of this Lease to the contrary, it is the intent of Landlord and Tenant that Tenant shall not, due to clerical oversight or other unintentional reasons, be considered to have waived any of Tenant's rights to extend the Term of this Lease. Accordingly, if Landlord does not receive notice from Tenant of Tenant's election to extend the Term of this Lease for any of the respective Option Periods, then Landlord shall notify Tenant in writing thereof ("Landlord's Option Notice"). Tenant's right to extend for any of the Option Periods shall not expire unless (i) Tenant fails to give Landlord notice of the extension within thirty (30) days of receipt of Landlord's Option Notice, or (ii) Tenant advises Landlord in writing that Tenant has elected not to extend the Term of this Lease.

Section 3. Rent: (a) Tenant covenants and agrees to pay Landlord for the **Demised Premises**, without offset or deduction except as expressly set forth herein, and without previous demand therefor Rent at the rate hereinafter set forth from the Rental Commencement Date and thereafter throughout the Term of this Lease. All Rent shall be payable by Tenant in equal monthly installments on the first day of each and every calendar month. The Rent payable each month shall be as follows: (1) The Rent payable each month of the first five (5) Lease Years, commencing on the Rental Commencement Date, shall be Six Thousand Three Hundred Thirty Three and 33/100 Dollars (\$6,333.33), and (2) the monthly Rent for each succeeding period of five (5) years (including the Option Periods) shall be One hundred twelve percent (112%) of the monthly Rent during the prior period of five (5) years. Accordingly, the monthly Rent during the initial Term and any Option Periods of this Lease shall be as follows:

<u>Initial Term</u>	<u>Monthly Rent</u>
Years 1-5	\$ 6,333.33
Years 6-10	\$7,093.33
<u>Option Periods</u>	<u>Monthly Rent</u>
Years 11-15	\$ 7,944.53
Years 16-20	\$ 8,897.88
Years 21-25	\$ 9,965.62
Years 26-30	\$11,161.49

(b) As used herein, the term "Rent" shall be deemed to include the Rent and the additional rent, if any, payable by Tenant to Landlord hereunder.

(c) In the event that rent commences hereunder on other than the first calendar day of a month, or if the last day of the term of this Lease is other than the last calendar day of a month, the rent due hereunder for the first and/or last month, as the case may be, shall be prorated on a daily basis.

Section 4. Place of Payment: All amounts payable under Section 3 of this Lease, as well as all other amounts payable by Tenant to Landlord under the terms of this Lease, shall be paid at the office of Landlord set forth above, or at such other place as Landlord may from time-to-time designate by written notice to Tenant, in

lawful money of the United States which shall be legal tender for the payment of all debts and dues, public and private, at the time of payment.

Section 5. Rent to be Net to Landlord: It is the intention of the parties hereto that the Rent payable hereunder shall be net to Landlord so that this Lease shall yield, net to Landlord, the Rent specified herein during the Term of this Lease, as such Rent may be adjusted as provided in Section 3; provided, however, Tenant shall not pay any leasing commissions or brokerage fees incurred in connection herewith, and such costs, if any, shall be paid as provided in Section 30 hereof.

Section 6. Use of Demised Premises: (a) The **Demised Premises** may be used for restaurant and any other lawful purposes which do not violate the terms of this Lease or matters of title encumbering the **Demised Premises** as of the Commencement Date of this Lease. Notwithstanding the foregoing, the following uses shall be prohibited on the **Demised Premises** and Landlord agrees and covenants that the following uses shall also be prohibited on the **Adjoining Property**:

(i) Any obnoxious odor, noise or sound which can be heard or smelled outside of the **Demised Premises** or **Adjoining Property**, as applicable, provided that any usual paging system shall be allowed and further provided that typical restaurant odors shall not be deemed prohibited hereby if such restaurant facilities have been properly constructed and maintained in accordance with applicable governmental laws, rules and regulations.

(ii) Any operation primarily used as a warehouse operation, including assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.

(iii) Any mobile home, trailer court, labor camp, junk yard or stock yard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance).

(iv) Any dumping, disposing, incineration or reduction of garbage (exclusive of garbage compactors or garbage dumpsters on the **Demised Premises** and/or on the **Adjoining Property** used in connection with permitted operations at the **Demised Premises** and/or on the **Adjoining Property**).

(v) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

(vi) Any automobile, truck, trailer or RV sales, leasing or display or facility doing auto body repair.

(vii) Any bowling alley.

(viii) Any skating rink, school or other place of public assembly.

~~(ix) Any living quarters, sleeping apartments or lodging rooms.~~

(x) Any veterinary hospital or animal raising facility (except that this provision shall not prohibit pet shops such as PetsMart or PetStuff or the maintenance or live animals for sale or the provision of veterinary services in conjunction with the operation of any such pet shop).

(xi) Any mortuary.

(xii) Any establishment which has as its principal business the selling or exhibiting of pornographic materials, including, without limitation any adult book or film store and any adult entertainment nightclub.

(xiii) Any bar, tavern or other establishment whose principal business is the sale for on premises consumption of alcoholic beverages, provided that nothing contained herein shall prohibit the selling of alcoholic beverages by a restaurant operation not otherwise prohibited by this Lease.

(xiv) Any theater or cinema.

(xv) Any flea market, amusement arcade, bingo parlor, pool or billiard hall, dance hall or discotheque, carnival, circus or off-track betting parlor.

(xvi) Any car wash or any gasoline service station.

(xvii) Any health club or health spa.

(xviii) The overnight storage of motor vehicles.

(xix) Any central laundry, dry cleaning plant or laundromat.

(xx) Any so called "head shop" and the sale of rolling paper and other drug paraphernalia.

(b) Tenant shall at all times keep and maintain the **Demised Premises** in compliance with all applicable laws, ordinances, statutes, rules, regulations, orders, directions and requirements of all applicable federal, state, county and municipal governments and of all other governmental agencies or authorities having jurisdiction over the **Demised Premises** or the business activities conducted thereon or therein; provided, however, Tenant's obligation as to complying with the foregoing laws, ordinances or the like shall be limited to those that relate to Tenant's leasing shall be limited to those that relate to Tenant's leasing of the **Demised Premises** or Tenant's activities conducted thereon or therein (not those which relate to ownership of the Land.)

(c) Notwithstanding anything to the contrary contained in this Lease, Tenant agrees that if Landlord provides Tenant with written notice (including reasonable supporting evidence) that Landlord has executed a lease with a single tenant for the leasing of at least 10,000 square feet of building space on the **Adjoining Property**, then Landlord and Tenant shall enter into a mutually acceptable amendment to this Lease, such amendment to impose upon the **Demised Premises** and the remaining portion of the **Adjoining Property** not being leased to said single tenant a prohibition against the use of the **Demised Premises** or such other part of the **Adjoining Property** in a manner which would directly compete with the said single tenant leasing in excess of 10,000 square feet of building space; provided, however, Landlord and Tenant agree that said additional use restriction upon the **Demised Premises** shall be limited to the sale of clothing, office supplies or electronics.

Section 7. Taxes and Utility Expenses: (a) Tenant shall, during the Term of this Lease, in addition to Rent, pay and discharge punctually, as and when the same shall become due and payable, all taxes and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, which arise or accrue from and after the Rental Commencement Date and which shall or may during the Term of this Lease be charged, levied, laid, assessed, imposed, become due and payable, or liens upon or for or with respect to the Land or any part thereof, or any buildings, appurtenances or equipment owned by Tenant thereon or therein or any part thereof, together with all interest and penalties thereon incurred as a result of Tenant's failure to timely pay any bill received by Tenant prior to its due date, under or by virtue of all present or future laws, ordinances, requirements, orders, directives, rules or regulations of the federal, state and county governments and of all other governmental authorities whatsoever (all of the foregoing being hereinafter referred to as "Taxes"). Landlord acknowledges and agrees that any standby fees, Taxes or assessments by any taxing authority attributable to any period prior to the Rental Commencement Date which may become due shall be paid in full by Landlord. Landlord shall be responsible for the payment of all impact fees imposed by any governmental authority with respect to the development of the **Adjoining Property**. Landlord and Tenant acknowledge and agree that Tenant has, as of the Effective Date of this Lease, prepaid impact fees imposed by governmental authorities with respect to the development of the Land. The parties therefore agree that in the event (i) Tenant terminates this Lease pursuant to its rights contained in Section 8 (excepting specifically Tenant's right to terminate as set forth in the first paragraph of Section 8(a) or 23(d) of this Lease or, (ii) Landlord defaults in its performance required under the terms of this Lease and, therefore, Tenant has the right to terminate the Lease, then Landlord shall reimburse to Tenant, within thirty (30) days of written demand therefor, the full amount of impact fees so pre-paid by Tenant.

Tenant shall be deemed to have complied with the covenants of this Section 7 if payment of such Taxes shall have been made within any period allowed either by law or by the governmental authority imposing the same

during which payment is permitted without penalty or interest, and Tenant shall produce and exhibit to Landlord satisfactory evidence of such payment, if Landlord shall demand the same in writing.

If the **Demised Premises** do not constitute a separate tax parcel, Landlord agrees that Tenant may apply for and follow such procedures as are necessary to have the **Demised Premises** taxed as a parcel separate from the **Adjoining Property** by the applicable governmental authorities, and Landlord further agrees to use its reasonable and diligent efforts to cooperate with Tenant, at Tenant's expense, in such process; provided, however, Landlord shall not be required to plat or otherwise formally subdivide the **Demised Premises** from the **Adjoining Property** or file suit.

(b) In the event that the **Demised Premises** are not taxed or assessed as a parcel separate from the **Adjoining Property**, Tenant shall pay Landlord as additional rent within fifteen (15) days after written demand therefor accompanied by evidence of Landlord's payment of such tax bill, an amount equal to Tenant's proportionate share of the Taxes. In the event that Landlord and Tenant are unable to cause a separate tax bill to be issued, Landlord and Tenant shall cooperate with one another to cause the taxing authority to either (i) issue separate tax bills for the improvements on the **Land** and for the improvements on the remainder of the subject tax parcel, or (ii) if no such separate tax bill is issued for such improvements, to provide Landlord and Tenant the supporting information used by such taxing authority for the valuation of such improvements. In all events, Landlord and Tenant shall cooperate with one another, in good faith, to determine Tenant's proportionate share of any such tax bill which shall, for the purposes of the assessments on the real property constituting the **Land**, be calculated based upon the number of square feet contained in the **Land** as compared to the total number of square feet of land which is the subject of the tax bill and which shall, for the purposes of the assessments on the improvements located on the **Land**, be calculated based upon either (i) the separate tax bills issued for the improvements, if applicable, (ii) the supporting information provided by the tax authority, if applicable, or (iii) Landlord's and Tenant's good faith determination of the relative values of the improvements on the **Land** and the remainder of the land which is the subject of the tax bill.

(c) All such Taxes which shall become payable during each of the calendar years in which the Term of this Lease commences and terminates, shall be apportioned pro-rata between Landlord and Tenant in accordance with the respective portions of such years during which such Term shall be in effect. In the event any of said Taxes are payable in installments, Landlord shall elect to pay such over the longest period allowed by law Tenant shall pay the same as such installments become due and payable. Landlord shall pay all special assessments made or becoming a lien against or with respect to the **Land** and improvements thereon prior to the Rental Commencement Date. If any special assessments made after the Rental Commencement Date shall be payable in installments, Tenant shall pay the installments that become due and payable during the remaining Term of this Lease. Landlord shall pay all Taxes owed for the period prior to the Rental Commencement Date which arise due to a reassessment of the **Land** whether in the nature of "roll-back" Taxes due to a change in use of the **Land** or otherwise.

(d) Tenant or its designees shall have the right to contest or review all such Taxes by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Tenant or its designees shall conduct promptly at its own cost and expense and free of any expense to Landlord, and, if necessary, in the name of and with the cooperation of Landlord and Landlord shall execute all documents necessary to accomplish the foregoing). Notwithstanding the foregoing, Tenant shall promptly pay all such Taxes if at any time the **Land** or any part thereof shall then be immediately subject to forfeiture, or if Landlord shall be subject to any criminal liability arising out of the non-payment thereof.

The legal proceedings referred to above in this Section 7(d) shall include appropriate certiorari proceedings and appeals from orders therein and appeals from any judgments, decrees or orders. In the event of any reduction, cancellation or discharge, Tenant shall pay the amount finally levied to be due and payable on any such contested Taxes.

