GROUND LEASE

**BASIC PROVISIONS**

 THIS GROUND LEASE (**“Lease”**), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022 is entered into by and between the Tenant and Landlord identified below.

 In consideration of the covenants contained in this Lease and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord hereby demises and leases to Tenant, and Tenant hereby leases from Landlord, subject to all provisions hereof, the Premises described below, together with the beneficial enjoyment of all of Landlord’s easement rights and appurtenances thereto.

A. **Landlord**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 A.1 Landlord federal tax identification number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 A.2 Landlord address for notices: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 A.3 Landlord address for payment of rent: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 A.4 Landlord telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ FAX: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

B. **Tenant**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

B.1 Tenant address for notices: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

with a copy to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 B.2 Tenant telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

C. **Premises**: Real property commonly known as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, shown on the Exhibit A(1) hereto and legally described on Exhibit A(2) attached hereto.

 Tax parcel number of Premises (if separately assessed): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Premises shall consist of: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

D. **Intentionally Omitted.**

E. **Milestone Dates:**

E.1 **Effective Date:** The date first above written, which shall be the last date upon which Landlord and Tenant have signed and delivered this Lease.

E.2 **Inspection Period:** Commences upon the Effective Date and, subject to any extensions permitted herein, ends upon the later to occur of (i) sixty (60) days after the Effective Date or (ii) Tenant’s receipt of notice from Landlord confirming Landlord’s receipt of all Landlord’s Approvals (as defined below).

E.3 **Permit Period:** Commences upon the expiration of the Inspection Period and ends sixty (60) days thereafter.

E.4 **Rent Commencement Date**: The earlier of (i) the date Tenant opens its business on the Premises to the public, or (ii) one hundred eighty (180) days after the date the Permit Period has expired, Tenant has obtained all Permits (as hereinafter defined), and Landlord has completed Landlord’s Work.

All dates and periods described above in this Section E shall be subject to extension for Excusable Delays (as defined hereinbelow) and shall be extended day for day for any period of Corrective Action to be performed by Landlord pursuant to Section 1.4 below or for any period of work for which Landlord is responsible under Section 18 of this Lease.

F. **Base Rent**:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

G. **Term**:

G.1 **Initial Term:** The Premises shall be leased to Tenant for \_\_\_\_\_\_\_\_\_\_\_\_ Lease Years (the **“Initial Term”**) commencing upon the date Tenant’s business at the Premises opens to the public (the **“Commencement Date”**), subject to extension and termination as provided herein. A **“Lease Year”** consists of twelve (12) consecutive calendar months beginning on the Commencement Date and each anniversary thereof; provided that if the Commencement Date occurs on other than the first (1st) day of a calendar month, the first Lease Year shall end on the last day of the twelfth (12th) full calendar month thereafter, and subsequent Lease Years shall begin on the first (1st) day of the thirteenth (13th) full calendar month and each anniversary thereof.

G.2 **Extension Periods**: Four (4) five (5)-year periods. Each such option (if Tenant elects to exercise it) shall be exercised by notice to Landlord at least one hundred twenty (120) days before the end of the Term, or the current Extension Period, stating that Tenant elects to extend the Term. Notwithstanding the foregoing, if Tenant fails to timely exercise any such option, then Tenant’s right to exercise such option shall nevertheless continue until the earlier of (a) sixty (60) days after Landlord has given Tenant notice of such failure, or (b) sixty (60) days after the expiration of the then-current Term. The options described above shall not be affected or terminated by the receipt or rejection of any offer relating to other types of options under the Lease, including without limitation rights to purchase..

 The **“Term”** shall include the Initial Term and any exercised Extension Periods.

H. **Broker(s)**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Signatures for Ground Lease**

 This Lease consists of the foregoing Basic Provisions, the following General Provisions, and the Exhibits described below, all of which are incorporated herein by this reference. If there are any inconsistencies between the Basic Provisions and the General Provisions, then the General Provisions shall prevail.

**EXHIBITS**:

 Exhibit A (1) Premises

 (2) Premises Legal Description

 Exhibit 3.1.1 Form of Memorandum of Lease

 Exhibit 3.1.2 Landlord’s Work

|  |  |  |
| --- | --- | --- |
| **Signature of Landlord** |  | **Signature of Tenant** |
|  |  |  |
|  |  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Landlord Name |  |  Tenant Name |
|  |  |  |
|  |  |  |
|  |  |  |

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**GENERAL PROVISIONS**

# INSPECTION PERIOD.

## Landlord’s Inspection Period Requirements.

On or before the Effective Date, Landlord shall have delivered to Tenant legible and complete copies of any and all of the following items (collectively, **“Landlord’s Documents”**): (i) a current IRS Form W-9 (most current version) completed and signed by Landlord; (ii) a commitment for an ALTA leasehold policy of title insurance specific to the Premises and including all rights appurtenant to the Premises, issued by Chicago Title Insurance Company, Denver, Colorado (the **“Title Company”**) with an effective date not earlier than thirty (30) days prior to the date said commitment is furnished to Tenant (including all underlying documents and a copy of the final, recorded plat and/or parcel map for the Subdivision); (iii) the current form of any and all current or proposed CC&Rs, ECRs, REAs, and similar documents concerning the Center (collectively, the “**CC&Rs**”); (iv) a survey specific to the Premises based upon the ALTA/ACSM Survey requirements 2005 for ALTA/ACSM Land Title Surveys, including optional items 1-11 of Table A thereof, and meeting the Accuracy Standards (as adopted by ALTA and NSPS), which survey is certified to Tenant and the Title Company and dated not earlier than thirty (30) days prior to the date same is delivered to Tenant (the **“Survey”**); (v) any environmental, soil, engineering, geotechnical, and flood studies, reports, letters and tests concerning the Premises within Landlord’s possession or control; and (vi) any other due diligence materials in Landlord’s possession relevant to Tenants inspections. Upon the Effective Date of the Lease, Tenant will be provided with reasonable access to the Premises to perform all desired due diligence investigations. During the Inspection Period, Landlord shall reasonably cooperate to provide any additional information related to the Premises in Landlord’s control or possession requested by Tenant. In addition, during the Inspection Period, Landlord shall provide Tenant evidence of the availability of utilities at the Premises in form acceptable to Tenant.

## Tenant’s Inspections.

Landlord covenants that, as of the Effective Date, Tenant shall have unhindered, legal access to the Premises by vehicle either from a public right-of-way or recorded access easement and the Premises shall be in suitable condition for Tenant to perform, without interference, interruption or unusual cost, all inspections, tests and investigations contemplated by this Section (collectively **“Inspection Condition”**). If the Premises is not in Inspection Condition by the Effective Date, then the Inspection Period shall be extended on a day-for-day basis until Tenant receives notice from the Landlord confirming that the Premises is in Inspection Condition. During the Inspection Period, Tenant shall, as Tenant deems necessary or appropriate: (a) inspect the Premises and review information concerning the Premises, including without limitation Landlord’s Documents, the status of title, access, utilities and surrounds to and serving the Premises; (b) perform tests and inspections of the soil and environmental conditions on, in and under the Premises and any improvements located thereon; and (c) research and inspect the feasibility of installing Improvements (as such term is defined in Section 2.2 below) and operating the proposed business on the Premises. Tenant may enter all portions of the Premises and any improvements located thereon at any and all times during the Inspection Period to conduct all such tests and inspections, and Tenant shall keep the Premises free of mechanics liens and claims resulting from Tenant’s inspections and testing on the Premises. If Tenant terminates this Lease during the Inspection Period (except in the event of a Landlord breach hereunder), Tenant shall return the tested portions of the Premises to substantially the same condition they were in prior to performing tests. Subject to the foregoing, Tenant shall defend Landlord against, and indemnify and hold Landlord harmless from, all liens, claims, losses, liabilities and expenses asserted against or incurred by Landlord only to the extent that they are caused by Tenant’s negligent acts or omissions at or on the Premises, however, Tenant shall have no obligation to defend Landlord against, or indemnify or hold Landlord harmless from any claims arising because of the discovery by Tenant of a dangerous condition or the existence of any Hazardous Material (as hereinafter defined) at, about or under the Premises, unless caused by or allowed to be created by Tenant or its employees, agents, contractors, or anyone acting on its behalf.

