

SUBLEASE

THIS SUBLEASE made and entered into as of this 12th day of April, 1994 by and between TPI RESTAURANTS, INC. (hereinafter referred to as "Sublessor") and PERRY E. COX, JR. (hereinafter referred to as "Sublessee").

WITNESSETH:

WHEREAS, Mrs. Albert Huey Green, as landlord, entered into that certain lease agreement dated January 18, 1985 (the "Lease") with Shoney's South, Inc., a copy of which Lease is attached hereto as Exhibit A, which Lease covers certain property located in Birmingham, Alabama, which property is more particularly described in the Lease as the Land and the Improvements (the "Premises"); and

WHEREAS, Sublessor is the successor to Shoney's South, Inc. and to the tenant under the Lease; and

WHEREAS, Sublessor wishes to sublease the Premises to Sublessee under all the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties agree as follows:

1. Sublessor does hereby lease and rent to Sublessee, and Sublessee does hereby lease and rent from Sublessor, the Premises for a term commencing on May 1, 1994 and terminating at midnight on the 31st day of January, 2006, unless extended or sooner terminated as herein provided.

2. Sublessee shall have and is hereby given three (3) separate options to renew and extend the term hereof for three (3) successive periods of five (5) years each. All such renewal terms shall be on the same terms and conditions as herein set forth except that rentals shall be as hereinafter specifically provided. Sublessee shall give written notice to Sublessor at least seven (7) months prior to the expiration of the initial term or the preceding renewal term, as the case may be, of its intention to exercise any of said options, in which case this Sublease shall be deemed renewed and extended without the execution of any further instrument or agreement. If Sublessee shall fail to exercise any renewal option then all succeeding renewal options shall automatically terminate. As hereinafter used, all references to the term of this Sublease shall include such additional period or periods of time for which the same may be extended as herein provided.

3. (a) Sublessee shall pay to Sublessor during the term of this Sublease, without notice or demand, and without

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abatement, deduction or setoff (except as may be hereinafter specifically provided), in lawful money of the United States, at such place as Sublessor shall designate, annual rental equal to the amounts set forth below, which rental amounts shall be paid in equal monthly installments as set forth below, in advance, on the first day of each month, commencing on May 1, 1994 (the "annual minimum rental").

	<u>Period</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
<i>Sub lessor to Sub lessee</i>	May 1, 1994 - January 31, 1999 ^{Jan 31, 1995}	\$102,000.00	\$8,500.00
	February 1, 1999 - January 31, 2006	112,200.00	9,350.00
	First Renewal Option (If Exercised)	123,420.00	10,285.00
	Second Renewal Option (If Exercised)	135,768.00	11,314.00
	Third Renewal Option (If Exercised)	149,352.00	12,446.00

(b) In addition to the annual minimum rental, Sublessee shall pay to Sublessor, as additional rental, an amount equal to five and one-half percent (5 1/2%) of the gross sales in excess of One Million Five Hundred Thousand Dollars (\$1,500,000) for each lease year (which shall mean the annual period used in the Lease to calculate percentage rent) (the "percentage rental"). Percentage rental shall be paid within eighty (80) days after the expiration of each lease year at the time the statement setting forth gross sales required by paragraph 3(c) below is submitted.

(c) The term "gross sales" as used herein is hereby defined to mean and shall be the total amount of the dollar value, whether paid or unpaid, whether for cash or credit, of all sales of merchandise and services and all revenues and income of every kind and character derived from, arising out of, or payable on account of the Sublessee's business and all other business transactions conducted at or from the Premises, whether by Sublessee, its subtenants or its assigns. The amount of the dollar volume of bona fide refunds or credits granted for return merchandise, all state sales or federal excise taxes, tobacco sales and all sales to employees at a discount shall be charged as a credit in reduction of the gross amount of sales of the period within which such refunds or credits shall be made or such taxes or other sales shall be made. Sublessee shall submit to Sublessor within eighty (80) days after the expiration of each lease year a written statement signed and certified by the Sublessee to be a true and correct statement of the amount of gross sales made by the Sublessee during the preceding lease

year, and the Sublessee shall at the same time pay to the Sublessor the amount of percentage rental, if there be any due, required to be paid as set forth in paragraph 3(b) above. During the term of this Sublease, Sublessee shall maintain and keep, or cause to be maintained and kept a full, complete, accurate and permanent record and account of all sales of merchandise and services and all sums of money paid or payable for or on account of, or arising out of the Sublessee's business and all business transactions conducted at or from the Premises by or for the account of Sublessee, for each day of the initial or any extended term hereof, and such records and accounts and all supporting records shall be open to inspection and audit by Sublessor, and its duly authorized agents or representatives at all reasonable times during ordinary business hours. Gross sales shall also include any sales not included in the above definition but which would be included as gross sales for purposes of computing the percentage rent due under the Lease.