(e) Landlord covenants and agrees that if there shall be any refunds or rebates on account of the Taxes paid by Tenant under the provisions of this Lease, such refund or rebate, less the reasonable costs, if any, incurred by Landlord in obtaining such refund or rebate, shall belong to Tenant, but shall be appropriately pro-rated if the refund or rebate applies to more property than just the **Land**. Landlord will, upon the request of Tenant, sign any

receipts which may be necessary to secure the payment of any such refund or rebate, and will pay over to Tenant such refund or rebate as and when received by Landlord.

(fe) Nothing contained in this Lease shall require or be construed to require Tenant to pay any inheritance, estate, succession, transfer, gift, franchise, income, gross receipts (whether imposed on Landlord or Tenant), excise or profit taxes that are or may be imposed upon or assessed against Landlord, its heirs, successors or assigns.

(g) During the Term of this Lease, Tenant shall also pay and discharge punctually, as and when the same shall become due and payable, all sewer rents and all charges for water, steam, heat, gas, hot water, electricity, light and power, and other service or services furnished to the Land and improvements thereon or the occupants thereof during the Term of this Lease.

(h) Tenant further agrees to pay any so-called sales tax on rent or other tax levied on the rent received by Landlord hereunder so long as such sales tax on rent or other tax levied on the rent received by Landlord is in the true nature of a rent tax which is levied in lieu of, or as a part of, ad valorem taxes on the Land (and is not in the nature of an income tax).

Section 8. Conditions to Tenant's Obligations: (a) Tenant's obligations under this Lease are subject to and contingent upon the determination by Tenant, in its sole discretion and judgment, that the **Demised Premises** are satisfactory for the use and purposes intended by Tenant, including, without limitation the mutual approval by Tenant and Landlord of Tenant's site layout for the Land. Tenant shall have seventy-five (75) days after the Effective Date of this Lease (the "Inspection Period") to make such determination with respect to the **Demised Premises** and to give notice to Landlord if Tenant shall determine, in its sole discretion and judgment, that the **Demised Premises** are not satisfactory for the use and purposes intended by Tenant. Upon the giving of such notice, this Lease shall terminate and be of no further force or effect and neither Landlord nor Tenant shall have any further rights or obligations hereunder. If Tenant fails to give such notice on or prior to the date of expiration of the Inspection Period, then such conditions shall be deemed to have been waived by Tenant. In the event the Inspection Period shall expire on a Saturday, Sunday or holiday, then the date of expiration of such Inspection Period shall be extended to the next succeeding business day. In the event Tenant shall terminate this Lease on or prior to the expiration of the Inspection Period as provided herein, Tenant shall be obligated to pay to Landlord the sum of One hundred and no/100 Dollars (\$100.00).

If at any time after the Inspection Period and prior to the Commencement Date there shall occur a change in the status of the zoning regulations applicable to the **Demised Premises**, or there shall exist conditions imposed by applicable governmental authorities for the grant of building permits, or in the availability of utilities, including water, sanitary sewer, storm sewer, natural gas, electricity and telephone, to service the **Demised Premises** (e.g., a sewer moratorium), any of which prohibits or inhibits, or would cause a delay of, the immediate development and use of Tenant's proposed Chick-fil-A drive-thru restaurant building on the **Demised Premises**, Landlord or Tenant shall have the right to postpone the Commencement Date until the earlier of (i) the date which is ten (10) business days after the lifting or removal of the impediment to the immediate development and use of such a Chick-fil-A drive-thru restaurant building on the **Demised Premises**, or (ii) the date which is sixty (60) days after the final date for the Commencement Date as aforesaid. In the event the impediment to the immediate development and use of such a Chick-fil-A drive-thru restaurant building on the **Demised Premises** has not been removed or lifted on or before the expiration of the postponement period, Tenant shall have the right to terminate this Lease by written notice to Landlord, whereupon Tenant shall be obligated to pay the sum of One hundred and no/100 Dollars \$100.00) to Landlord, and this Lease shall be of no further force or effect.

Landlord acknowledges and agrees that the sum of One hundred and no/100 Dollars (\$100.00) is good, adequate and sufficient consideration for the rights granted to Tenant under this Section 8(a).

(b) The obligations of Tenant under this Lease shall also be expressly subject to and conditioned upon (i) the receipt by Tenant of all necessary permits or other governmental authorizations (the "Permits") necessary for the development and operation of a fast-food drive-thru restaurant on the Land, including, without limitation, any building, signage, health or other Permits deemed necessary by Tenant in connection with Tenant's intended

development of the Land as a fast-food drive-thru restaurant; provided, however, that Tenant agrees to complete and submit applications for all such Permits within fifteen (15) days prior to the expiration of the Inspection Period and to thereafter use reasonable and diligent efforts to obtain such Permits in an expeditious manner, and (ii) completion by Landlord of the Landlord's Work (if any) pursuant to Section 44 hereof. In the event that the foregoing fifteen (15) day period shall expire on a Saturday, Sunday or holiday, then such time period shall be extended to the next succeeding business day.

In the event the foregoing conditions in item (i) of this subparagraph (b) have not been satisfied or otherwise waived in writing on or before the Commencement Date and provided that Tenant has applied for such Permits and is diligently pursuing receipt of the same, the Commencement Date shall be deemed automatically extended for up to sixty (60) days to allow for the satisfaction of such conditions and if said conditions are not satisfied within said sixty (60) day period then Tenant shall have the option, upon written notice to Landlord, to (y) extend the Commencement Date for an additional period not to exceed another sixty (60) days to allow for the satisfaction of such conditions, or (x) terminate this Lease. In the event that the scheduled Commencement Date shall fall on a Saturday, Sunday or holiday items, then the date upon which Tenant must deliver such notice to Landlord of the election of its option in the foregoing (y) or (x) shall be extended to the next succeeding business day. In the event Tenant elects to extend the Commencement Date pursuant to option (y) hereof, and, upon the expiration of such additional sixty (60) day period, the aforesaid conditions have not been satisfied or waived in writing by Tenant, Tenant, upon written notice to Landlord, may exercise its option under item (x) above. In the event that Tenant elects to extend the Commencement Date for such sixty (60) day period as aforesaid and such extended time period shall expire on a Saturday, Sunday or holiday, the date upon which Tenant must elect to terminate this Lease due to the failure of such condition shall be extended to the next succeeding business day.

In the event the foregoing conditions in item (ii) of this subparagraph (b) have not been satisfied prior to the Commencement Date, Tenant shall have the option to (A) elect to extend the Commencement Date pending completion by Landlord of Landlord's Work, or (B) elect to extend the Commencement Date in order to allow Tenant to complete Landlord's Work on Landlord's behalf, in which event the Commencement Date shall be extended for the period of time required for Tenant to so complete Landlord's Work and, upon completion thereof, Tenant shall give written notice to Landlord establishing the Commencement Date. All costs and expenses incurred by Tenant in connection with the performance of Landlord's Work shall be reimbursed by Landlord to Tenant and shall bear interest from the date of expenditure at the rate of twelve percent (12%) per annum until reimbursed to Tenant. In the event Landlord fails to reimburse any such amounts to Tenant within thirty (30) days after written request therefor, such amounts may be offset by Tenant against Rent and additional rents due under this Lease. In the event Tenant elects option (B) above and Landlord's Work has not been completed within such sixty (60) day period, Tenant may elect either option (A) or (C) above.

(c) Tenant shall at all times before the Commencement Date of the Lease have the privilege of going upon the Demised Premises with its agents or engineers as needed to inspect, examine, survey and otherwise do whatever Tenant deems necessary in the engineering and planning for development of the Demised Premises. Said privilege shall include the right, at Tenant's sole expense, to make soil tests, borings, percolation tests and tests to obtain other information necessary to determine surface, subsurface and topographic conditions. Tenant hereby indemnifies and agrees to hold Landlord harmless from and against any claims or damages incurred by Landlord as a result of persons or firms entering the Demised Premises on Tenant's behalf pursuant to the privilege granted under this Section 8. Tenant's indemnity obligations under this Section 8(c) shall survive the expiration or termination of this Lease.

Section 9. Improvements, Repairs, Additions, and Replacements (a) Tenant shall have the right, at its own cost and expense, to construct on any part or all of the Land, at any time and from time to time, such buildings, structures, parking areas, driveways, drive-through windows, walks, gardens and other improvements as Tenant in its sole discretion shall from time to time determine are necessary for conducting the business of Tenant on the Demised Premises, provided that the same shall be in compliance with all then applicable building codes and ordinances, and provided that the plans for the same shall be approved in writing by Landlord, which approval by Landlord shall not be unreasonably withheld, conditioned or delayed. Landlord hereby approves the preliminary plans for the building and other improvements which Tenant proposes to construct on the Land, which plans are identified on Exhibit "F" attached hereto and by reference made a part hereof (the "Preliminary

Plans"). Any material change to such Preliminary Plans shall require Landlord's written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord agrees to respond to any request for approval of material changes in such Preliminary Plans within ten (10) business days after receipt by Landlord of the proposed changes, and if Landlord fails to respond to any request by Tenant for such approval within such ten (10) business day period, such changes shall be deemed to be approved.

(b) Tenant shall, at all times during the Term of this Lease, and at its own cost and expense, keep and maintain or cause to be kept or maintained in adequate repair and condition all building and improvements at any time erected on the **Land**. Unless expressly provided herein, Landlord shall not be required to furnish any services or facilities or to make any improvements, repairs or alterations in or to the **Land** during the Term of this Lease.

(c) Following the initial construction of the improvements by Tenant as provided in subparagraph (a) above, Tenant shall obtain Landlord's approval of any future alterations or replacements of such improvements which constitute a material change from the Preliminary Plans and which materially affect the exterior of the improvements, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, no such approval of Landlord shall be required for an alteration or replacement made to the improvements in order to cause the improvements to conform to the plans and specifications for Tenant's then existing prototype.

(d) Until the expiration or sooner termination of this Lease, title to any building or buildings or improvements situate or erected on the **Land**, the building equipment and other items installed therein and thereon, and any alteration, change or addition thereto shall remain solely in Tenant; and Tenant alone shall be entitled to deduct all depreciation on Tenant's income tax returns for any such building or buildings, building equipment and/or other items, improvements, additions, changes or alterations. Upon the expiration or sooner termination of the Term of this Lease, title to any building or buildings or improvements situate or erected on the **Land** shall vest in and become the full and absolute property of Landlord, subject to Section 9(e) below.

(e) Upon the expiration or sooner termination of the Term of this Lease, Tenant shall quit and surrender to Landlord the **Demised Premises** and the buildings and improvements then located thereon; provided, however, Tenant shall be permitted to remove Tenant's installed food service equipment, signs, trade fixtures and floor coverings, decorative wall panels (but not walls), stained glass windows, wall lanterns, menu soffits and any other items that make up Tenant's trade style, and Tenant shall have the right to alter the design and physical features of the buildings and improvements to protect the trade style or patent rights claimed by Tenant in such building and improvements.

Section 10. Requirements of Public Authority: (a) During the Term of this Lease, Tenant shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the federal, state, and county governments and of all other governmental authorities affecting Tenant's use and occupation of the **Demised Premises** or appurtenances thereto or any part thereof whether the same are in force at the Commencement Date or may in the future be passed, enacted or directed, and Tenant shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands that may in any manner arise out of or be imposed because of the failure of Tenant to comply with the covenants of this Section 10. The foregoing covenant of Tenant shall not impose any liability for the presence of Hazardous Materials on the **Demised Premises** beyond the express liability of Tenant set forth in Section 31 hereof.

(b) Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant or Landlord (as legally required), or both (if legally required), without cost or expense to Landlord, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in subparagraph (a) of this Section and if compliance therewith may legally be delayed pending the prosecution of any such proceeding, Tenant may delay such compliance therewith until the final determination of such proceeding.

(c) Landlord agrees to execute and deliver any appropriate papers or other instruments which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, directive, rule, regulation or requirement and to fully cooperate with Tenant in such contest.

Section 11. Covenant Against Liens: If, because of any act or omission of Tenant, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Landlord or the interest of Landlord in and to any portion of the **Demised Premises**, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after written notice from Landlord to Tenant of the filing thereof, and Tenant shall indemnify and save Landlord harmless from and against all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting therefrom. Notice is hereby given that all such liens shall relate and attach only to the interest of Tenant in the **Demised Premises**.