## Contamination and Soil Conditions.

Tenant shall obtain at Tenant’s expense a Phase I environmental site assessment covering the Premises. If conditions are discovered during the Inspection Period suggesting the presence of Hazardous Materials or unexpected soil characteristics, then Tenant may perform such further tests concerning said conditions as deemed appropriate by Tenant in its sole discretion, and the Inspection Period shall be extended by the length of time to complete and review such further tests. Landlord shall incur the expense of any such additional tests or Phase II environmental site assessment.

## Termination and Corrective Action.

Tenant, in its sole discretion, may terminate this Lease during the Inspection Period for any reason upon notice thereof to Landlord. Alternatively, Tenant may notify Landlord of the results of its inspections and reviews, and provide to Landlord a statement of actions (collectively, **“Corrective Action”**) which Tenant requests that Landlord take within specified time periods to correct certain matters, which Corrective Action may concern, by way of example and not limitation, title, access, utility services to the Premises, or the condition of the soil on and under the Premises. If Tenant fails to issue either a written notice of termination or a notice of Corrective Action prior to the end of the Inspection Period, such failure shall be deemed a waiver of its right to terminate this Lease pursuant to the provisions of this Section. Within ten (10) days after Landlord’s receipt of Tenant’s notice of Corrective Action, Landlord shall give Tenant notice of Landlord’s election of whether or not Landlord will complete the Corrective Action within the specified time periods. A failure by Landlord to give such notice within said ten (10) days shall be deemed Landlord’s election not to so complete the Corrective Action. If Landlord elects not to complete the Corrective Action in accordance with Tenant’s notice thereof, Tenant may, in its sole discretion, (a) terminate this Lease or (b) waive the Corrective Action.

# PERMIT PERIOD.

## Permits.

During the Permit Period, Tenant shall, at Tenant’s expense, apply for and use reasonable efforts to obtain all Permits. **“Permits”** include all authorizations, permits, approvals, licenses, variances, easements, zoning changes, subdivisions or similar actions, issued or granted by governmental or other applicable authorities (except the Landlord’s Approvals, for which Landlord is responsible), and necessary or desirable, in Tenant’s sole discretion, to construct and install the Improvements according to Tenant’s plans and specifications, including without limitation construction of a pylon sign on the Premises, and to operate Tenant’s business on the Premises. As a part of the process of seeking Permits, Tenant may enter into agreements restricting use of, or granting licenses over, the Premises, or agree to conditions to issuance of the Permits, provided the restrictions, licenses, and conditions (a) do not become effective until Tenant obtains Permits, (b) expire with the expiration or sooner termination of this Lease, and (c) are limited to the Premises. At Tenant’s request, Landlord shall cooperate to the extent necessary to obtain Permits and join with Tenant in all applications and proceedings and all agreements required by government agencies as a condition to issuance of Permits. Tenant, upon notice to Landlord, may extend the Permit Period for the additional period(s) set forth in the Basic Provisions if Tenant determines that such additional time is necessary to obtain Permits and/or allow applicable appeal periods to expire. If Permits have not been obtained or are available only with conditions, restrictions, requirements, or costs that are unacceptable to Tenant, or if Tenant determines that it would be too costly or otherwise not feasible to build and operate the Improvements in a manner acceptable to Tenant, then Tenant may terminate this Lease during the Permit Period.

## Improvements.

**“Improvements”** include any and all buildings, structures, sidewalks, driveways, parking areas, curbs, curb cuts, lighting, drive through lane, retaining walls, landscaping, fire hydrants, playground, related improvements, and all identification, advertising and directional signs, fixtures, and equipment constructed or located by Tenant on the Premises during the Term. Landlord agrees that at any time, and from time to time, during the Term of this Lease, Tenant may construct, install, maintain, repair and replace and/or remove on the Premises any and all Improvements, including without limitation, a building of up to the total square footage permitted by applicable government requirements, but in no event less than the square footage (including expansion space) shown on Exhibit A(1), and, at Tenant’s option, with a drive-through facility, patio, and/or a playground. Any Improvements constructed by Tenant shall be constructed in compliance with all applicable governmental requirements. Landlord represents and warrants that Tenant’s rights to construct Improvements and operate a permitted use on the Premises are not subject to any approval rights of any non-governmental third party (including, by way of example, Landlord’s lender and authorized parties under the CC&Rs). All Improvements shall remain the property of Tenant during the Term.

# DELIVERY AND CONSTRUCTION OBLIGATIONS.

## Landlord’s Obligations.

Landlord shall complete the following (collectively, the **“Delivery Requirements”**):

(a) on or before commencement of the Permit Period, delivery to Tenant of written confirmation that Landlord, at its expense, has obtained all governmental and non-governmental approvals necessary to lease the Premises to Tenant in accordance with this Lease, including, without limitation, any and all necessary approvals necessary for (i) Landlord to complete all construction obligations referenced in this Section 3.1, and (ii) Tenant to pursue and obtain its Permits without interruption or delay and to operate a quick service restaurant with a drive-through facility on the Premises (collectively, “**Landlord’s Approvals**”);

 (b) on or before commencement of the Permit Period, delivery to Tenant of (i) a pro forma ALTA policy of leasehold title insurance specific to the Premises based upon the legal description shown on the Survey, issued by the Title Company, showing leasehold title to the Premises vested in Tenant and insuring all rights appurtenant thereto, with coverage in the amount required by Tenant, and subject only to the exceptions approved in writing by Tenant during the Inspection Period (with all general exceptions deleted), (ii) an executed and acknowledged memorandum of this Lease in substantially the form attached hereto as Exhibit 3.1.1 (the **“Memorandum”**) and (iii) all SNDAs (as such term is defined in Section 21.3) required hereinbelow, which Memorandum and SNDA(s) may be recorded by Tenant in the local land records;

 (c) upon expiration (or earlier waiver by Tenant) of the Permit Period, delivery to Tenant of exclusive possession of the Premises with all of Landlord’s Work completed in accordance with the terms and conditions set forth on Exhibit 3.1.2 attached hereto, if any, free and clear of all liens and tenancies, and in the condition approved by Tenant during the Inspection Period (with any and all Corrective Action which Landlord has agreed to perform completed).

If Landlord fails to fully satisfy any of the Delivery Requirements by the applicable deadline then the Permit Period and the Rent Commencement Date each shall be deemed extended one (1) day for each day after the applicable deadline until satisfaction of the same. If Landlord fails to fully satisfy any of the Delivery Requirements within thirty (30) days after the applicable deadline, then in addition to the foregoing, Tenant shall be reimbursed by Landlord for all costs resulting from such delay (including, without limitation, costs concerning security, fencing, construction, labor, operations and lost business). In addition, if Landlord fails to timely satisfy Delivery Requirement (c) for more than thirty (30) days, then Tenant may elect to perform or cause to be performed such work using, at Tenant’s election, either Landlord’s contractor or a contractor selected by Tenant, and Landlord agrees to reimburse Tenant within twenty (20) days after demand for all amounts reasonably expended by Tenant to perform such work. If Landlord fails to reimburse Tenant for such work within said twenty (20) days, Tenant may offset the reimbursement amount against Rent due hereunder. If Landlord fails to timely satisfy any Delivery Requirement for more than forty-five (45) days (subject to Excusable Delay as provided in Section 21.5 below), then Tenant shall have the right at any time to terminate this Lease upon written notice to Landlord and Landlord shall, within twenty (20) days thereafter, reimburse Tenant for any and all of Tenant’s actual costs to perform due diligence, prepare Improvement plans, pursue and obtain Permits and construct the Improvements.