(d) Sublessee may deduct from percentage rental all real estate taxes, paid by Sublessee and the cost of fire and extended coverage insurance as provided in the Lease.

4. The Premises shall be used for the operation of a Dos Amigo's Mexican Restaurant. The Premises may not be used for any other purpose without the prior express written consent of Sublessor, which consent shall not be unreasonably withheld.

5. Sublessee acknowledges that it has read and examined the Lease and is fully familiar with the terms, covenants and conditions contained therein. Except to the extent that the terms of the Lease are inconsistent with specific terms set forth herein, this Sublease is subject to all the terms and conditions of the Lease (all of which are incorporated herein by reference), and Sublessee agrees to perform, comply with, and be bound by all the terms, conditions, covenants and agreements set forth in the Lease which are to be performed or carried out by the tenant therein as they relate to the Premises.

6. Sublessee hereby expressly acknowledges that it has inspected the Premises, is thoroughly familiar with the physical condition thereof, and agrees to take the same "as is". Sublessee acknowledges that Sublessor shall have no obligations to do any work in and to the Premises in order to make it suitable and ready for occupancy and use by Sublessee.

7. If the Sublessor's landlord shall default in the performance or observance of any of the agreements or obligations of the landlord under the Lease (including any obligations for the payment of money), Sublessor shall have no liability therefore to Sublessee and shall be excused from the performance of the corresponding obligation which may be owed by Sublessor to Sublessee under the Sublease. In this connection, Sublessor shall fully cooperate with the Sublessee in the assertion of any claims hereunder, in the name of Sublessee or otherwise, against

Sublessor's landlord. No such default shall excuse Sublessee from the performance of any of its obligations to be performed under this Sublease, or entitle Sublessee to terminate the Sublease or to any reduction in or abatement of any of the rents provided for in this Sublease, unless, and only to the extent that, Sublessor shall be excused from the performance of the corresponding obligations to the landlord under the Lease or shall be entitled to a reduction in or abatement of any rents provided for in the Lease by reason of such default by the Sublessor's landlord.

8. Notwithstanding the provisions of the Lease, Sublessee shall maintain general liability insurance with a combined single limit of not less than \$2,000,000. Sublessee agrees that any insurance policies required to be obtained pursuant to the Leases, in addition to any of the requirements contained in the Lease, shall name Sublessor as an additional insured, as its interest may appear.

9. During the term hereof, Sublessor shall be responsible for all maintenance on the Premises and shall, at its sole cost and expense, provide all services necessary for the use of the Premises, including water and power, heating, lighting, air conditioning, cleaning and maintaining the interior and the exterior of the Premises, except to the extent the landlord under the Lease is obligated to maintain any portion of the Premises.

10. Sublessor warrants that it has the full right and lawful authority to enter into this Sublease and that it is lawfully seized of the leasehold estate in the Premises and that Sublessee, upon paying the rent herein reserved and performing and observing each and every covenant to be observed and performed by Sublessee under this Sublease, may peacefully hold and enjoy the Premises during the term of this Sublease.

11. This Sublease may not be assigned nor may the Premises be further subleased, in whole or in part, without the prior written consent of Sublessor, which consent may not be unreasonably withheld. Any such assignment or subleasing shall not relieve Sublessee of any liability hereunder.

12. (a) The occurrence of any of the following acts, events or conditions shall constitute an event of default under this Sublease (herein referred to as "Default").

- (i) Sublessee fails at any time during the term of this Sublease to make any payment of rent required to be paid by Sublessee; or
- (ii) Sublessee fails to fulfill or perform any of Sublessee's other covenants, agreements or obligations hereunder or under the Lease, and such failure continues for twenty-five (25) days after the date thereof; or

- (iii) The estate or interest of Sublessee in the Premises is levied upon or attached in any proceedings and such levy or attachment is not vacated or discharged within twenty-five (25) days after the date thereof; or
- (iv) The filing by Sublessee of a voluntary petition in bankruptcy or the Sublessee's adjudication as a bankrupt or insolvent, or the filing by or against the Sublessee of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Sublessee's seeking or consenting to the appointment of any trustee, receiver or liquidator of the Sublessee or of all or any substantial part of the Premises or of any or all the rents, revenues, issues, earnings, profits, or income thereof, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or
- (v) Sublessee takes any action or fails to take any action which results in a default under the Lease; or
- (vi) Sublessee shall abandon the Premises or shall close the restaurant operated on the Premises for more than fifteen (15) consecutive days except for any closing made necessary to repair any damage or destruction to the Premises or to perform any alterations to the Premises.