Section 12. Access to Demised Premises: Landlord or Landlord's agents and designees shall have the right, but not the obligation, to enter upon the **Demised Premises** at all reasonable times after reasonable notice to Tenant to examine same and to exhibit the **Demised Premises** to prospective purchasers and prospective tenants, but in the latter case only during the last six (6) months of the Term of this Lease.

Section 13. Assignment and Subletting: (a) Tenant may assign, mortgage or otherwise encumber this Lease or sublease all or any part of the **Demised Premises** without Landlord's consent but with written notice thereof to Landlord. Tenant agrees to furnish to Landlord written notice of any assignment or subletting of this Lease within thirty (30) days thereafter, together with the name and address of the assignee. Upon any such assignment of this Lease or subletting of all or any part of the **Demised Premises**, Tenant shall be and remain fully responsible for all obligations under this Lease except as otherwise set forth in Section 21(b)(5) of this Lease.

Section 14. Signs: Tenant shall have the right to install, maintain and replace in, on, over or in front of the **Demised Premises** or in any part thereof such signs and advertising matter as Tenant may determine are necessary for conducting the business of Tenant on the **Demised Premises** (including, without limitation, at least one (1) pylon sign), and Tenant shall comply with any applicable requirements of governmental authorities having jurisdiction and shall obtain any necessary permits for such purposes. As used in this Section 14, the word "sign" shall be construed to include any placard, light or other advertising symbol or object, irrespective of whether same be temporary or permanent.

Section 15. Indemnity: (a) Tenant shall indemnify and save Landlord harmless from and against any and all liability, damages, penalties or judgments arising from injury to person or property sustained by anyone in and about the **Land** resulting from any act or omission of Tenant or Tenant's agents, servants, employees or contractors. Tenant shall, at its own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against Landlord or in which Landlord may be impleaded with others upon any such above-mentioned matter or claim, except as may result from the acts set forth in subparagraph (b) of this Section 15.

(b) Landlord shall indemnify and save Tenant harmless from and against any and all liability, damages, penalties or judgments arising from injury to person or property sustained by anyone in and about the **Land** resulting from any act or omission of Landlord or Landlord's agents, servants, employees or contractors. Landlord shall, at its own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against Tenant or in which Tenant may be impleaded with others upon any such above-mentioned matter or claim, except as may result from the acts set forth in subparagraph (a) of this Section 15.

Section 16. Insurance: (a) Tenant (but not any assignee or sublessee of Tenant) shall provide at its expense, and keep in force during the Term of this Lease, commercial general liability insurance in a good and solvent insurance company or companies licensed to do business in the State in which the **Land** is located, selected by Tenant, and reasonably satisfactory to the holder of any Leasehold Mortgage (as hereinafter defined) placed by Tenant on the **Demised Premises**, in the amount of at least One Million and no/100 Dollars (\$1,000,000.00) with respect to injury or death to any one (1) person, and Three Million and no/100 Dollars (\$3,000,000.00) with respect to injury or death of more than one (1) person in any one (1) accident or other occurrence, and Five Hundred Thousand and no 100/ Dollars (\$500,000.00) with respect to damage to property. The aforesaid limits may be met through a combination of Tenant's primary coverage and umbrella and/or excess coverage.

Tenant (and any assignee or sublessee of Tenant so long as Tenant is primarily liable under the terms of this Lease) shall be permitted to maintain a self insured retention with respect to its commercial general liability

coverage up to the amount of Two Hundred Fifty and no/100 Dollars (\$250,000.00). Such policy or policies shall include Landlord and each such Leasehold Mortgagee (as hereinafter defined) as additional insureds. Tenant agrees to deliver certificates of such insurance to Landlord on or before the Commencement Date and thereafter not less than ten (10) days prior to the expiration of any such policy. Such insurance may not be cancelled without thirty (30) days' written notice to Landlord and to each Leasehold Mortgagee.

(b) During the Term of this Lease, Tenant shall keep all buildings and improvements erected by Tenant on the Land at any time insured for the benefit of Landlord, Tenant and any Leasehold Mortgagee, as their respective interests may appear, against loss or damage by fire and customary extended coverage in a minimum amount equal to one hundred percent (100%) of the replacement value of such buildings and improvements, subject to reasonable deductibles and the other terms and rights contained in this Section 16. All proceeds payable at any time and from time to time by any insurance company under such policies shall be payable to the Leasehold Mortgagee, if any, or to Tenant, and Landlord shall not be entitled to, and shall have no interest in, such proceeds or any part thereof. Any proceeds paid directly to Tenant shall be held by Tenant for the purpose of paying the expenses of complying with its obligations under Section 18 hereof. Landlord shall, at Tenant's cost and expense, cooperate in good faith with Tenant in order to obtain the largest possible recovery and execute any and all consents and other instruments and take all other actions necessary or desirable in order to effectuate the same and to cause such proceeds to be paid as provided herein. Landlord shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by Tenant hereunder if the effect of such separate insurance would be to reduce the protection or the payment to be made under Tenant's insurance. Tenant reserves the right to self-insure against the foregoing risks so long as Tenant maintains a plan of self-insurance adequate to provide coverage equal to such policy. If Tenant elects to so self-insure, Tenant shall furnish Landlord with a certification from a principal officer of Tenant certifying that Tenant has an adequate plan of self-insurance in place.

(c) Any insurance required to be provided by Tenant pursuant to this Lease may be provided by blanket insurance covering the Demised Premises and other locations of Tenant provided such blanket insurance complies with all of the other requirements of this Lease with respect to such insurance and such blanket insurance is acceptable to any Leasehold Mortgagee.

(d) Landlord shall provide at its expense (but subject to reimbursement as a Common Area Maintenance Expense, as set forth in Section 45 hereof), and keep in force during the Term of this Lease, general liability insurance in a good and solvent insurance company or companies licensed to do business in the State in which the Land is located on the Adjoining Property in the amount of at least Three Million and no/100 Dollars (\$3,000,000.00) with respect to injury or death to any one person, and Five Million and no/100 Dollars (\$5,000,000.00) with respect to injury or death of more than one person in any one accident or occurrence, and One Million Dollars and no/100 (\$1,000,000.00) with respect to damage to property. Such policy or policies shall include Tenant and any Leasehold Mortgagee (as hereinafter defined) as additional insureds. Landlord agrees to deliver certificates of such insurance to Tenant on or before the Commencement Date and thereafter not less than ten (10) days prior to the expiration of any such policy. Such insurance may not be cancelled without thirty (30) days written notice to Tenant and to each Leasehold Mortgagee.

Section 17. Waiver of Subrogation: All insurance policies carried by either party covering the Demised Premises and/or the Adjoining Property, including but not limited to contents, fire and casualty insurance, shall expressly waive any right on the part of the insurer against the other party. As to any loss or damage which may occur upon the property of a party hereto and be covered (or required by the terms of this Lease to be covered) under any insurance policy(ies), such party hereby releases the other from any amount of liability for such loss or damage. Such release shall include a release of liability for the full amount of any deductible maintained by a party under its insurance policy.

Section 18. Destruction: In the event that, at any time during the Term of this Lease, the buildings and improvements on the Land shall be destroyed or damaged in whole or in part by fire or other cause within the extended coverage of the fire insurance policies carried by Tenant in accordance with this Lease, then, to the extent of the net proceeds received by Tenant plus any deductible maintained by Tenant, Tenant shall cause the same to be repaired, replaced or rebuilt (with such changes in the design, type or character of the building and improvements as

Tenant may deem desirable) within nine (9) months after receipt by Tenant of such insurance proceeds. Notwithstanding the foregoing sentence to the contrary, in the event the buildings and improvements on the **Land** are destroyed or damaged at any time during the last two (2) years of the initial Term of this Lease or any extension period to the extent that, in Tenant's reasonable judgment, the **Demised Premises** are not usable in their damaged condition for the conduct of Tenant's business, Tenant may, upon written notice to Landlord, elect to terminate this Lease in which event Tenant shall pay to Landlord an amount equal to the greater of (i) the basic rent payable for the then remaining term of this Lease, or (ii) the insurance proceeds collected in connection with such damage and destruction and which are attributable to the buildings and other improvements on the **Demised Premises**, less any amount expended by Tenant to collect such insurance proceeds and less any amount expended by Tenant to place the **Land** in a safe condition following such damage; provided, however, in no event shall the amount due under this subclause (ii) exceed (x) base rent payable for the then remaining term of this Lease plus (y) the fair market value of the Tenant's improvements on the **Demised Premises** (excluding Tenant's removable furniture, fixtures and equipment) immediately prior to such destruction or damage (fair market value to be determined pursuant to Section 43 hereof).

Section 19. Eminent Domain: (a) As used herein, the term "Taking" shall mean and refer to the event of vesting of title in a competent authority vested with the power of eminent domain or condemnation pursuant to any action or proceeding brought by such authority in exercise of such power, including a voluntary sale to such authority, either under threat of, or in lieu of, condemnation or while a condemnation action or proceeding is pending. If, at any time during the Term of this Lease, there shall be a Taking of all of the **Demised Premises**, or a substantial part of the **Demised Premises** such that the portion of the **Demised Premises** remaining after such Taking would, in Tenant's sole but reasonable business judgment, be impractical for use by Tenant, then Tenant shall be relieved of its obligations to pay Rent and additional rent and to perform its other covenants hereunder from and after the date of such Taking, and Tenant shall surrender the remaining portion of the **Demised Premises**, if any, to the Landlord as of such date; provided that such release and surrender shall in no way prejudice or interfere with Tenant's right to an award for its loss or damage as hereinafter provided. The Rent and additional rent for the last month of Tenant's possession of the **Demised Premises** shall be prorated and any Rent and additional rent paid in advance shall be refunded to the Tenant.

(b) In the event of a Taking which does not result in a termination of this Lease pursuant to Section 19(a), the Term of this Lease shall not be reduced or affected in any way, but the Rent and additional rent payable hereunder shall be reduced by an amount which bears the same ratio to the Rent and additional rent payable immediately prior to such Taking as the fair market value of the **Demised Premises** (excluding improvements) after Taking bears to the fair market value of the **Demised Premises** (excluding improvements) immediately prior to the Taking (such fair market value to be determined pursuant to Section 43 hereof). The award for any partial Taking shall be allocated between Landlord and Tenant as described in subparagraph (c) below; provided, however, if Tenant elects to restore, replace or reconstruct any improvements which are the subject of any Taking, Landlord shall deliver to Tenant its share of the award attributable to such improvements to the extent Tenant's award attributable to such improvements is not sufficient to pay for the cost of restoration, replacement and reconstruction.

(c) In the event of any Taking of all or any portion of the **Demised Premises**, Landlord and Tenant shall be entitled to an award based on any loss or reduction of its leasehold and easement estates (such award to be shared between Landlord and Tenant with Tenant's share being the award multiplied by a fraction, the numerator of which is the number of years left remaining in the Term, including Option Periods, and the denominator of which shall be 30, and Landlord's share shall be the remaining portion of such award), and Tenant shall be entitled to an award based on loss of any building or other improvement constructed or placed on the **Land** or the **Adjoining Property** by Tenant, loss or interruption of business and the cost of any alterations or restoration resulting from any such Taking. Any single award or settlement shall be allocated between the parties in accordance with the foregoing.

(d) If a court fails or refuses to grant separate awards to Landlord and Tenant upon a Taking of all or any portion of the **Demised Premises**, and if Landlord and Tenant cannot agree on the allocation of the award, and if such inability to agree continues for thirty (30) days after the amount of the award is determined, Landlord and Tenant agree that the determination of such allocation shall be made in accordance with the following procedure:

(1) Landlord and Tenant shall each promptly appoint one (1) appraiser. Those two (2) appraisers shall promptly appoint a third (3rd) appraiser. Each appraiser appointed hereunder shall be a member of the American Institute of Real Estate Appraisers (or successor organization) having at least five (5) years experience in appraisal of real estate for commercial retail use in the metropolitan area in which the Land is located. If such appraisers fail to appoint such third (3rd) appraiser within thirty (30) days after notice of their appointment, then either Landlord or Tenant, upon notice to the other, may request the appointment of a third (3rd) appraiser by the then president of the Board of Realtors in the city in which the Land is located, or any then similar existing body.

(2) The three (3) appraisers so appointed shall jointly make the required appraisals of the values of Landlord's and Tenant's interests in the Demised Premises and shall allocate the award based upon such appraisals, and if they cannot agree, the appraisals of the third (3rd) appraiser will be accepted by Landlord and Tenant.