# USE.

## Use.

Tenant may use the Premises for any lawful use or purpose, including without limitation a quick service restaurant featuring the sale of hamburgers, chicken and chicken products, biscuits and breakfast sandwiches and Mexican style food, as well as tea and coffee based products, and including, at Tenant’s option, a drive-through facility and/or a playground. Landlord warrants that such use of the Premises (including typical restaurant cooking odors and drive-through speaker noises at commercially reasonable volumes) is permitted under all applicable laws, rules, regulations, ordinances and restrictions. Tenant shall comply with all laws applicable to Tenant’s use of the Premises, normal wear and tear excepted. Tenant shall have no obligation to continuously operate its business at the Premises.

## Signage.

Notwithstanding any provision herein to the contrary, Landlord agrees that Tenant may install, maintain, repair and replace on the Premises any and all of Tenant’s prototypical identification, advertising, promotional and directional signs and media and standard “trade dress”, so long as they comply with all applicable governmental requirements.

## Use Restrictions.

Landlord covenants and agrees that so long as Tenant leases, owns, or otherwise controls the Premises:

 (a) Tenant and any permitted subtenant or assignee thereof shall have the exclusive right on any and all property (other than the Premises) now or hereafter owned, leased, or otherwise controlled, directly or indirectly, by Landlord or an affiliate of Landlord within two miles of the perimeter of the Premises (whether or not such other property is subsequently conveyed by Landlord) (collectively, the **“Restricted Property”**) to operate a quick service restaurant featuring the sale of hamburgers, hot dogs, chicken products, biscuits, breakfast sandwiches, (by way of example and not limitation, uses that would violate Tenant’s exclusive right include Burger King, Wendy’s, Fatburger, Johnny Rockets Express, In-N-Out Burger, Farmer Boys, Smashburger, Five Guys, The Counter, Mooyah Burger, Krystal, White Castle, A&W, Whataburger, Checkers, Rallys, Sonic and similar “drive-in” concepts, Steak N Shake, Culver’s, Jack-in-the-Box, McDonald’s and Dunkin’ Donuts).

 (b) any buildings or other improvements constructed on property adjacent or contiguous to the Premises and now or hereafter owned, leased or otherwise controlled, directly or indirectly, by Landlord or an affiliate of Landlord, shall be set back at least 75 feet from all public rights-of-way, provided however that this restriction shall not apply to improvements existing on the Effective Date or on the date that Landlord or an affiliate of Landlord acquires ownership or control of such property, if later.

 It is mutually agreed that the covenants set forth above shall run with the land, be binding upon third parties, and be incorporated into the Memorandum along with a legal description of the Restricted Property that shall be furnished by Landlord.

# CC&RS.

Landlord represents, warrants and covenants that Landlord shall not permit the adoption or implementation of any CC&Rs, declarations, REAs, or similar agreements (the "CC&Rs") without Tenant’s prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. In the event the Premises become encumbered by any CC&Rs, then (a) Landlord shall promptly furnish to Tenant copies of all notices and correspondence concerning the CC&Rs delivered to Landlord as owner of the Premises; and (b) Tenant shall have, and may exercise, all rights and remedies of Landlord under the CC&Rs as owner of the Premises, and Landlord shall either (i) grant Tenant a legally effective and meaningful right (either by the terms of the CC&Rs or by an assignment of Landlord’s rights which is sufficient for the effective enforcement of the CC&Rs by Tenant) to enforce the CC&Rs for its own benefit, or (ii) allow Tenant, in Landlord’s name, at Tenant’s sole cost and expense, to use appropriate legal means to enforce the CC&Rs for Tenant’s benefit (including, without limitation, litigation, self-help rights granted by the CC&Rs and/or informal dispute resolution procedures to enforce the CC&Rs).

# RENT.

## Base Rent.

Beginning on the Rent Commencement Date, Tenant shall pay Base Rent in the amount set forth in Paragraph F of the Basic Provisions hereinabove to Landlord in equal monthly installments, in advance, on the first day of each calendar month of the Term. Base Rent for any partial month during the Term shall be prorated on the basis of a thirty (30) day month. All Rent payments due to Landlord shall be made to Landlord’s address set forth in Paragraph A.3 hereinabove (or to such other address as Landlord may give upon sixty (60) days prior written notice to Tenant, together with a completed and signed IRS Form W-9 if current information differs from that shown on the Form W-9 previously submitted by Landlord to Tenant). Landlord acknowledges that Tenant must receive from Landlord a current completed and signed IRS Form W-9 (most current version) in order to process the payment of Rent. Base Rent and any other amounts payable by Tenant under this Lease may be referred to herein collectively as “Rent.”

## Early Termination.

Except as may be otherwise provided herein, in the event this Lease is terminated prior to the end of the then-current Term, not due to a default by Tenant hereunder, all Rent shall be prorated to the date of termination, and Landlord shall, upon demand, reimburse Tenant the paid and unearned amounts accordingly.

## Late Charge.

If Tenant is delinquent in any monthly installment of Base Rent and such delinquency continues for ten (10) days after written notice from Landlord that such payment was not received when due, Tenant shall pay to Landlord on demand a late charge equal to three (3%) percent of such delinquent sum.  The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as a penalty.

# TAXES.

## Personal Property.

Tenant shall pay all taxes levied against personal property of Tenant located on the Premises plus all business, license, sales and excise taxes levied against Tenant or Tenant’s occupancy of the Premises.

## Real Property.

Tenant shall pay all real property taxes and assessments levied against the Premises during the Term and actually billed (taking into account any discounts, abatements or reductions). If the land and improvements comprising the Premises are not separately assessed, Landlord shall use reasonable best efforts to obtain from the taxing authorities a separate assessment for such land and Improvements. If permitted by the applicable taxing authorities, Landlord shall have all tax and assessment bills sent directly by the taxing authority to Tenant. If any tax or assessment bills are sent by the applicable authority to Landlord, then Landlord shall deliver the same to Tenant, along with a copy of the applicable bills and calculation of Tenant’s share of same (if the Premises is not separately assessed), within five (5) business days after Landlord’s receipt of same. Tenant shall pay all such taxes and assessments prior to delinquency directly to the taxing authority provided the bills for such taxes and assessments are sent directly by the taxing authority to Tenant or Landlord delivers same to Tenant within five (5) business days of receipt from the taxing authority. If, despite Landlord’s reasonable best efforts, the Premises are not separately assessed, Tenant shall pay its share of the real property taxes and assessments as follows: (a) as to taxes on improvements, Tenant’s share shall be the ratio, stated as a percentage, which the number of square feet of floor area in the Tenant’s building bears to the number of square feet of floor area in all buildings, including mezzanines, located in the tax parcel; and (b) as to taxes on land, Tenant’s share shall be the ratio, stated as a percentage, which the number of square feet of land in the Premises bears to the number of square feet of land in the tax parcel. Real property taxes and assessments for the tax years in which the Term begins and ends shall be prorated between Landlord and Tenant as of the Rent Commencement Date and the date the Term ends, respectively, based upon a three hundred sixty-five (365) day year. Tenant may, in its own name or in the name of Landlord, at Tenant’s expense, contest, appeal or apply for abatement of, any tax or assessment, and pay in installments where allowed by the taxing authority. Landlord shall cooperate with any such appeal or application, and agrees to sign all necessary instruments in connection therewith. Landlord shall not settle any such applications or appeal without Tenant’s prior written approval. Real property taxes shall not include business, income, gross receipts, or profits taxes, estate, succession, inheritance, transfer, corporation, franchise or capital taxes assessed against Landlord or any other tax intended by the taxing authority to be a tax on the Rent payable under this Lease or on Landlord’s income. Tenant shall not be responsible to pay any transfer taxes or development costs, including without limitation, traffic impact fees, billed as part of real estate taxes. Further, Tenant shall not be responsible for increases in real property taxes attributable to a failure by Landlord to respond to a request of the applicable tax assessor or penalties or interest due to a failure by Landlord to timely (i) deliver the tax bills and information to Tenant, or (ii) pay any taxes and assessments for which Landlord is responsible to the applicable authorities.

## Special Assessments.

Landlord shall not authorize any special assessment, tax, or fee concerning the Premises during the Term without obtaining Tenant’s prior written consent. If Landlord pays any assessment in installments, Tenant shall be billed for its share of such assessment in comparable installments during the Term.

## Landlord’s Payment and Notice Obligations.

Landlord shall pay before delinquency any and all obligations of Landlord under any judgment, assessment, tax or other encumbrance affecting the Premises that is not otherwise Tenant’s obligation under this Section. Landlord shall promptly furnish to Tenant copies of all notices, information and/or correspondence in its (or its agent’s or property manager’s) possession or control that could affect Tenant’s business operations on the Premises during the Term.

# RESERVED

# INSURANCE & INDEMNIFICATION.

## General Insurance Requirements.

Tenant shall, at Tenant’s expense, maintain the insurance described in this Section during the Term. Tenant may provide insurance through a blanket policy and with commercially reasonable deductibles determined by Tenant. Prior to the Rent Commencement Date and from time to time during the term of this Lease Tenant shall provide Landlord with certificates of insurance confirming coverage and confirming that policies will not be canceled or changed without thirty (30) days prior notice to Landlord. From time to time, Tenant shall deliver to Landlord insurance certificates naming Landlord and Landlord's lender(s) as additional insureds/loss payees, as appropriate. Each policy must contain a waiver by the insurer of any right of subrogation to the rights of its insured which arises from payment under an insurance policy required under this Lease.

## Property Insurance.

Starting on the expiration of the Permit Period and provided Landlord’s Work has been completed, Tenant shall maintain property insurance on the building and all of Tenant’s personal property in the Premises in an amount not less than the full replacement value thereof. All property insurance proceeds shall be paid to Tenant.

## Liability Insurance.

Starting on the Effective Date, Tenant shall maintain commercial general liability insurance with combined single limit coverage in the amount of one Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate. Landlord shall be named as an additional insured. The liability insurance shall provide coverage against claims for bodily injury, personal injury, death and property damage occurring on the Premises.

## Workers Compensation Insurance.

Starting on expiration of the Permit Period, Tenant shall maintain workers compensation insurance as required by law in the State where the Premises is located.

## Waiver of Subrogation.

Tenant and Landlord each waive all rights to recover against the other for any loss or damage to its tangible personal or real property (whether owned or leased) from any cause covered by insurance maintained or required to be maintained (whether or not such insurance is in fact carried) by such party, including any applicable deductible or self-insured retention. Tenant and Landlord each shall cause its insurer to issue an appropriate waiver of subrogation rights endorsement to its property insurance policies.

## Indemnification.

### Indemnification of Landlord by Tenant.

Tenant shall defend Landlord against, and indemnify and hold Landlord harmless from, all claims, losses, liabilities and expenses (including attorneys’ fees) asserted against or incurred by Landlord due to (a) a breach of Tenant’s representations and warranties hereunder, (b) a default on Tenant’s covenants and obligations hereunder, or (c) negligence or willful acts or omissions of Tenant, its agents, employees or contractors.

### Indemnification of Tenant by Landlord.

Landlord shall defend Tenant against, indemnify and hold Tenant harmless from, all claims, losses, liabilities and expenses (including attorneys’ fees) asserted against or incurred by Tenant due to (a) a breach of Landlord’s representations and warranties hereunder, (b) a default on Landlord’s covenants or obligations hereunder, or (c) the negligence or willful acts or omissions of Landlord, its agents, employees, or contractors.

### Indemnification.

Notwithstanding any provision in this Lease to the contrary, in the event of the concurrent negligence or intentional misconduct of Tenant, its partners, directors, officers, agents, employees, sublessees, or contractors on the one hand and that of Landlord, its partners, directors, officers, agents, employees, or contractors on the other hand, which concurrent negligence or intentional misconduct results in injury or damage to persons or property and relates to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of the Premises, a party’s (the **“Indemnifying Party”**) obligation to indemnify the other as set forth in this Lease shall be limited to the extent of the Indemnifying Party’s negligence and/or intentional misconduct, and that of its agents, employees, sublessees, or contractors, including the Indemnifying Party’s proportionate share of reasonable costs, attorneys’ fees, and expenses incurred in connection with any claim, action, or proceeding brought with respect to such injury or damage. A party entitled to indemnity must promptly notify the Indemnifying Party of its claim for indemnity. The Indemnifying Party may defend, prosecute and settle the matter for which indemnity is sought, using counsel selected by the Indemnifying Party or its insurer reasonably acceptable to the indemnified party. All indemnity obligations hereunder that accrue during the Term shall survive the expiration or earlier termination of this Lease.

# UTILITIES.

## Utility Payment.

Tenant shall directly pay for all water, electricity, gas, telephone, sanitary sewers, trash collection and other utility services furnished to the Premises during the Term.

# ALTERATIONS.

## Alterations by Tenant.

**“Alterations”** include, without limitation, interior and exterior changes to, and demolition and/or renovation of, Improvements. Tenant shall have the right to make, or permit any subtenant to make, Alterations to Improvements from time to time during the Term.

## Tenant Work Notice and Liens.

Tenant shall keep the Premises free from liens arising out of any work performed, materials furnished, or obligations incurred by Tenant, but may, upon posting a bond or other security, contest any such lien at Tenant’s sole expense.

# ASSIGNMENT AND SUBLEASE.

## Assignment and Subletting

## Landlord’s prior written consent shall be required for any assignment of all or a portion of Tenant’s interest in this Lease or a sublease of all or a portion of the Demised Premises. Landlord shall not unreasonably withhold, condition or delay such consent. Notwithstanding any provision of this Lease to the contrary, Tenant may assign or sublease the Premises without Landlord’s consent, but with ten (10) days’ prior written notice to Landlord, (a) to a corporation controlling, controlled by, or under common control with Tenant, (b) to Hardee’s Restaurants LLC, its parent, affiliates or subsidiaries, (c) to the surviving corporation in a merger or other corporate reorganization to which Tenant is a party and as a result of which all or substantially all of the assets of Tenant become assets of the assignee/surviving corporation or (d) to a purchaser of all or substantially all of the assets of Tenant.

## Leasehold Financing

## Notwithstanding any other provision of this Lease to the contrary, Tenant shall have the unrestricted right to execute and deliver a leasehold mortgage, deed of trust, pledge and/or collateral assignment of this Lease (“Leasehold Mortgage”) as security for any indebtedness in any form whatsoever. In the event Tenant shall execute and deliver a Leasehold Mortgage, and if the holder of the indebtedness secured by this Lease (“Leasehold Mortgagee”) notifies Landlord of the execution of such Leasehold Mortgage, and the name and place for service of notices upon such Leasehold Mortgagee, then and in such event, Landlord hereby agrees for the benefit of Tenant and such Leasehold Mortgagee from time to time:

### That Landlord shall endeavor to give to any Leasehold Mortgagee simultaneously with service on Tenant a duplicate of any and all notices or demands given by Landlord to Tenant but shall not be liable for any failure to deliver such duplicate notice to Leasehold Mortgagee.

### Leasehold Mortgagee shall have the privilege of performing any of Tenant’s covenants or of curing any defaults by Tenant or of exercising any election, option or privilege conferred upon Tenant by the terms of this Lease within the time periods permitted below.

### Landlord shall not terminate the Lease or Tenant’s right of possession for any default of Tenant if, within a period of thirty (30) days (ten (10) days in the case of a financial default) after the expiration of the period of time within which Tenant might cure such defect, such default is cured or caused to be cured by Leasehold Mortgagee or, if within a period of thirty (30) days after the expiration of the period of time within which Tenant might commence to eliminate the cause of such default, Mortgagee diligently commences to eliminate the cause of such default and thereafter diligently prosecutes the same to completion.

### No liability for the payment of Rent or the performance of any of Tenant’s covenants and obligations of this Lease shall attach to or be imposed upon any Leasehold Mortgagee, while not entitled to lawful possession of the Premises, all such liability being hereby expressly waived by Landlord.