(3) If, after notice by either Landlord or Tenant of the appointment of an appraiser by the party giving such notice, the other party to whom such notice is given shall fail, within a period of ten (10) days after such notice, to appoint an appraiser, then the appraiser so appointed by the party giving the notice shall have the power to proceed as sole appraiser to make the appraisal and allocation hereunder.

(4) Landlord shall pay the fees and expenses of the person appointed by Landlord as an appraiser hereunder, Tenant shall pay the fees and expenses of the person appointed by Tenant as an appraiser hereunder, and Landlord and Tenant shall each pay one-half (1/2) of the fees and expenses of the third (3rd) appraiser appointed pursuant to the provisions of this Section 19.

Section 20. Utility Easements: Tenant shall have the right to enter into reasonable agreements with utility suppliers creating easements in favor of such suppliers, including, without limitation, gas, electricity, telephone, water and sewer, as are required in order to service the buildings and improvements on the Land, subject, however, to Landlord's reasonable approval of the location of such utility lines. The form of any such easements shall require the utility supplier to restore the easement area following any construction or repair work and such easements shall reserve the rights of the owner of the Land to relocate such utility lines from time to time at such owner's expense (provided, however, the foregoing shall not operate to permit Landlord to so relocate any such utility lines during the Term of this Lease). Landlord covenants and agrees to consent thereto and to execute any and all documents, agreements and instruments, and to take all other actions reasonably required in order to effectuate the same, all at Tenant's cost and expense.

Section 21. Leasehold Mortgages: (a) Notwithstanding any other provision hereof to the contrary, Tenant shall have the right, from time to time, to convey or encumber by mortgage, deed to secure debt or similar financing instrument, Tenant's leasehold estate and interest in and to the Demised Premises or any part thereof (each such leasehold mortgage, deed to secure debt or other financing instrument being herein referred to as a "Leasehold Mortgage" and the holder thereof as a "Leasehold Mortgagee"). The execution and delivery of a Leasehold Mortgage shall not, in and of itself, be deemed to constitute an assignment or transfer of this Lease nor shall the Leasehold Mortgagee, as such, be deemed an assignee or transferee of this Lease so as to require such Leasehold Mortgagee to assume the performance of any of the covenants or agreements on the part of Tenant to be performed hereunder. Tenant shall also have the right from time to time to obtain financing by a "sale and leaseback" of Tenant's leasehold interest hereunder (i.e., an assignment of Tenant's leasehold estate under this Lease simultaneously with or subsequent to the making of a sublease of all of the Demised Premises to Tenant). If Tenant shall enter into any such financing arrangement, it shall deliver to Landlord true and complete copies of the instruments effecting such transaction. Simultaneously with the delivery to Landlord of the aforesaid instruments effecting such transaction, Tenant shall also give Landlord notice of the name and address of the party providing such financing.

(b) Tenant agrees that Tenant shall not encumber its leasehold estate with more than two (2) Leasehold Mortgages at one time without the prior, written consent of Landlord. With respect to any Leasehold Mortgagee or other person providing financing as to which Landlord shall have been given notice, the following shall apply notwithstanding any other provision of this Lease to the contrary:

(1) No voluntary termination by Tenant of this Lease shall be effective unless consented to in writing by such Leasehold Mortgagee; and any material amendment or material modification of this Lease or the exercise by Tenant of any option to terminate this Lease without the written consent of such Leasehold Mortgagee shall be voidable as against such Leasehold Mortgagee at its option. If any Leasehold Mortgagee shall fail to respond to any written consent under this Section 21(b)(1) within thirty (30) days after the receipt by such Leasehold Mortgagee of such written request [which written request shall make specific reference to this Section 21(b)], the Leasehold Mortgagee shall be deemed to have granted its consent to such request.

(2) Landlord shall give any and all notices given to Tenant hereunder simultaneously to any such Leasehold Mortgagee at the address of such Leasehold Mortgagee provided to Landlord, and no such notice shall be effective as to such Leasehold Mortgagee unless and until a copy thereof has been given to such Leasehold Mortgagee. In the event Landlord sends Tenant a notice of default, from and after the time that such notice has been delivered to such Leasehold Mortgagee, such Leasehold Mortgagee shall have a period equal to the period granted to the Tenant plus, with respect to monetary defaults, an additional ten (10) business days in which to effect a cure, and with respect to non-monetary defaults only, an additional thirty (30) days in which to effect a cure of any default by Tenant under this Lease (provided, however, that if such cure is of a nature that it cannot be effected within such a period of time, no default shall have been deemed to have occurred hereunder as long as such Leasehold Mortgagee shall have commenced to cure such default within such period and shall thereafter be taking diligent steps to effect the same). Landlord shall accept performance of any and all of Tenant's obligations hereunder, including the obligations to pay Rent and additional rent, from any such Leasehold Mortgagee and the performance of such obligation by such Leasehold Mortgagee shall be deemed to have been a cure effected by Tenant. Landlord hereby consents to the entry into the **Demised Premises** by any such Leasehold Mortgagee for the purpose of effecting the cure of any default by Tenant. In the event of a default by Tenant hereunder, any Leasehold Mortgagee may effect the cure of such default by foreclosing its Leasehold Mortgage, obtaining possession of the **Demised Premises** and performing all of Tenant's obligations hereunder.

(3) If it shall be necessary for any such Leasehold Mortgagee to obtain possession of the **Demised Premises** to effect any such cure of a default by Tenant under this Lease, then Landlord shall not commence any proceeding or action to terminate the Term of this Lease if (i) such Leasehold Mortgagee shall have informed Landlord within the grace period applicable to such Leasehold Mortgagee that such Leasehold Mortgagee has taken steps to foreclose its Leasehold Mortgage, or cancel its sublease or other financing arrangement, necessary to obtain possession of the **Demised Premises**, (ii) the Rent and additional rent shall be paid and all other provisions and requirements of this Lease which are capable of being observed and performed without obtaining possession of the **Demised Premises** are so observed and performed while any such foreclosure, other action or other remedy is being prosecuted by any such Leasehold Mortgagee and for so long thereafter as such Leasehold Mortgagee shall have obtained possession of the **Demised Premises**, and (iii) such Leasehold Mortgagee shall be diligently prosecuting such foreclosure or cancellation and attempting to effect a cure of the default. Nothing herein contained shall be deemed to require the Leasehold Mortgagee to continue with any foreclosure or other proceedings, or, in the event such Leasehold Mortgagee shall otherwise acquire possession of the **Demised Premises**, to continue such possession, if the default in respect to which Landlord shall have given the notice shall be remedied.

(4) Landlord agrees that in the event of the termination of this Lease by reason of any default by Tenant, and if Landlord has prior to such termination been given written notice of the name and address of such Leasehold Mortgagee, Landlord will enter into a new lease of the **Demised Premises** with any Leasehold Mortgagee or its nominee for the remainder of the Term of this Lease, effective as of the date of such termination, at the rent and upon the terms, options, provisions, covenants and agreements as herein contained, provided:

(A) Such Leasehold Mortgagee shall make written request upon Landlord for such new lease prior to or within ten (10) days after the date of such termination and such written request is accompanied by payment to Landlord of all sums then due to Landlord hereunder

(B) Such Leasehold Mortgagee or its nominee shall pay to Landlord at the time of the execution and delivery of said new lease any and all sums which would at that time be due hereunder but for such termination, together with any expenses, including reasonable attorneys' fees, incurred by Landlord as a result of such termination, as well as in the preparation, execution and delivery of such new lease; and

(C) Tenant is not released of its monetary obligations under this Lease.

(5) No Leasehold Mortgagee shall become liable under the agreements, terms, covenants or conditions of this Lease unless and until it becomes the owner of the leasehold estate. Any assignment of the entire interest in this Lease by any owner of the leasehold estate whose interest shall have been acquired by, through or under any Leasehold Mortgage or from any holder thereof, shall be subject to Section 13 of this Lease, except that the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment, provided that the assignee shall execute and deliver to Landlord a recordable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions in this Lease contained on Tenant's part to be performed and observed, it being the intention of the parties that once the Leasehold Mortgagee or its nominee shall succeed to Tenant's interest hereunder, any and all subsequent assignments (whether by such Leasehold Mortgagee, its nominee, or any purchaser at a foreclosure sale or other transferee or assignee from Leasehold Mortgagee or its nominee) shall upon the aforesaid assumption and agreement by the assignee, effect a release of the assignor's liability hereunder.

(6) If at any time there shall be two (2) or more Leasehold Mortgages constituting a lien on the Tenant's interest in this Lease and the leasehold estate hereby created, the holder of the Leasehold Mortgage recorded prior in time shall be vested with the rights under Section 21(b)(4) of this Lease to the exclusion of the holder(s) of the other Leasehold Mortgages; provided, however, that if the holder of a Leasehold Mortgage recorded prior in time to any other Leasehold Mortgage shall fail or refuse to exercise the rights set forth in this Lease, the holder of the other Leasehold Mortgage next in time shall have the right to exercise such rights. All of the provisions contained in this Lease with respect to Leasehold Mortgages and the rights of Leasehold Mortgagees shall survive the termination of this Lease for such period of time as shall be necessary to effectuate the rights granted to all Leasehold Mortgagees by the provisions of this Lease.

(7) Nothing herein contained shall require any Leasehold Mortgagee or its nominee to cure any default by Tenant hereunder.

Section 22. Performance by Subtenant: Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any sublessee of Tenant occupying all or any part of the **Demised Premises** and the performance of such act shall be deemed to be performance by Tenant and shall be accepted as Tenant's act by Landlord.

Section 23. Quiet Enjoyment; Status of Landlord's Title: (a) Tenant, upon paying the Rent and additional rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the **Demised Premises** during the Term of this Lease, without hindrance or molestation by anyone.

(b) Landlord represents and warrants to Tenant that **Landlord** is the owner of a leasehold estate in and to the **Demised Premises** by virtue of that certain Lease Agreement between Adams Family Limited Partnership, a Florida limited partnership, as lessor, and Mercator Properties, Inc., a Florida corporation, as lessee, dated June 4, 1997, as assigned by Mercator Properties, Inc. to College Station Retail Center, L.L.C. pursuant to an Assignment and Assumption Agreement dated May 2, 2003 (said Lease Agreement, as assigned, being hereinafter

referred to as the "Senior Lease"). Landlord hereby acknowledges and agrees that the lessor under the Senior Lease and Landlord will enter into a Memorandum of Lease regarding the Senior Lease and the assignment to Landlord and such Memorandum of Lease will be properly recorded prior to the Commencement Date. Landlord represents and warrants to Tenant that Landlord's leasehold estate in and to the Demised Premises is free and clear of any liens, encumbrances and restrictions except only those matters set forth on Exhibit "C" attached hereto and by reference made a part hereof and that Landlord has the power and authority to execute and deliver this Lease and to carry out and perform all covenants to be performed by Landlord hereunder.

Landlord represents and warrants to Tenant that Landlord has delivered to Tenant a complete and accurate copy of the Senior Lease, that there are no existing or uncured defaults by Landlord under the Senior Lease, that there are no events which with the passage of time or notice, or both, would constitute a default by Landlord under the Senior Lease, that the Senior Lease is in full force and effect, and that there are no other agreements, understandings or commitments between the lessor(s) under the Senior Lease and Landlord relating to the premises leased under the Senior Lease.

Landlord and Tenant hereby agree to immediately send to the other copies of any and all notices received by either of them from the lessor(s) under the Senior Lease.

Landlord hereby agrees to pay the rent due under the Senior Lease and to duly observe and perform the obligations imposed upon the lessee under the Senior Lease to the extent that such obligations are not provided in this Lease to be observed or performed by Tenant, and except to the extent that any failure so to pay or any failure in such observance or performance shall have resulted from the default by Tenant hereunder (including without limitation, the failure of Tenant to pay any amount of Rent or other charges hereunder). Landlord shall not do or permit any act, condition or thing to occur which would or may constitute a default under the Senior Lease, except to the extent that such occurrence shall have resulted from a default by Tenant hereunder (including, without limitation, the failure of Tenant to pay any amount of Rent or other charges hereunder). In the event Landlord shall at any time fail to comply with its obligations under this Section, Tenant shall have the right, but not the obligation, to make any payment or take any action necessary to prevent or cure any default under the terms of the Senior Lease, and Landlord shall promptly reimburse Tenant for all costs and expenses incurred by Tenant in preventing or curing such default under the Senior Lease. In the event Landlord shall fail to so promptly reimburse Tenant for such costs and expenses, Tenant may, at its option, effect a credit or offset against any Rent or additional rent thereafter becoming due hereunder for such reimbursed costs and expenses incurred by Tenant in preventing or curing such default under the Senior Lease.

Whenever Landlord shall have the right to enforce any rights or remedies against the lessor(s) or any other party under the Senior Lease because of the default or breach of such lessor(s) or such other party, and if Landlord shall fail or refuse to enforce such rights within a reasonable period of time after Tenant shall request Landlord to enforce such rights, then the Tenant shall have the right, in the name of Tenant, or, if necessary, in the name of Landlord, to enforce such rights of the Landlord. Such enforcement shall be at the sole expense of the Tenant, and the Tenant shall indemnify the Landlord against all costs and expenses, including reasonable attorneys' fees, which may be incurred by Landlord in connection with any claim, action or proceeding so undertaken by Tenant. Any amount of recovery obtained by Tenant shall be the property of Tenant, and shall be applied (as between Landlord and Tenant) first to the costs incurred by Tenant in enforcing such rights, then to Tenant to compensate Tenant for any damages sustained by Tenant as a consequence of such damage or breach on the part of such lessor(s) or such other party, and then to Landlord to compensate Landlord for any damage sustained by Landlord as a consequence of such damage or breach on the part of such lessor(s) or such other party.

Landlord hereby covenants, warrants, represents and agrees that it shall not voluntarily terminate the Senior Lease, whether pursuant to any termination right or option under the Senior Lease or otherwise, or cause any modification or amendment of the Senior Lease which would adversely affect the rights or increase the obligations of Tenant hereunder without the prior written consent of Tenant and any Leasehold Mortgagee.

Landlord covenants and agrees to use all commercially reasonable efforts to obtain from the Senior Landlord, prior to the Commencement Date of this Lease, an agreement in the form of Exhibit "E" attached hereto and made a part hereof by this reference. Tenant's obligations hereunder are expressly conditioned upon Landlord,

Tenant and the Senior Landlord entering into such agreement on or prior to the establishment of the Commencement Date.

(c) As an express condition precedent to the expiration of the Inspection Period, Landlord agrees to obtain from the holder of any mortgage, deed to secure debt or other security instrument presently placed against the **Demised Premises**, an agreement substantially in the form attached hereto as **Exhibit "E"** and made a part hereof by this reference, which provides that in the event of any foreclosure, sale under power of sale, or transfer in lieu of any of the foregoing pursuant to any such lease or security instrument Tenant's use, possession and enjoyment of the **Demised Premises** shall not be disturbed and this Lease shall continue in full force and effect so long as Tenant is not in default hereunder beyond any applicable cure periods.

(d) Landlord acknowledges that, upon the establishment of the Commencement Date of this Lease and the recordation of the Short Form Lease (as defined in Section 39), Tenant intends to obtain a leasehold title insurance policy insuring Tenant's leasehold estate in the **Demised Premises** (which includes Tenant's easement rights over the **Adjoining Property**). Tenant shall have until the date which is sixty (60) days after the Effective Date of this Lease during which to examine title to the **Demised Premises** and to cause a survey (the "Survey") of the **Demised Premises** to be made and to advise Landlord in writing of any defects or objections affecting the title to the **Demised Premises** or the use thereof by Tenant disclosed by such title examination and/or Survey. In the event such sixty (60) day period shall expire on a Saturday, Sunday or holiday, then such time period shall be extended to the next succeeding business day. From time to time prior to the Commencement Date of this Lease, Tenant may update the effective date of such title examination or Survey and give notice to Landlord of all defects or objections appearing subsequent to the effective date of its previous title examination or Survey, as the case may be. Landlord shall have ten (10) days after receipt of such notice of title defects or objections from Tenant to advise Tenant in writing which of such title defects or objections Landlord does not intend to satisfy or cure; provided, however, Landlord hereby agrees that Landlord shall satisfy or cure any such defects or objections consisting of Taxes, mortgages, deeds of trust, mechanic's or materialmen's liens or other such monetary encumbrances. Landlord further agrees that Landlord shall, upon the issuance of Tenant's leasehold title insurance policy, deliver to the title insurer a customary owner's affidavit in a form sufficient to delete the so-called "standard exceptions" in an ALTA title insurance policy. In the event Landlord fails to give such written advice to Tenant within such ten (10) day period, Landlord shall be deemed to have agreed to satisfy or cure all such defects or objections set forth in Tenant's notice. In the event that the foregoing ten (10) day period given to Landlord shall expire on a Saturday, Sunday or holiday, then the time period for response by Landlord shall be extended to the next succeeding business day. If Landlord shall advise Tenant in writing that Landlord does not intend to satisfy or cure any specific non-monetary encumbrances, Tenant may elect either (a) to terminate this Lease by written notice to Landlord, or (b) to accept its leasehold estate subject to such specific non-monetary encumbrances. Unless otherwise agreed by Landlord and Tenant, Landlord shall have until the Commencement Date to satisfy or cure all such defects and objections which Landlord agreed (or is deemed to have agreed) to satisfy or cure as provided above. In the event Landlord fails or refuses to cure any defects and objections which are required herein to be satisfied or cured by Landlord prior to the Commencement Date, such failure or refusal shall constitute a default by Landlord under this Lease, and Tenant shall have, in addition to all other rights and remedies hereunder, the option to (i) terminate this Lease by written notice to Landlord, (ii) cure such defect or objection, in which event the actual cost and expense incurred by Tenant in connection with the curing of such defect or objection may be offset by Tenant against Rent and additional rent hereunder, (iii) accept its leasehold estate subject to such defects and objections, or (iv) any combination of items (ii) and (iii) above. If Tenant elects the option in item (i), Landlord shall be required to reimburse Tenant for the costs and expenses incurred by Tenant in connection with its due diligence with respect to the **Demised Premises**, in pursuing its Permits, and in connection with the preparation and negotiation of this Lease.

Section 24. Defaults: (a) The following events shall constitute events of default under this Lease:

(1) Tenant's failure to pay any installment of Rent or additional rent when the same shall be due and payable and the continuance of such failure for a period of ten (10) days after receipt by Tenant of notice in writing from Landlord specifying the nature of such failure; or

(2) Tenant's failure to perform any of the other covenants, conditions and agreements herein contained on Tenant's part to be kept or performed and the continuance of such failure without the curing

of same for a period of thirty (30) days after receipt by Tenant of notice in writing from Landlord specifying the nature of such failure, and provided Tenant shall not cure said failure as provided in subparagraph (b) of this Section 24; or

(3) if Tenant shall (i) file a petition commencing a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law; (ii) make a general assignment for the benefit of its creditors; (iii) file an application for, or consent to, the appointment of any receiver or a permanent or interim trustee of Tenant or of all or a substantial portion of its property; (iv) file a petition seeking a reorganization of its financial affairs or to take advantage of any bankruptcy, insolvency or similar law, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law; (v) take any action for the purpose of effecting any of the foregoing; or (vi) be the subject of a decree or order for relief by a court having jurisdiction in respect of Tenant in any involuntary case under any applicable federal or state bankruptcy, insolvency or similar law; or

(4) if any proceedings brought against Tenant seeking any of the relief mentioned in Section 24(a)(3) shall not have been dismissed within ninety (90) days.

Upon the occurrence of an event of default and the failure of Tenant to cure the same within the cure period specified, Landlord may, at its option, (i) give to Tenant a notice of election to end the Term of this Lease upon a date specified in such notice, which date shall be not less than ten (10) business days (Saturdays, Sundays and legal holidays excluded) after the date of receipt by Tenant of such notice from Landlord, and upon the date specified in said notice, and provided such event of default has not been cured, the Term and estate hereby vested in Tenant shall cease and any and all other right, title and interest of Tenant hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire Term of this Lease had elapsed, or (ii) bring suit for the collection of Rent hereunder as same becomes due without cancellation or termination of the Lease. The curing of any default(s) within the above time limits set forth in this Section 24(a) or Section 21(b)(2) by any of the permissible parties or combination thereof, shall constitute a curing of any default(s) hereunder with like effect as if Tenant had cured same hereunder.

(b) In the event that Landlord gives notice of a default referred to in Section 24(a)(2) and said default is of such a nature that it cannot be cured within such thirty (30) day period then such default shall not be deemed to continue so long as Tenant, after receiving such notice, promptly proceeds to cure the default and continues to take all steps necessary to complete the same promptly. No default shall be deemed to continue if and so long as Tenant shall be delayed in or prevented from curing the same by any cause specified in the Section 34 of this Lease entitled "Force Majeure".

(c) Upon any termination of the Term of this Lease pursuant to Section 24(a), or at any time thereafter, Landlord may, in addition to and without prejudice to any other rights and remedies Landlord shall have at law or in equity, re-enter the **Demised Premises** and recover possession thereof and dispossess any or all occupants of the **Demised Premises** in the manner prescribed by the statute relating to summary proceedings, or similar statutes. Landlord agrees to use reasonable efforts to re-let the **Demised Premises** in order to mitigate Landlord's damages in the event of a default by Tenant hereunder.

(d) Should this Lease be terminated, or should Landlord recover possession of the **Demised Premises**, in accordance with this Section 24, Landlord shall have the option to relet the **Demised Premises** upon such terms (including rental) as are not unreasonable under the circumstances and, if the full Rent reserved under this Lease (and any of the costs, expenses, or damages indicated below) shall not be realized by Landlord, Tenant shall be liable for all damages sustained by Landlord, including, without limitation, deficiency in Rent, attorneys' fees, brokerage fees, and expenses of placing the **Demised Premises** in first-class rentable condition. Landlord, in putting the **Demised Premises** in good order or preparing the same for re-rental, may, at Landlord's option, make such alterations, repairs or replacements in and to (but not remodel) the **Demised Premises** as Landlord, in its sole discretion, considers advisable and necessary for the purpose of re-letting the **Demised Premises**, and the making of such alterations, repairs or replacements shall not operate or be construed to release Tenant from liability under this Lease. Subject to Section 24(c), Landlord shall in no event be liable in any way whatsoever for failure to re-let the **Demised Premises** or, if the **Demised Premises** are re-let, for failure to collect the rent under such re-letting, and in

no event shall Tenant be entitled to receive the excess, if an, of such net rent collected over the sums payable by Tenant to Landlord.

(e) Tenant agrees that Landlord's agreement to use reasonable efforts to relet the **Demised Premises** shall not be deemed to impose any obligation on Landlord to relet the **Demised Premises** (i) for any purposes which would breach any covenant of Landlord respecting radius, location, use or exclusivity in any other lease or agreement relating to the Shopping Center; (ii) to any lessee who is not financially capable of performing the duties and obligations imposed upon such lessee under the applicable lease; (iii) to a prospective tenant when other premises in the Shopping Center suitable for that prospective tenant's use are (or soon will be available; or (iv) for a rental less than the then current fair market rental prevailing for similar retail uses in comparable shopping centers in the same market area as the Shopping Center. Tenant further agrees that the agreement by Landlord to use reasonable efforts to relet the **Demised Premises** shall not impose any obligation on Landlord to relet **Demised Premises** in preference to the leasing by Landlord of any other outparcel of the Shopping Center.

Section 25. Interest and Late Charges: All Rent or additional rent owed by Tenant to Landlord under this Lease shall bear interest from the tenth (10th) day after the date due until paid at the lesser of (i) the "prime rate" (or if the "prime rate" is discontinued, the rate announced as that being charged to the most creditworthy commercial borrowers) announced by Bank of America, N.A., Atlanta, Georgia, or its successor, from time to time, or (ii) the maximum lawful contract rate per annum. In addition, in the event any installment of Rent or additional rent under this Lease shall not be paid on or before the fifteenth (15th) day after the due date, a "late charge" of Twenty-Five and no/100 Dollars (\$25.00) may be charged by Landlord, as additional rent, for the purpose of defraying Landlord's administrative expenses incident to the handling of such overdue payment.

Section 26. Waivers: Failure of Landlord or Tenant to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision.

Section 27. Limitation of Liability: Tenant shall look solely to Landlord's estate and interest in the **Demised Premises** and the **Adjoining Property** and the Rents, profits and sale proceeds therefrom for the satisfaction of any right of Tenant for the collection of a judgment or other judicial process requiring the payment of money by Landlord, and no other property or assets of Landlord shall be subject to levy, lien, execution, attachment or other enforcement procedure for the satisfaction of Tenant's rights and remedies under or with respect to this Lease.