# CONDEMNATION.

## Definition and Effect.

**“Condemnation”** means any impairment of Tenant’s use of the Premises, or easements serving the Premises, by act or omission of any governmental or quasi-governmental authority, including, without limitation, a public or private exercise of the power of eminent domain, an exercise of other government authority such as alteration of a public street or easement serving the Premises or other change in the law that has a substantially similar effect. A voluntary sale by Landlord to any party having the power to effect a Condemnation either under a threat of exercise of that power, or while proceedings are pending, shall also be deemed a Condemnation. Landlord, promptly upon receipt of notice, shall furnish to Tenant notice of any pending or threatened Condemnation proceedings or sale in lieu thereof concerning the Premises and shall inform the applicable authority that Tenant is to be copied on all future correspondence related to the Condemnation. Tenant may terminate this Lease upon notice to Landlord if, in Tenant’s reasonable judgment, a Condemnation would render the Premises unsuitable or untenantable for Tenant’s continued operation, such as for any of the following reasons: (a) any portion of the restaurant building is affected by the Condemnation in a manner that would (in Tenant’s reasonable judgment) have a material, adverse effect on Tenant’s business operations, (b) access to the Premises is materially, adversely affected, (c) visibility of the Premises is materially, adversely affected, (d) the parking available to the Premises is materially reduced, or (e) any portion of a drive-through facility is unavailable for Tenant’s use. If this Lease is so terminated, all Rent and other charges paid by Tenant shall be prorated and Landlord shall refund to Tenant any such amounts paid in advance. In the event this Lease does not terminate due to a Condemnation, Tenant shall repair and restore the Improvements, and Landlord shall promptly make any portion of the Award attributable to the Improvements and paid to Landlord available to Tenant. During the completion of any such repair and/or restoration, Tenant’s obligation to pay Rent shall abate in proportion to that portion of the Premises rendered untenantable during such period. If this Lease is not terminated due to a Condemnation, an equitable adjustment in Rent, taking into account the impact of such Condemnation on business operations at the Premises, shall be made for the balance of the Term, retroactive to the date of the Condemnation.

## Award.

In the event that an award is made for an entire or partial Condemnation or for a sale in lieu thereof, or for damage to the Premises or any interest therein in any action in direct or inverse condemnation, the parties hereto agree that their respective rights to the award or compensation paid shall be as follows:

### Landlord shall be entitled to that portion of the award received for the taking of the real property within the Premises, exclusive of all Improvements.

### Tenant shall be entitled to that portion of the award received for the taking of Improvements and to any award that may be made for the taking of or injury to Tenant’s business and profits or on account of any cost or loss Tenant or its subtenants may sustain in the removal of its or their merchandise, fixtures, equipment and furnishings from the Premises.

### Any severance damages and interest payable on the total award shall be divided between Landlord and Tenant in the same ratio as are the awards granted to them pursuant to the other provisions of this Section.

### Tenant shall be entitled to any portion of the award that is made on the basis that Tenant’s interest in this Lease has a bonus value (i.e. that the fair rental value of the Premises for all or any portion of the remainder of the term hereof exceeds the rental reserved under this Lease for such period), provided the same does not diminish Landlord’s portion of the award described in paragraph 13.2.1 above.

### 13.2.5. Notwithstanding any provision herein to the contrary, in the event of a temporary taking of the Premises during the Term which does not result in termination of this Lease, Tenant shall receive any and all awards specifically allocated by the condemning authority as attributable to the temporary taking of the Premises.

# DAMAGE OR DESTRUCTION.

## Repair and Restoration.

Tenant shall have the right but not the obligation to repair and/or restore any Improvements damaged or destroyed during the Term.

## Termination.

In the event improvements on the Premises are damaged or destroyed such that (a) governmental or third party requirements in effect do not permit repair and restoration by Tenant in accordance with its then-current plans and specifications for Tenant’s prototypical restaurant, or (b) damage or destruction occurs during the last sixty (60) months of the Initial Term, or any extension thereof, then Tenant may terminate this Lease by written notice to Landlord effective as of the date of such damage or destruction. In the event that this Lease is so terminated, Tenant shall have no obligation to repair or restore the Premises.

# DEFAULT.

## Tenant Default.

Tenant will be in default under this Lease only if: (a) Tenant fails to perform any monetary obligation of Tenant under this Lease within ten (10) days after receipt of notice from Landlord regarding such failure; (b) Tenant fails to perform any non-monetary obligation of Tenant under this Lease within thirty (30) days after receipt of notice from Landlord stating the obligation which Tenant has failed to perform and demanding performance (unless such performance reasonably requires more than thirty (30) days, in which case Tenant shall commence a cure within such thirty (30) day period and thereafter diligently pursue the same to completion); or (c) Tenant makes any general assignment for the benefit of creditors, Tenant files, or has filed against it, a petition to have Tenant adjudged bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless the same is dismissed within sixty (60) days), or a trustee or receiver is appointed to take possession of substantially all of Tenant’s assets located at the Premises or of Tenant’s interest in this Lease, where such seizure is not discharged within thirty (30) days after appointment of such trustee or receiver. In the event of a default under this Lease by Tenant, any notice from Landlord shall not be deemed to be a termination of this Lease unless Landlord specifically states in the notice that this Lease is terminated.

## Landlord Remedies.

Upon a default by Tenant, Landlord, by notice to Tenant may terminate this Lease on a date specified in the notice and may demand and recover possession of the Premises from Tenant. Tenant shall remain liable to Landlord for the following: (a) the worth, at the time of the award, of the unpaid Rent earned at the time of termination of this Lease; (b) the worth, at the time of the award, of the amount by which the unpaid Rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; (c) the worth, at the time of the award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could be reasonably avoided; and (d) any other amount, and court costs, necessary to compensate Landlord for all detriment caused by Tenant’s default.

 The “worth at the time of the award,” as referred to in subsection (c) of this Section is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus three percent (3%).

 While Tenant is in default of this Lease, Landlord may enter and relet the Premises for Tenant’s account, for such period, terms, and rent as are reasonable. Tenant shall pay to Landlord the Rent due under this Lease on the dates Rent is due, plus all reasonable expenses (calculated by multiplying (a) the number of months remaining in the Lease Term by (b) the monthly amortized cost of the expenses on a straight line basis over the term of the reletting) incurred by Landlord for remodeling and refurbishing the Premises for another tenant, and for marketing and brokerage commissions, less the Rent Landlord receives from any reletting.

Landlord agrees to use reasonable efforts to mitigate its damages resulting from a default by Tenant.

## Landlord Default.

Landlord will be in default under this Lease if Landlord breaches any representation, warranty, or covenant hereunder, or fails to perform any obligation of Landlord within thirty (30) days after receipt of notice from Tenant stating the obligation which Landlord has failed to perform (unless such performance reasonably requires more than thirty (30) days, in which case Landlord shall promptly commence a cure or remedy and thereafter shall diligently pursue the same to completion). In the event of a Landlord default due to failure to timely perform a covenant or obligation, Tenant may perform any such covenant or obligation after the notice and cure period expires. Notwithstanding any provision herein to the contrary, in the event of an emergency, Tenant may perform any such obligation of Landlord as soon as is reasonably necessary under the circumstances after providing written notice to Landlord. If Tenant elects to perform any Landlord obligation, or if Landlord is expressly obligated under this Lease to reimburse Tenant for certain costs, Landlord shall, upon demand, reimburse Tenant the full amount of Tenant’s expenses incurred in connection with performing the Landlord obligation. If Landlord fails to reimburse Tenant within twenty (20) days after request therefor, Tenant may offset the reimbursement amount against Rent due hereunder. Notwithstanding any provision herein to the contrary, in the event of a breach of any representation, warranty, covenant or obligation of Landlord under this Lease, Tenant may pursue any and all remedies available at law or in equity.

# ACCESS TO PREMISES.

Upon reasonable prior notice, but in no event less than seventy-two (72) hours (except in the case of a life-threatening or property-threatening emergency, in which case reasonable notice under the circumstances shall be required), Landlord may enter the Premises during Tenant’s non-peak daylight business hours, or such other hours as mutually agreed for purposes of inspection, to show the Premises to prospective purchasers and lenders. Should business operations on the Premises be interfered with due to such entry, then, in addition to any other rights Tenant may have available to it, Tenant shall be entitled to an abatement of Rent, proportionate to the degree of such interference with Tenant’s business operations.

# TENANT’S PROPERTY AND SURRENDER OF PREMISES.

Landlord agrees that all trade fixtures, signs, trade equipment, furniture or other personal property of whatever kind and nature kept or installed in the Premises by Tenant or Tenant’s subtenants (Tenant’s **“FF&E”**) shall not become the property of Landlord or a part of the realty no matter how affixed to the Premises and may be removed by Tenant or Tenant’s subtenants, in their discretion, at any time and from time to time during the Term of this Lease, as the same may be extended. Upon request of Tenant, Landlord shall execute and deliver real estate consent or waiver forms submitted by any vendor, lessor, chattel mortgagee or holder or owner of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed in the Premises setting forth the fact that such property is personal property, is not to become a part of the realty no matter how affixed to it, may be removed from the Premises by the vendor, lessor, chattel mortgagee, owner or holder at any time free and clear of any claim or lien of Landlord, and Landlord waives any and all superior liens, claims, interests or other rights.

Tenant and any subtenant shall have the right, but not the obligation, to remove any Improvements and/or FF&E, including without limitation proprietary signs, distinctive exterior and interior designs, colors and layouts, and trademarks prescribed by Tenant, at any time during the Term of this Lease and for a period of thirty (30) days after the expiration or earlier termination of this Lease, and to enter upon the Premises for such purpose. Tenant’s failure to remove any Improvements or FF&E after the expiration of such period of thirty (30) days shall be deemed to be an abandonment and the same shall, at such time, be and become a part of the real estate with title vesting in the owner of the land. In case of removal of the building on the Premises by Tenant or any subtenant occurring at or after the termination of this Lease, Tenant shall leave the building pad in a level condition with all utilities capped and stubbed.

# HAZARDOUS MATERIAL.

Tenant shall not bring any Hazardous Material (other than those commonly used in the normal course of operations of a restaurant business) onto the Premises. Tenant shall not be responsible for handling, removal, remediation, or treatment of any Hazardous Material which is present prior to delivery of the Premises to Tenant (unless caused by Tenant during the Inspection Period or the Permit Period), or which migrates or is brought onto the Premises by some party outside the control of Tenant, and no costs incurred in connection with the clean-up, removal, or treatment of any such Hazardous Material shall be allocated to Tenant. Tenant shall be responsible for handling, removal, remediation, or treatment of any Hazardous Material and the costs incurred in connection with the clean-up, removal, or treatment of Hazardous Material (other than those commonly used in the normal course of operations of a restaurant business and which are used in accordance with applicable environmental laws) brought onto the Premises by Tenant or a party under the control of or on behalf of Tenant, to the extent required by applicable environmental laws or by order of any court or governmental agency having jurisdiction. Landlord shall be responsible for the prompt and diligent handling, removal, remediation and treatment of any and all Hazardous Material on or under the Premises which is not the obligation of Tenant as set forth above, to the extent required by applicable environmental laws or by order of any court or governmental agency having jurisdiction. Rent due under this Lease shall abate in proportion to any interruption of Tenant’s business operations on the Premises due to Hazardous Materials for which Landlord is responsible under this paragraph. Landlord hereby agrees to defend, indemnify, and hold Tenant harmless against all claims, liabilities, costs and expenses (including defending and paying Tenant’s attorneys’ fees) in connection with Hazardous Material which Landlord is obligated hereunder to handle, remove, remediate or treat. Tenant hereby agrees to defend, indemnify, and hold Landlord harmless against all claims, liabilities, costs and expenses (including defending and paying Landlord’s attorneys’ fees) in connection with Hazardous Material which Tenant is obligated hereunder to handle, remove, remediate or treat. Nothing herein shall be deemed to waive Landlord’s or Tenant's statutory obligations concerning Remediation.

**“Hazardous Material”** means any substance potentially injurious to public health or the environment or which is or becomes regulated by any governmental authority and includes, without limitation, underground storage tanks and any substance which is: (a) defined as “Hazardous Substance,” “Hazardous Waste,” or “Extremely Hazardous Substance” pursuant to any provision of the United States Code, including United States Code sections commonly known as the Federal Water Pollution Control Act, the Federal Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, and the Superfund Amendments and Reauthorizations Act of 1986; (b) defined as a hazardous substance or material pursuant to any state or local law governing the Premises; (c) petroleum or a petroleum by-product; (d) asbestos or asbestos containing material; (e) a pesticide; (f) a polychlorinated biphenyl; (g) a dry cleaning fluid; or (h) a solvent. **“Remediation”** means those steps required by any Federal, state, or local law, regulation or order to eliminate or mitigate the presence of Hazardous Materials.

# REPRESENTATIONS AND WARRANTIES.

## Landlord Representations and Warranties.

Landlord represents and warrants, and where indicated covenants, to Tenant, as of the Effective Date through the Term, as follows:

 (a) Landlord is duly organized, validly existing and in good standing in the state of its formation, has all requisite power and authority to enter into and perform under this Lease in accordance with its terms, and the individuals executing this Lease have been duly authorized to do so;

 (b) this Lease is binding, jointly and severally, on all parties comprising Landlord in accordance with its terms;

 (c) Landlord is the sole fee simple owner and record title holder of the entire Premises;

 (d) neither the execution and delivery of this Lease by Landlord, nor the performance of the terms and conditions of this Lease, does or would violate any commitment or agreement concerning Landlord or the Premises, nor will it require Landlord to perform any actions or obtain any governmental or third party consents not expressly contemplated herein;

 (e) to the best of Landlord’s knowledge, no party is in default (nor does any condition exist which with the passage of time could constitute a default) under any covenant, condition, restriction, easement or right-of-way affecting the Premises;

 (f) to the best of Landlord’s knowledge, there is no pending, proposed, or threatened condemnation or eminent domain proceeding, litigation, or other proceeding or action that could adversely affect Tenant’s use of the Premises;

 (g) to the best of Landlord’s knowledge, the Premises, including the soil and groundwater thereon and thereunder, (i) does not contain any Hazardous Materials, (ii) complies with all applicable laws, regulations and ordinances pertaining to the protection of human health, safety, and the quality of the environment, and (iii) does not and has not contained any underground storage tanks; and

 (h) this Lease does not contain any untrue statement of material fact by Landlord, or omit any material fact necessary to make Landlord’s statements contained herein not misleading. Landlord shall immediately notify Tenant (and furnish Tenant with copies of all related notices, claims or demands) if any of the aforementioned representations or warranties of Landlord materially change during the pendency of this Lease.

## Tenant Representations and Warranties.

Tenant represents and warrants that it is duly organized, validly existing and in good standing in the state of its formation, has all requisite power and authority to enter into and perform under this Lease in accordance with its terms, and the individuals executing this Lease have been duly authorized to do so.

# RIGHTS OF FIRST OFFER AND FIRST REFUSAL TO PURCHASE and LEASE.

## First Offer to Purchase.

If Landlord elects to offer to transfer the Premises by sale or exchange, Landlord shall provide Tenant notice of all terms of the proposed offer, including without limitation the purchase price, length of due diligence period, closing date, type of warranty deed, any title exceptions to which the Premises will be subject, and other commercially reasonable terms, and such notice shall enclose a copy of the actual offer (if any). Tenant shall have twenty (20) days after receiving the notice within which to accept the offer on all terms stated in the notice to Tenant or such other terms to which Landlord and Tenant agree. If Tenant fails to accept the offer within such twenty (20) day period, Landlord shall be free to make the same offer available to others and conclude a sale or exchange on the terms stated therein. If Landlord desires to change a material term of such offer, or if the transaction contemplated by such offer fails to close and a new or revised transaction is proposed, Landlord must again notify Tenant in accordance with the foregoing requirements, and Tenant shall have twenty (20) days after receiving the notice within which to accept the changed offer or such other terms to which Landlord and Tenant agree.