Section 28. Adjoining Property: Landlord hereby agrees and covenants that (i) no buildings or other structures will be constructed on the **Adjoining Property** within the area shown as the "No Build Area" on **Exhibit "B"**; (ii) Landlord shall maintain and repair, at no cost to Tenant, the driveways crosshatched on the site plan attached hereto as **Exhibit "B"**, all in accordance with first-class shopping center standards and practices; (iii) Landlord will not lease, rent, sell or occupy, or permit to be leased, rented, sold or occupied any premises within three hundred (300) feet of the **Demised Premises** for the purpose of operating a theater of any kind, bowling alley, skating rink, amusement park, carnival, meeting hall, sporting event or other sports facility, auditorium or any other like place of public assembly, manufacturing operation, factory, any industrial usage, warehouse, processing, or rendering plant, any establishment selling cars (new or used), billiard parlor, bar, amusement center, flea market, massage parlor, "disco" or other dance hall, so-called "off track betting" operation, or the sale or display of pornographic materials. (See Section 6 for additional restrictions on **Adjoining Property**).

Section 29. Covenant Not to Compete: Landlord covenants and agrees that no portion of the **Adjoining Property** shall, during the Term of this Lease, be leased, used or occupied as a restaurant selling or serving chicken as a principal menu item. For purposes hereof, "a restaurant selling or serving chicken as a principal menu item" shall mean any restaurant deriving twenty-five percent (25%) or more of its gross sales from the sale of chicken. Landlord further covenants and agrees that no portion of the **Adjoining Property** shall, during the Term of this Lease, be leased, used or occupied by or for any of the following: Boston Market, Kenny Roger's, Kentucky Fried Chicken, Popeye's, Church's, Bojangle's, Mrs. Winner's, Tanner's, Chicken Out, Willie May's Chicken,

Biscuitville, Zaxby's or Ranch One. Landlord further covenants and agrees that no portion of the Adjoining Property shown crosshatched on Exhibit "B-1" (said Exhibit being attached hereto and incorporated into this Lease by this reference) shall, during the Term of this Lease, be leased, used or occupied as a restaurant operating under the trade name of Wendy's or Arby's.

It is mutually agreed that the covenants set forth in Section 28 and in this Section 29 shall run with the title to the Land and the Adjoining Property and that such restrictions shall be set forth in the Short Form Lease. If said covenants are breached, one-half (1/2) of all payments required to be made by Tenant hereunder shall be abated for so long as such breach continues. The total sums thus abated shall be partial liquidated damages for such breach and not a penalty therefor, the parties agreeing that Tenant shall sustain proximate and substantial damages from such breach, but that it will be very difficult if not impossible to ascertain the amount of such damage. In addition to this remedy, Tenant shall be entitled to injunctive and other appropriate relief, whether under the provisions of this Lease or otherwise. Landlord acknowledges that Tenant is relying upon said covenants, representations and warranties in executing this Lease.

Landlord agrees that the covenants and restrictions set forth in Section 28 and this Section 29 shall be set forth in the Short Form Lease. In the event Tenant does not elect to record a Short Form Lease, Landlord agrees to record a Declaration of Covenants and Restrictions which shall be effective for the Term of this Lease setting forth such covenants and restrictions. Tenant shall prepare and record such document at Tenant's sole cost and expense.

Section 30. Brokerage Commissions: Landlord represents and warrants to Tenant that, other than David Morse, Morse Properties, 117 Red Bay Drive, Orlando, Florida 32779 ("Landlord's Broker"); Landlord has not engaged or employed any real estate broker, agent or other intermediary in connection with this Lease. Tenant represents and warrants to Landlord that, other than Allan Duke, Duke Real Estate, Inc., 507 North New York Avenue, Suite R-5, Winter Park, Florida 32789 ("Tenant's Broker"), that Tenant has not engaged or employed any real estate broker, agent or other intermediary in connection with this Lease. Landlord hereby covenants and agrees that it shall be solely responsible for the payment of any commissions or fees owed to Landlord's Broker and Tenant's Broker by reason of the creation or procurement of this Lease pursuant to a separate agreement by and between Landlord, Landlord's Broker and Tenant's Broker. Landlord shall and does hereby indemnify, defend and hold Tenant harmless from and against any and all claims, demands, actions, and judgments of any and all broker's, agents, and other intermediaries 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 **Demised Premises**, including any claims by Landlord's Broker and Tenant's Broker. Tenant shall and does hereby indemnify, defend and hold Landlord harmless from and against any claims, defenses, actions and judgments of any brokers, agents, and intermediaries 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 **Demised Premises**; provided, however, the foregoing indemnity shall not extend to any claims by Landlord's Broker and Tenant's Broker which shall be the responsibility of Landlord as set forth herein. This Section 30 shall survive the termination or expiration of this Lease.

Section 31. Representations and Warranties; Hazardous Materials: (a) To induce Tenant to enter into this Lease, Landlord does hereby expressly warrant and represent to Tenant the following:

- (1) To the best of Landlord's knowledge, there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, pending or threatened against the **Demised Premises** or Landlord in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality, including, without limitation, any condemnation or eminent domain proceedings.
- (2) To the best of Landlord's knowledge, no person, firm, corporation or other legal entity whatsoever (other than Tenant) has any right or option whatsoever to acquire or lease the **Demised Premises** or any portion or portions thereof or any interest or interests therein.
- (3) To the best of Landlord's knowledge, the **Demised Premises** is not and will not be subject to or affected by any special assessments, whether or not presently a lien thereon.

(4) To the best of Landlord's knowledge, there is no existing violation or breach of any ordinance, code, law, rule, requirement or regulation applicable to the **Demised Premises**.

(5) To the best of Landlord's knowledge, there are no actions, suits, proceedings or proposals of any kind or nature whatsoever pending or being considered relating to any proposed changes to the highways, roadways and/or accessways adjoining or adjacent to the **Demised Premises**, including without limitation, the widening thereof, proposed or pending construction of road medians, proposed or pending construction of acceleration/deceleration lanes, changes in or additions to existing or approved curb cuts, proposed or pending installation or removal of traffic lights or any other changes or proposed changes in traffic patterns or management of traffic flow thereover.

(b) Landlord further represents and warrants that Landlord has not used or operated the **Land** or the **Adjoining Property** in any manner for the storage, use, treatment, manufacture or disposal of any Hazardous Materials (hereinafter defined), and to the best of Landlord's knowledge and belief, after reasonable investigation, neither the **Land** nor the **Adjoining Property** have ever been used or operated for the storage, use, treatment, manufacture or disposal of any Hazardous Materials. For purposes hereof, the term "Hazardous Materials" means (i) any "hazardous wastes" as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), as amended from time to time, and regulations promulgated thereunder; and (ii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in or for the purposes of the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "superfund" or "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, and specifically identified and known as a hazardous, toxic or dangerous waste, substance or material as of the date hereof including any petroleum, petroleum products or waste. Landlord hereby indemnifies and holds Tenant harmless from and against any loss, cost, damage or expense arising out of or relating to the presence of Hazardous Materials on the **Land** unless due to the act or omission of Tenant. Tenant hereby indemnifies and holds Landlord harmless from and against any loss, cost, damage or expense arising out of or relating to the presence of **Hazardous Materials** on the **Land** due to the act or omission of Tenant. This Section 31 will survive the termination or expiration of this Lease. Nothing contained in Section 15 shall be construed to expand the liability of Tenant with respect to the presence of Hazardous Materials on the **Land** or the **Adjoining Property** beyond the express liability of Tenant set forth in this Section 31(b).

Section 32. Intentionally Deleted:

Section 33. Intentionally Deleted:

Section 34. Force Majeure: In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, the act, failure to act or default of the other party, war or any reason beyond their control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, the provisions of this Section shall not operate to extend the date Landlord is required to deliver possession of the **Demised Premises** to Tenant. Lack of funds shall not be a basis for avoidance or delay of any obligation under this Lease.

Section 35. Notices: Every notice, approval, consent, or other communication authorized or required by this Lease shall not be effective unless the same shall be in writing and delivered (i) in person, (ii) by courier, (iii) by reputable overnight courier guaranteeing next day delivery, (iv) if sent on a business day during the business hours of 9:00 a.m. until 5:00 p.m. E.S.T., via telecopier with a copy to follow by reputable overnight courier guaranteeing next day delivery, or (v) sent postage prepaid by United States registered or certified mail, return receipt requested, directed to the other party at its address hereinabove first mentioned, or such other address as either party may designate by notice given from time to time in accordance with this Section. Such notices or other communications shall be effective (i) in the case of personal delivery or courier delivery, on the date of delivery to the party to whom such notice is addressed as evidenced by a written receipt signed on behalf of such party, (ii) if by overnight courier,

one (1) day after the deposit thereof with all delivery charges prepaid, (iii) if by telecopier, on the date of transmission, provided that such telecopier transmission is sent on a business day, during the hours stated above, and provided that a confirmation sheet is received and a copy of the notice is simultaneously delivered by reputable overnight courier (with all charges prepaid) for receipt on the next succeeding business day, and (iv) in the case of registered or certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice or five (5) business days after the date of posting by the United States Post Office. The Rent payable by Tenant hereunder shall be paid to Landlord at the same place where a notice to Landlord is herein required to be directed.

Section 36. Certificates: Either party shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee, assignee or purchaser, or proposed mortgagee, assignee or proposed purchaser, or any other person, firm or corporation specified in such request: (i) as to whether this Lease has been supplemented or amended, and, if so, the substance and manner of such supplement or amendment; (ii) as to the validity and force and effect of this Lease, in accordance with its tenor as then constituted; (iii) as to the existence of any default under this Lease; (iv) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party; (v) as to the commencement and expiration dates of the Term of this Lease; and (vi) as to any other matters as may reasonably be so requested. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

Section 37. Governing Law: This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State in which the Land is located.

Section 38. Partial Invalidity: If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 39. Short Form Lease: Landlord and Tenant shall execute and deliver a short form of lease in the form attached hereto as Exhibit "D" and made a part hereof by this reference (the "Short Form Lease") upon the establishment of the Commencement Date, which will constitute a short form of this Lease. Any and all recording costs required in connection with the recording of such Short Form Lease shall be paid by Tenant.

Section 40. Interpretation: Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The term "Landlord" whenever used herein shall mean only the owner at the time of Landlord's interest herein, and upon any sale or assignment of the interest of Landlord, its successors in interest and/or assigns shall, during the term of its ownership of its estate herein, be deemed to be Landlord. The use of the terms "Landlord" and "Tenant" notwithstanding, this Lease creates for all purposes an estate for years and not a usufruct.

Section 41. Entire Agreement; Modification of Lease: No oral statement or prior written matter shall have any force or effect. Landlord and Tenant agree that they are not relying on any representations or agreements other than those contained in this Lease. This Lease shall not be modified or canceled except by writing executed by Landlord and Tenant.

Section 42. Parties: Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, successors in title, administrators and assigns.

Section 43. Determination of Fair Market Value: (a) The determination of the fair market value of the Demised Premises (excluding improvements) as of the date of any Taking as provided in Section 19(b) hereof shall

be made by Landlord and Tenant no later than one (1) month after such Taking. If Landlord and Tenant are unable to agree on the fair market value of the Demised Premises (excluding Improvements) prior to such applicable deadline, such determination shall be made by appraisal as hereinafter set forth. Such appraisal procedure shall be commenced by one party delivering to the other a notice appointing its appraiser. Within fifteen (15) days after receipt of such notice, the other party shall appoint its appraiser and give notice of such appointment to the first party. Any appraiser appointed hereunder shall be a member of the American Institute of Real Estate Appraisers (or successor organization) having at least five (5) years experience in appraisal of real estate for commercial retail use in the metropolitan area in which the Land is located. If the party receiving such first written notice shall fail to appoint its appraiser within fifteen (15) days after receipt of the first written notice, the determination of the value in question by the single appraiser appointed by the party giving such first written notice should be final, binding and conclusive on Landlord and Tenant. Each appraiser then shall prepare a written appraisal with respect to the determination of the fair market value of the Demised Premises (excluding improvements). If within thirty (30) days after appointment of the two (2) appraisers, as described above, the two (2) appraisers are unable to agree upon the amount in question, a third (3rd) independent appraiser shall be chosen within ten (10) days thereafter by the mutual consent of such first two (2) appraisers or, if such first two (2) appraisers fail to agree upon the appointment of a third appraiser within such ten (10) day period, such appointment shall be made by the American Arbitration Association, or any organization successor thereto, from a panel of appraisers having experience in the appraisal of real estate for commercial retail use in the metropolitan area in which the Land is located. The decision of the third (3rd) appraiser so appointed and chosen shall be given within ten (10) days after the selection of such third (3rd) appraiser. If three (3) appraisers shall be appointed and the determination of one (1) appraiser is disparate from the median of all three (3) determinations by more than twice the amount by which the other determination is disparate from the median, then the determination of such appraiser shall be excluded, the remaining two (2) determinations shall be averaged and such average shall be binding and conclusive on Landlord and Tenant; otherwise the average of all three (3) determinations shall be binding and conclusive on Landlord and Tenant. The fees and expenses of the appraiser appointed by Tenant shall be paid by Tenant, the fees and expenses of the appraiser appointed by Landlord shall be paid by Landlord and the fees and expenses of the third appraiser shall be divided equally between Tenant and Landlord.