## Right of First Refusal to Purchase.

If Landlord receives an offer to acquire the Premises which Landlord desires to accept, Landlord shall promptly provide Tenant notice of the name and address of the offeror and all terms of the offer (the “**Offer**”), including without limitation the purchase price, length of due diligence period, closing date, type of warranty deed, any title exceptions to which the Premises will be subject, and other commercially reasonable terms, and such notice shall enclose a copy of the actual offer (if any). Tenant shall have ten (10) days after receiving the Offer within which to agree to become the offeror (by providing notice and a non-refundable deposit of $25,000) on all terms stated in the Offer or such other terms to which Landlord and Tenant agree. If Tenant fails within such ten (10) day period to agree to become the offeror, Landlord shall be free to accept such Offer and complete the transaction contemplated thereby on the terms stated therein. If Landlord desires to agree to a change in a material term of the Offer, or if the transaction contemplated by such Offer fails to close within 6 months or a new or revised transaction is proposed, then Landlord must again notify Tenant in accordance with the foregoing requirements and Tenant shall have ten (10) days after receiving the new or revised Offer within which to agree to become the offeror as to such Offer or such other terms to which Landlord and Tenant agree.

## Right of First Refusal to Lease.

If at any time during the Term Landlord shall desire to enter into a lease concerning the Premises for a term commencing at or after the expiration of the Term, Landlord shall notify Tenant of such proposed lease (such notice shall include executed copies of all relevant documents and the name and address of the proposed tenant), and Tenant shall have the right to re-let the Premises upon the terms and conditions of such proposed lease by giving Landlord written notice of its election to do so within twenty (20) days after receipt of Landlord’s notice. In the event Tenant fails to notify Landlord of its election within such twenty (20) day period, Landlord shall have the right to lease the Premises to any person upon the terms and conditions contained in such notice to Tenant. Tenant’s acceptance or rejection of this proposed lease shall have no effect on Tenant’s option to purchase or option to extend, if any.

# MISCELLANEOUS PROVISIONS.

## Notices.

All notices, consents, demands and other communications required or allowed shall be in writing and shall be sent to the addresses shown for notices in the Basic Provisions hereinabove, or such other addresses as a party may from time to time direct to the other party in writing. A party may change its address for notices and consents by giving notice to the other party. Notices and consents may be delivered by personal delivery, facsimile or email transmission during normal business hours of the recipient, a nationally-recognized overnight delivery service, or U.S. Mail sent certified with return receipt requested, and are effective on the earlier of the date of delivery or the date of first attempt to deliver.

## Quiet Enjoyment.

Commencing on the date Landlord delivers possession of the Premises to Tenant pursuant to Section 3.1 of this Lease, Landlord shall assure Tenant of quiet enjoyment and possession of the Premises and Tenant shall enjoy all rights herein granted without interference so long as Tenant is not in default of its obligations under this Lease.

## Subordination.

With respect to any and all mortgages, deeds of trust or ground leases that encumber any portion of the Premises on or after the Effective Date and to which this Lease shall be subordinate, Landlord agrees to promptly obtain from each applicable lender and master lessor, respectively, a Subordination, Non-Disturbance and Attornment Agreement in recordable form and otherwise in form and substance reasonably acceptable to Tenant and executed and acknowledged by the lender or master lessor, as applicable (each, an **“SNDA”**). Tenant and Landlord each agree to promptly execute, acknowledge and deliver to the other all SNDAs.

## Estoppel Certificates.

Landlord and Tenant each agree to execute and deliver to the other, within thirty (30) days after request, an estoppel certificate addressing such matters as may be reasonably requested by an existing or prospective mortgagee, a prospective transferee of the Premises, or a prospective transferee of Tenant’s leasehold interest.

## Excusable Delays.

The time for a party’s performance of an obligation, except payment of Rent, shall be extended for the period during which the party is prevented from performing or acting by the act, omission or delay of another party or governmental authority, adverse weather, fire, earthquake, strikes, lockouts, labor disputes, failure of power or other utilities or services, war, acts of public enemies or terrorists, riots, insurrection, civil commotion, inability to obtain labor or materials, acts of God, or other cause beyond such party’s reasonable control (each of the foregoing, an **“Excusable Delay”**).

## Holding Over.

Any holding over after the expiration of the Term shall be as a tenancy from month to month subject to all provisions of this Lease, except that Base Rent shall be equal to one hundred ten percent (110%) of the Base Rent in effect at the expiration of the Term.

## Amendment.

Changes may be made only by a written amendment to this Lease executed by the parties hereto.

## Attorneys’ Fees.

If an action or proceeding is commenced to enforce or interpret any provision hereof, the prevailing party as determined by a final court judgment shall be entitled to recover from the other party such reasonable attorneys’ fees and expenses incurred in the action as the court may award. This Section shall survive expiration or earlier termination of this Lease.

## Confidentiality.

All financial aspects of this transaction are confidential. No party may make public announcement or disclosure of any financial information about this transaction, except to its agents involved in the negotiation of this Lease and prospective purchasers, tenants, subtenants, lenders, and business and legal advisors (provided that such parties are similarly bound by this confidentiality obligation), without the consent of the other party, unless the disclosure is required by law.

## Consents.

Whenever a party is asked to provide consent or give its approval, such party may not unreasonably withhold, condition or delay giving the consent or approval requested unless specifically provided hereunder. Consents and approvals shall be given in the same manner as provided for notices hereunder.

## Counterparts.

This document may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument.

## Disclaimers.

Nothing in this Lease: (a) creates any right or remedy for the benefit of any person not a party hereto nor (b) creates a fiduciary relationship, an agency, partnership, or joint venture. Further, notwithstanding anything to the contrary contained herein, neither affiliates of Landlord or Tenant, nor any disclosed or undisclosed officers, shareholders, principals, directors, employees, partners, servants or agents of Landlord, Tenant or of their respective affiliates, successors and assigns, nor any general or limited partner in or of such parties, whether direct or indirect, nor any investment adviser or other holder of any equity interest in or of such parties, shall have any personal liability with respect to any provisions of this Lease.

## Broker(s).

Landlord and Tenant represent and warrant to each other that they have not engaged or dealt with any broker or agent with respect to the Premises except the Broker(s) (if any) named in the Basic Provisions. Any commissions due to the Broker(s) shall be paid by Landlord pursuant to a separate agreement. Landlord and Tenant shall each defend and indemnify the other against and hold the other harmless from all claims, losses, liabilities and expenses asserted against or incurred by the indemnified party in connection with any claim or demand by any person or entity (other than the Broker(s)) for any broker, finder or other fee or compensation in connection with the indemnifying party’s signing this Lease.

## Interpretation.

The provisions of this Lease shall be interpreted to give effect to their fair meaning and shall be construed as though prepared by both parties. The entire agreement of the parties is set forth in this Lease, and all prior negotiations, documents and discussions are superseded hereby. The parties acknowledge there are no applicable representations, warranties or terms that are not stated in this Lease. The invalidity of any provision shall not affect the validity of any other provision. Section headings are for convenience only and may not be used in interpretations. All interpretations are to be made in accordance with the laws of the state in which the Premises is located.

## Successors or Assigns.

All terms, conditions, covenants, and agreements contained herein shall be binding upon and inure to the benefit of Landlord, Tenant, and their respective heirs, administrators, executors, successors, subtenants, and assigns, if any, and upon any person or entity coming into ownership or possession of any interest in the Premises by operation of law or otherwise. Subject to the provisions of Section 20 above, Landlord may transfer its interest in the Premises by sale or exchange, and may assign its rights, title and interest in and to this Lease, to any person or entity without the consent of Tenant, provided that any such transfer and/or assignment must be made pursuant to a recorded assignment and assumption agreement containing an assumption by the assignee of all obligations of Landlord under this Lease. Upon such assignment, the assigning Landlord shall be automatically released from all future responsibilities, liabilities and obligations as Landlord arising after the date of such assignment.