(b) In making the determination of such fair market value, the appraisers shall assume a reasonable time under the then existing market conditions is allowed for exposure of the Demised Premises on the open market, and the appraisers shall deduct the value of any improvements then existing on the Demised Premises.

Section 44. Landlord's Work: Landlord covenants and agrees, prior to the Commencement Date, to complete the following work (the "Landlord's Work"):

(a) The construction and installation, at Landlord's sole cost and expense, of all utilities necessary for the development and use of the Demised Premises for Tenant's intended purposes, including, without limitation, water and sanitary sewer, storm sewer, electricity and telephone, which utilities shall be installed and operational to a point within the boundaries of the Land, with such installations to be adequate and sufficient to provide such quantities, pressure and capacity as will permit utilization of the Demised Premises for a Chick-fil-A drive-thru restaurant such that Tenant shall be entitled to obtain all such services solely upon the payment of ordinary tap on fees and user charges as are normally and uniformly imposed by the utility companies or governmental agencies supplying such utility services.

(b) The completion by Landlord of the grading of the Land in accordance with a grading plan (the "Grading Plan") to be prepared by Landlord and approved by Tenant. Such Grading Plan shall be prepared at the expense of Landlord and submitted to Tenant for review and comment by Tenant on or before the date which is ten (10) days after the effective date of this Lease. Landlord and Tenant shall mutually agree upon the Grading Plan in writing prior to the expiration of the Inspection Period.

(c) The construction, installation and completion by Landlord of the driveways, accessways and curb cuts shown crosshatched on Exhibit "B" in accordance with the plans and specifications therefor to be prepared by Landlord and submitted to Tenant within ten (10) days after the date of this Lease for review and approval by Tenant. Landlord and Tenant shall agree upon the plans and specification for such driveways, accessways and curb cuts prior to the expiration of the Inspection Period.

Not later than ten (10) days prior to the Commencement Date, Landlord shall provide written evidence reasonably satisfactory to Tenant that the Landlord's Work has been completed in accordance with terms of this Lease. If Landlord shall fail to complete the Landlord's Work prior the Commencement Date, Tenant shall have, in addition to all other rights and remedies, the rights set forth in Section 8 hereof.

Section 45. Common Area Maintenance Contribution by Tenant: (a) For purposes of this Lease, the term "Common Area" or "Common Areas" shall mean those areas of the **Adjoining Property** controlled by Landlord but not leased by Landlord to another entity. For purposes of this Lease, the term "Common Area Maintenance Expenses" shall mean and be limited to those expenses actually incurred by Landlord (net of proceeds from other sources, i.e., discounts, rebates, or the proceeds of warranty or insurance claims, or contributions by parties other than occupants of the Adjoining Property) in the performance or discharge of the following activities:

- (i) Maintenance of landscaping materials and irrigation systems, and irrigation of landscaped areas within the Common Areas.
- (ii) Sweeping and cleaning of the Common Area.
- (iii) Utility charges attributable to the operation and maintenance of the Common Area.
- (iv) Repair, minor repaving, sealing, and restriping of the Common Area.
- (v) Security for the fire sprinkler alarm, if any, for the Common Areas.
- (vi) Security for Common Areas, if any.
- (vii) Maintenance of the Common Area stormwater management system, including, without limitation, all lines, conduits, drains, outfalls and retention areas.
- (viii) Liability insurance maintained by Landlord with respect to the Common Area.
- (ix) Replacement of lights and other fixtures located in the Common Area.
- (x) Illumination and maintenance of the shopping center pylon and/or monument sign(s) provided said sign advertises only the name of the shopping center development, not any particular business operation within said development.
- (xi) Administrative costs or management fees not to exceed five percent (5%) of the annual Common Area Maintenance Expenses.

Except for the foregoing Common Area Maintenance Expenses, no other costs shall be deemed included in Common Area Maintenance Expenses. More specifically, the cost of construction, maintenance, or repairs considered for federal income tax purposes to be in the nature of a capital improvement and leasing expenses shall not be deemed Common Area Maintenance Expenses.

(b) Tenant agrees to pay Tenant's Share of the Common Area Maintenance Expenses in equal monthly installments, which shall be due and payable at the time basic Rent payments are due and payable hereunder. Prior to the Effective Date, Landlord shall provide Tenant with a statement setting forth a good faith estimate of Tenant's Share for the first Lease Year. On or before the ninetieth (90th) day following the end of each Lease Year during the Term, Landlord shall send to Tenant a statement of Tenant's Share of Common Area Maintenance Expenses for the preceding Lease Year, together with a good faith estimate of the amount of the monthly installments for the forthcoming Lease Year. Such statement shall be reasonably detailed, prepared in accordance with generally accepted accounting principles, and certified as true and correct by an officer, partner, or member of Landlord. If Tenant's Share of actual Common Area Maintenance Expenses exceeds the estimated amount paid by Tenant for said preceding Lease Year, the excess amount shall be paid by Tenant to Landlord within

ninety (90) days after receipt of supporting documentation. If the estimated amount paid by Tenant for said preceding Lease Year exceeds Tenant's Share of actual Common Area Maintenance Expenses, such excess amount shall be paid by Landlord to Tenant simultaneously with delivery by Landlord to Tenant of the statement of Tenant's Share of Common Area Maintenance Expenses for the preceding Lease Year. Tenant's Share of Common Area Maintenance Expenses for a partial Lease Year shall be apportioned on a per diem basis for such partial Lease Year. In the event Tenant's Share of Common Area Maintenance Expenses for a partial last Lease Year is not capable of being determined within ninety (90) days following the end of such partial last Lease Year, (Landlord agreeing to use reasonable efforts to make such determination within the said ninety (90) day period) then such determination shall be made, and delivery of the statement thereof as contemplated hereinabove shall be performed, on or before the ninetieth (90th) day following the end of the calendar year in which such partial last Lease Year occurs.

(c) Tenant or Tenant's representative shall have the right to audit Landlord's books and records to verify Landlord's calculation of Common Area Maintenance Expenses and Tenant's Share; provided, however, (i) notice of Tenant's intent to audit must be given within ninety (90) days after the annual reconciliation is delivered to Tenant, (ii) such audit must begin within one hundred eighty (180) days after Tenant's notice, (iii) reasonable efforts must be made so that the audit will be concluded within ninety (90) days after it has begun, and (iv) only one (1) audit for each Lease Year may be conducted. In the event of an error, an immediate refund shall be due upon demand.

(d) Notwithstanding anything to the contrary contained herein, or in any other document controlling the Demised Premises, Tenant's Share of Common Area Maintenance Expenses shall not exceed One Thousand Five Hundred Dollars (\$1,500.00) per year for years one through five of the Term ("Tenant's Maximum Contribution"). Commencing with the sixth year of the Term and every fifth year thereafter, Tenant's Maximum Contribution shall be increased by twelve percent (12%) of Tenant's Maximum Contribution for the immediately preceding year. Therefore Tenant's Maximum Contribution shall be: \$1,680.00 per year for years six through ten;; \$1,881.60 per year for years eleven through fifteen; \$2,107.39 per year for years sixteen through twenty; \$2,360.28 per year for years twenty through twenty-five; and \$2,643.51 per year for years twenty-six through thirty.

Section 46. Counterpart Execution; Effective Date: This Lease shall be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement. The Effective Date of this Lease shall be the date upon which this Lease shall have been fully executed by both Landlord and Tenant and each of Landlord and Tenant have received a fully executed counterpart hereof. The party last executing this Lease shall deliver a fully executed counterpart to the other party by overnight courier for receipt on the next succeeding business day and shall insert as the Effective Date on all counterparts of this Lease such next succeeding business day.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered
in the presence of the
following witnesses:

“Landlord”

COLLEGE STATION RETAIL CENTER, L.L.C.,
a Florida limited liability company

By: _____
Its: _____

By: _____
Its: _____

Date: _____

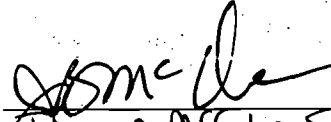
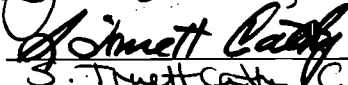
Federal Tax Identification Number of
Landlord: _____

“Tenant”

CHICK-FIL-A, INC., a Georgia corporation

Signed, sealed and delivered
in the presence of the
following witnesses:

Cynthia S. Denny
Dennis K. Jacobs

By: 
Its: James B. McCabe, Sr. Vice President
By: 
Its: S. T. Mett Cathy, CEO

Date: May 7, 2003

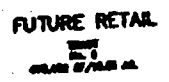
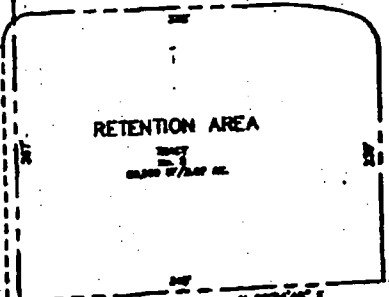
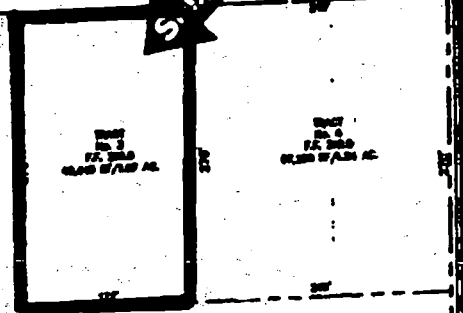
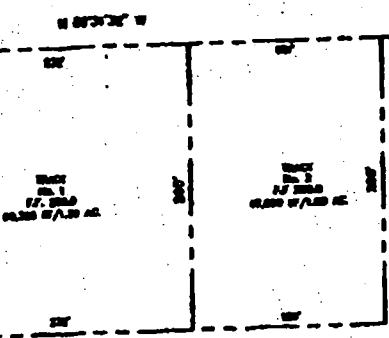
EXHIBIT "A"
DESCRIPTION OF LAND

STATE ROAD NO. 60

Subject

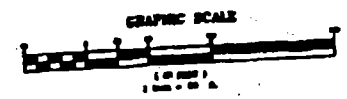
CONNECTOR ROAD

HANCOCK ROAD



TRACT	AREA
1	60,320 SF / 1.39 AC.
2	47,060 SF / 1.08 AC.
3	46,440 SF / 1.07 AC.
4	67,230 SF / 1.54 AC.
RETENTION AREA	89,980 SF / 2.07 AC.
FUTURE RETAIL	472,488 SF / 10.85 AC.
TOTAL	783,518 SF / 17.99 AC.

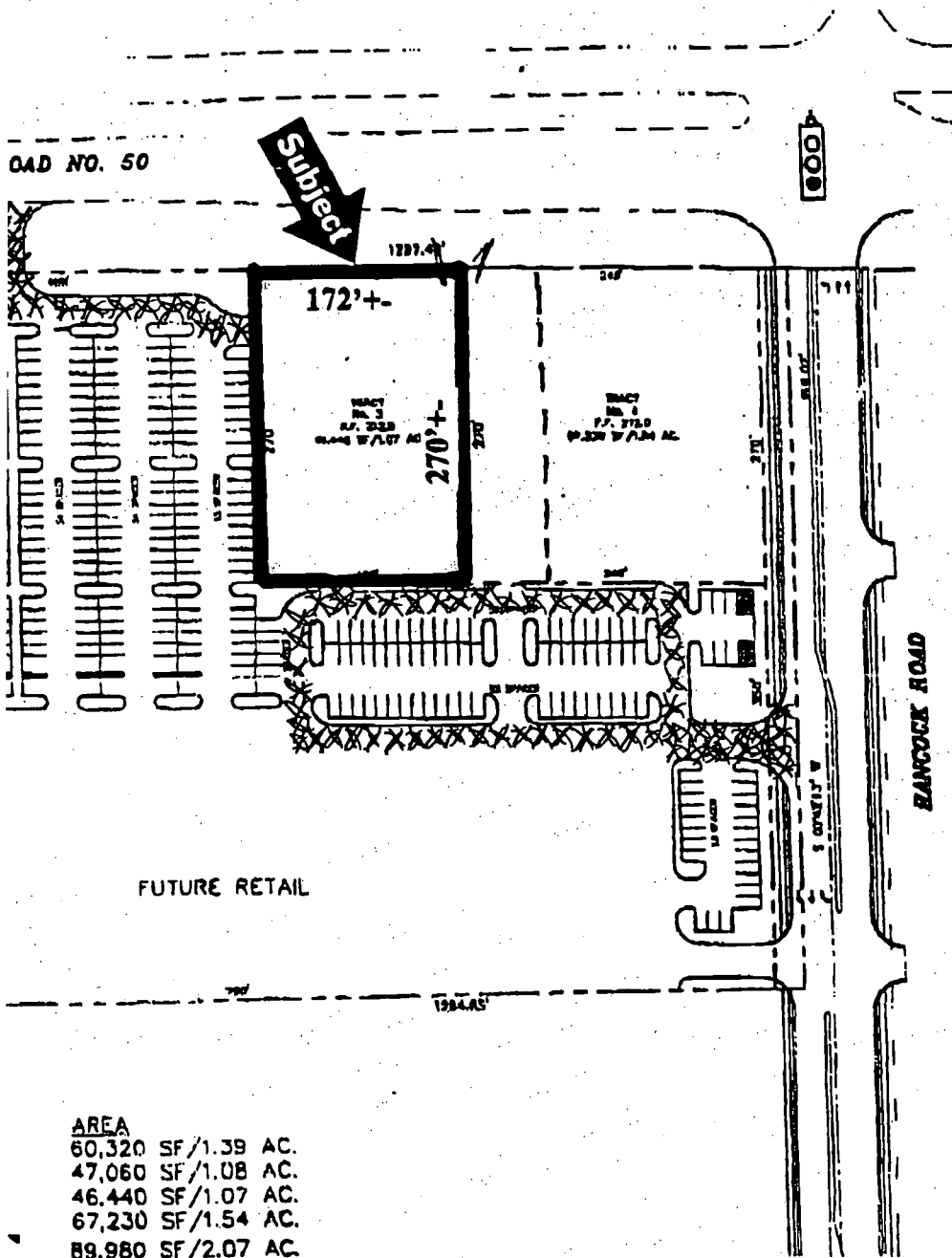
EXHIBIT "B"
(Page 1 of 2)



FUTURE HOOK STREET

ES&ES

CLERMONT, FLORIDA



AREA	SF	AC.
60,320	SF	1.39 AC.
47,060	SF	1.08 AC.
46,440	SF	1.07 AC.
67,230	SF	1.54 AC.
89,980	SF	2.07 AC.
472,488	SF	10.85 AC.
783,518	SF	17.99 AC.



EXHIBIT "B"
(Page 2 of 2)

KCCG
KELLY, COLLINS & GENTRY, INC.
CONCEPTUAL DESIGN GROUP, INC.
1000 N. W. 10th St., Suite 100
Clermont, FL 34711-1000

NO.	REVISION
1	
2	
3	
4	
5	

PREPARED FOR
JAYMARK BUILDERS & DEVELOPERS, INC.

SR. 30 & HANCOCK RD.
LAKE COUNTY,
FLORIDA

CONCEPTUAL PLAN

DATE	11/11/01
DRAWN	DM
CHECKED	DM
DESIGNED	DM
IN CHARGE	DM
DATE	11/11/01
SHEET	1-1

KELLY, COLLINS & GENTRY, INC.

EXHIBIT "B"
DESCRIPTION OF ADJOINING PROPERTY

EXHIBIT "C"
TITLE EXCEPTIONS

EXHIBIT "D"

SHORT FORM LEASE

THIS SHORT FORM LEASE, made and entered into this ____ day of _____, 2000, by and between _____ (hereinafter referred to as "Landlord"), and CHICK-FIL-A, INC., a Georgia corporation (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant have entered into that certain Ground Lease dated _____, 199__, (the "Lease"); and

WHEREAS, the parties hereto desire to file this Short Form Lease for record in the Records of _____ County, _____, to provide record notice of the Lease and the terms and conditions contained therein with respect to the Demised Premises (as hereinafter defined).

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and in the Lease, Landlord and Tenant hereby agree as follows:

1. Premises. [Section 1 of Lease to be inserted upon recordation.]
2. Term. The Term of the Lease commenced on _____, 200__, and shall terminate on the last day of the month which is _____ (____) years after the Rental Commencement Date (as such term is defined in the Lease) unless sooner terminated or extended as provided in the Lease. Tenant has the right to extend the Term of the Lease for _____ (____) consecutive periods of _____ (____) years each pursuant to the Terms of the Lease. Landlord and Tenant agree to record an amendment to this Short Form Lease setting forth the Rental Commencement Date once the same is determined in accordance with the terms of the Lease. Pursuant to the terms of the Lease, in no event shall the Rental Commencement Date be later than _____.
3. Incorporation of Lease. The provisions set forth in the Lease are hereby incorporated into this Short Form Lease as if set out in full herein. In the event of any conflict or inconsistency between the terms of this Short Form Lease and the terms of the Lease, the terms of the Lease shall govern and control for all purposes.
4. Defined Terms. All capitalized terms and words of art which are used but not defined herein shall have the same respective meaning designated for such terms and words of art in the Lease.
5. Restrictions on Adjoining Property. Sections 28 and 29 to be inserted upon recording.]
6. Tenant's Option to Purchase. [Section 32 to be inserted upon recording, if applicable.]
7. Right of First Refusal. [Section 33 to be inserted upon recording, if applicable.]
8. Cancellation of Short Form Lease. Upon the request of Landlord following the expiration or termination of the Lease, Tenant shall promptly execute and deliver to Landlord an appropriate release and/or cancellation instrument acknowledging the expiration or termination of the Lease and releasing any and all right, title and interest of Tenant in and to the Demised Premises under the Lease. Such release and/or cancellation instrument shall be executed in proper form for recordation in the Deed Records of _____ County, _____.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Short Form Lease to be executed and sealed the day, month and year first above written.

“Landlord”

a _____

Signed, sealed and delivered in the presence of:

By: _____
Title: _____

(CORPORATE SEAL)

Witness

Notary Public

Commission Data:

(NOTARIAL SEAL)

“Tenant”

CHICK-FIL-A, INC.,
a Georgia corporation

Signed, sealed and delivered in the presence of:

By: _____
Title: _____

Witness

Attest: _____
Title: _____

Notary Public

Commission Data:

(CORPORATE SEAL)

(NOTARIAL SEAL)

EXHIBIT "E"

NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____ 200__, is made by and among CHICK-FIL-A, INC., a Georgia corporation (the "Sublessee"), _____, a _____ (the "Ground Lessee"), and _____, a _____ (the "Fee Owner").

WITNESSETH:

WHEREAS, the Fee Owner and _____, Inc. entered into that certain Lease and Concession Agreement dated _____, (the "Ground Lease"), for certain land located at _____, more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property"); and

WHEREAS, _____, Inc. assigned its interest as "tenant" or "lessee" under said Ground Lease to Ground Lessee by virtue of that certain Assignment of Lease dated _____, 199__; and

WHEREAS, Ground Lessee has entered into a Ground Lease dated _____, 200__ (the "Sublease") with Sublessee for a portion of the Property consisting of approximately _____ square feet, more particularly described on Exhibit " " attached hereto and incorporated herein (the "Premises"); and

WHEREAS, the Fee Owner, the Ground Lessee and the Sublessee desire to establish certain rights, safeguards, obligations and priorities with regard to their respective interests by means of this Non-Disturbance and Attornment Agreement;

NOW, THEREFORE, in consideration of the mutual covenants of the parties and other good and valuable consideration, the Sublessee, the Fee Owner and the Ground Lessee agree as follows:

1. The Fee Owner consents to the execution and delivery of the Sublease.
2. Provided the Sublease remains in full force and effect and Sublessee is not in default under the Sublease (beyond any period given the Sublessee to cure the default), then:
 - (a) Fee Owner shall recognize the Sublease and shall not disaffirm the Sublease even if the Ground Lease is terminated. The Sublessee's right of possession to the Premises and the Sublessee's other rights, duties and obligations arising out of the Sublease shall not be disturbed, modified, enlarged or otherwise affected by the Fee Owner or by any person or entity which shall have acquired rights through or under the Fee Owner in the exercise of its rights or in the performance of its obligations or in any other manner under the Ground Lease. Further, the Sublessee shall not be named as a party defendant in any proceedings resulting from a default of the Ground Lessee under the Ground Lease nor in any other way be deprived of its rights under the Sublease.
 - (b) If the Ground Lease or any renewal shall terminate before the expiration of the Term of the Sublease, as the Sublease may be renewed in accordance with its terms, the Sublease, if then in existence, shall continue as a lease between the Fee Owner as lessor, and the Sublessee as lessee, with the same force and effect as if the Fee Owner and Sublessee had entered into a ground lease as of the date of termination of the Ground Lease, containing the same terms, covenants and conditions as those contained in the Sublease. In such event, the Sublease shall remain in full force and effect in accordance with its terms.

(c) In the event that the Fee Owner exercises any of its remedies in the event of a default by the Ground Lessee, as provided for in the Ground Lease, the Sublease shall not be terminated or affected by the default or action of the Fee Owner or the Ground Lessee or both. The Sublessee covenants and agrees to attorn to the Fee Owner, as the case may be, as its new lessor if the Ground Lessee's rights under the Ground Lease are terminated, and the Sublease shall continue in full force and effect as a direct lease between the Sublessee and the Fee Owner.

3. The term "Fee Owner" as used in this Sublease means only the Fee Owner for the time being of the Premises. In the event of the sale, assignment or transfer of such owner's interest in the Premises, such selling, assigning or transferring owner shall be released and discharged from all covenants and obligations of Fee Owner thereafter accruing, but such covenants and obligations shall be binding upon each new owner of the Premises for the period of its ownership.

4. Fee Owner and Ground Lessee represent and warrant that the Ground Lease is in full force and effect as of the date hereof.

5. The above provisions shall be self-operative and effective without execution of any further instruments on the part of any party. However, the Sublessee agrees to execute and deliver to the Fee Owner or to any other person to whom the Sublessee agrees to attorn, such other instruments as either shall request in order to comply with these provisions.

6. This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest.

7. This Agreement shall run with the land and inure to the benefit of and be binding upon the parties and their successors and assigns.

8. This document may be executed in one or more counterparts which, taken together, shall constitute one and the same instrument. To indicate their agreement to the above, the parties or their authorized representatives or officers have signed this document.

IN WITNESS WHEREOF, Fee Owner, Ground Lessee, and Sublessee have caused this Non-Disturbance and Attornment Agreement to be executed and sealed the day, month and year first above written.

"GROUND LESSEE"

a _____

By: _____ (SEAL)

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, the _____ of _____, a _____, on behalf of the said _____ is personally known to me and did not take an oath.

Notary Public
Print Name: _____

My Commission Expires:

"FEE OWNER"

By: _____ (SEAL)

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____, the _____ of _____, on behalf of _____ is personally known to me and did not take an oath.

Notary Public
Print Name: _____

My Commission Expires:

[Signatures continue on following page]

[Signatures continued from previous page]

"SUBLESSEE"

CHICK-FIL-A, INC.,
a Georgia corporation

By: _____
Title: _____

Attest: _____
Title: _____

[CORPORATE SEAL]

STATE OF GEORGIA

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by _____ and _____, the _____ and _____, respectively, of Chick-fil-A, Inc., a Georgia corporation. _____ and _____ are personally known to me and did not take an oath.

Notary Public
Print Name: _____

My Commission Expires:

84016-2

RECEIVED

AUG 27 2003

PDS
ALTAMONTE SVC. CTR.