## Time.

Time is of the essence of all provisions hereof where time is a factor; provided that if any day for the occurrence of an event or act under this Lease falls on a Saturday, Sunday or a nationally recognized legal holiday, then the time of the occurrence of such event or act shall be extended to the next succeeding business day.

## Waiver of Consequential Damages.

Under no circumstances shall either Landlord or Tenant be liable to the other under any theory of tort, contract, strict liability or other legal or equitable theory for any punitive, special, incidental, indirect or consequential damages, each of which is excluded by agreement of the parties regardless of whether or not any party has been advised of the possibility of such damages.

## Waiver.

No right or remedy will be waived unless the waiver is in writing and signed by the party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver.

## Conflicts of Interest.

Landlord and (if Landlord is not an individual) the party(ies) executing this Lease for or on behalf of Landlord, or as a representative of Landlord, hereby represent that, to the best of his/her/their knowledge, he/she/they, or any person connected directly or indirectly with Landlord is/are not (an) agent(s), employee(s), servant(s), supplier(s), licensee(s) or officer(s) of Tenant or any subsidiary, affiliate or parent corporation thereof, or related to any agent, employee, servant, supplier, licensee or officer of Tenant or any subsidiary, affiliate or parent corporation. The parties executing this Lease acknowledge that the foregoing representations are and shall be relied upon by Tenant as an inducement to enter into this Lease.

[Remainder of page intentionally left blank.]

EXHIBIT A(1)

TO

GROUND LEASE

PREMISES LEGAL DESCRIPTION

EXHIBIT A(2)

TO

GROUND LEASE

PREMISES LEGAL DESCRIPTION

EXHIBIT 3.1.1

TO GROUND LEASE

FORM OF

MEMORANDUM OF LEASE

***[To be updated upon finalizing Ground Lease provisions.]***

**RECORDING REQUESTED BY**

**AND WHEN RECORDED MAIL TO:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (*Space above for Recorder’s use)*

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (“Memorandum”) dated as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2022 is made and entered into by and between DAVID P. DEMARCO, an individual (“Landlord”), and PHASE THREE STAR LLC, a Florida limited liability company (“Tenant”).

 Landlord and Tenant entered into that certain Ground Lease dated as of the \_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022 (the “Lease”) for that certain real property located in the City of Port Richey, County of Pasco, State of Florida as more particularly described on the attached Exhibit “A” (the “Premises”).

 NOW, THEREFORE, for and in consideration of the foregoing, Landlord and Tenant hereby agree as follows:

1. Agreement to Lease. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises pursuant to the Lease, and all rights, privileges and easements appurtenant thereto, at the rental and upon all of the terms and conditions set forth in the Lease, which Lease is incorporated herein by this reference. Terms use, but not defined, herein shall have the same meaning as set forth in the Lease.

2. Term. Subject to the terms and conditions contained in the Lease, the Premises is leased for an initial term of twenty (20) years, with four (4) five (5) year options to extend the initial term. The term of the lease will commence as provided in the Lease.

3. Restriction on Use of Other Premises. Landlord covenants and agrees that so long as Tenant leases, owns, or otherwise controls the Premises:

 (a) Tenant and any permitted subtenant or assignee thereof shall have the exclusive right on any and all property (other than the Premises) now or hereafter owned, leased, or otherwise controlled, directly or indirectly, by Landlord or an affiliate of Landlord within 2 miles of the perimeter of the Premises (whether or not such other property is subsequently conveyed by Landlord) (collectively, the “Restricted Property”) to operate a quick service restaurant featuring the sale of hamburgers, hot dogs, chicken products, biscuits or breakfast sandwiches, (by way of example and not limitation, uses that would violate Tenant’s exclusive right include Burger King, Wendy’s, Fatburger, Johnny Rockets Express, In-N-Out Burger, Farmer Boys, Smashburger, Five Guys, The Counter, Mooyah Burger, Krystal, White Castle, A&W, Whataburger, Checkers, Rallys, Sonic and similar “drive-in” concepts, Steak N Shake, Culver’s, Jack-in-the-Box, McDonald’s, Dunkin’ Donuts); and

 (b) any buildings or other improvements constructed on property adjacent or contiguous to the Premises and now or hereafter owned, leased or otherwise controlled, directly or indirectly, by Landlord or an affiliate of Landlord, shall be set back at least 75 feet from all public rights-of-way, provided however that this restriction shall not apply to improvements existing on the date of the Lease or on the date that Landlord or an affiliate of Landlord acquires ownership or control of such property, if later.

It is mutually agreed that the covenants set forth above shall run with the land and shall be binding upon third parties.

4. Purchase and Lease Rights. Tenant has certain rights of first offer and first refusal to purchase and further lease the Premises and an option to purchase the Premises, all as more fully set forth in the Lease.

5. Miscellaneous. This Memorandum does not amend, alter or otherwise change the provisions of the Lease. In the event of any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall govern and control. All provisions of this Memorandum, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, assigns, licensees, invitees, successors, tenants and subtenants of the parties. This Memorandum may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument.

 IN WITNESS WHEREOF, each of the parties hereto has executed this instrument as of the date first above written.

**LANDLORD:**

State of Florida

County of Pasco

Personally appeared before me, David P. DeMarco, with whom I am personally acquainted, and who acknowledged that he or she executed the within instrument for the purposes therein contained and who further acknowledged that he or she is the maker or a constituent of the maker and is authorized by the maker or by its constituent, the constituent being authorized by the maker, to execute this instrument on behalf of the maker.

Witness my hand, at office, this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

My commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**TENANT:**

By:

STATE OF FLORIDA )

 ) ss.

COUNTY OF )

 On this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022, before me personally appeared John W. Kemp, to me known to be the President of PT Star Management Inc., the Manager of PHASE THREE STAR LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

 **IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal the day and year above written.

Signature

 Notary Public in and for said County and State

My Commission Expires:

EXHIBIT A

TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PREMISES

EXHIBIT 3.1.2

TO

GROUND LEASE

LANDLORD’S WORK

Landlord shall complete the following work at its expense and shall furnish Tenant with certifications thereof in accordance with the following descriptions and specifications (**“Landlord’s Work”**):

A. SOIL CONDITION

Landlord shall at its expense provide an independent professional soils engineering test to Tenant with a written certification verifying the soil compaction and stability. Landlord covenants that the condition of the Premises shall not be altered between the date of such certification and the delivery of exclusive possession of the Premises to Tenant.

B. UTILITIES

Landlord shall provide the following permanent utilities to the boundary line of the Premises in the locations designated on Landlord’s Plans (but in any event the stub point of such utilities shall not be covered by paving): gas (2 MBTUH at a minimum 8" wc pressure), telephone, permanent electricity (adequate for a 600 amp panel, 3-phase, 120/208 volt), storm sewer system (in accordance with Landlord’s Plans), sanitary sewer (6” line). The domestic water (2” line) and fire water (4/ 6 ” line) is available in street and shall be arranged for and paid for by Tenant, including any “Tap Fees” , deposits, required by the Local Utility Company.

Landlord covenants that all of the aforementioned utilities shall be clearly marked and staked, and fully operational for Tenant’s use by the deadline for installation of the same. Landlord shall pay when due any and all utility impact, development, capacity, and similar fees concerning the Premises. Upon completion of Landlord’s Work, Landlord shall furnish Tenant with a written certification of its compliance with the foregoing utility installation requirements.

C. GENERAL

Landlord covenants that the Property shall be lien free and in compliance with all applicable laws, statutes, ordinances, codes, rules, restrictions, and regulations, including the Americans with Disabilities Act and all related rules and regulations. Landlord agrees to indemnify and hold Tenant harmless from and against any claim, loss, damage or expense, including reasonable attorneys’ fees, asserted against or suffered by Tenant resulting from a breach of the foregoing representations, warranties and covenants.