(b) In the event of a Default by Sublessee as defined above, the Sublessor shall have all the same rights and remedies with respect to such Default as are given to the landlord under the Lease with respect to the default of the tenant under the Lease, all with the same force and effect as if the provisions of the Lease with respect to defaults, and the rights or remedies of Sublessor in the event thereof, were set forth at length herein.

13. Anything contained in any provision of this Sublease to the contrary notwithstanding, Sublessee agrees, with respect to the Premises, to comply with and remedy any Default within the period allowed to Sublessor as tenant under the Lease, even if such time period is shorter than the period otherwise allowed in the Lease or this Sublease due to the fact that notice of default from Sublessor to Sublessee is given after the corresponding notice of default from Sublessor's landlord to

Sublessor. Sublessor agrees to promptly forward to Sublessee, upon receipt thereof by Sublessor, a copy of each notice of default relating to the Premises received by Sublessor in his capacity as tenant under the Lease. Sublessee agrees to promptly forward to Sublessor upon receipt thereof, copies of any notices received by Sublessee from the Sublessor's landlord or from any governmental authorities.

14. Sublessee covenants and agrees to pay, defend, indemnify and save Sublessor harmless from and against any and all liability, loss, damage, cost, expense (including all reasonable attorney's fees), causes of action, suits, claims, demands or judgments of any nature whatsoever (i) arising from any injury to or the death of any person or damage to any property occurring on the Premises, or in any manner arising out of or connected with the use, non-use, condition or occupation of the Premises or any part thereof or of adjoining sidewalks, streets or ways, by Sublessee, its agents, employees or contractors, except for such injury or damage caused in any way by Sublessor's negligence or willful misconduct or Sublessor's failure to comply with its obligations under this Sublease or the Lease or (ii) resulting from the violation by Sublessee prior to the expiration or earlier termination of this Sublease of any term, condition or covenant of this Sublease or of any term of the Lease to be performed by Sublessee, or of any contract, agreement, restriction, or regulation affecting the Premises or any part thereof or the ownership, occupancy or use thereof. The obligations of Sublessee under this paragraph shall survive the expiration or earlier termination of this Sublease and any transfer or assignment by Sublessor or Sublessee of this Sublease or any interest hereunder.

15. All consents required to be obtained under the Lease shall be obtained from both Sublessor and the landlord under the Lease.

16. The terms, conditions and provisions contained in this Sublease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs, representatives and assigns.

17. Wherever in this Sublease it shall be required or permitted that notice or demand be given or served by either party to this Sublease to or on the other, such notice or demand shall be given or served and shall not be deemed to have been duly given or served unless in writing and forwarded by certified mail addressed as follows:

TO THE SUBLESSOR:

TPI Restaurants, Inc.
2158 Union Avenue
Memphis, TN 38174-1379
Attn: Mr. Rex Martin

TO THE SUBLESSEE:

✓ Perry E. Cox, Jr.
#1 Country Ridge
Sterrett, AL 35147-9331

18. Time is of the essence of this Sublease, but no delay or failure of either party to exercise any right hereunder or to insist upon strict compliance with the terms and provisions hereof shall constitute a waiver of any right hereunder or a waiver of the right thereafter to insist upon strict compliance with the terms and provisions hereof.

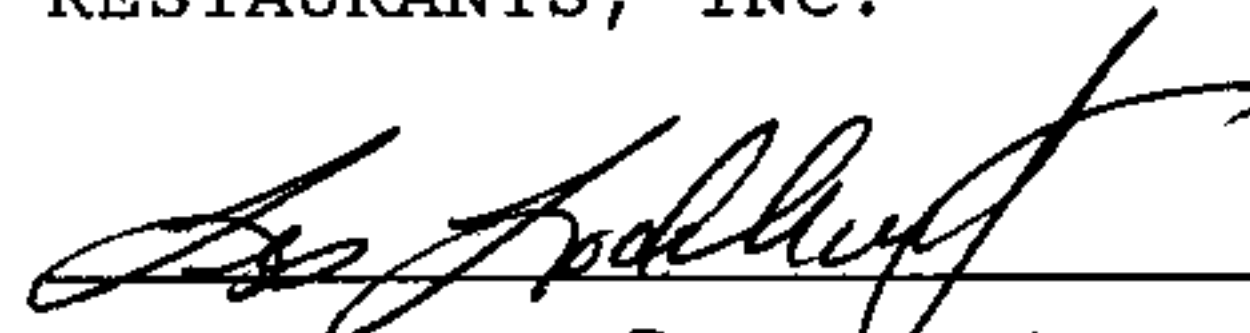
19. Sublessor shall not be construed or held to be a partner or associate of Sublessee in the conduct of Sublessee's business, it being expressly understood and agreed that the relationship between the parties hereto is, and shall at all times remain during the term of this Sublease, that a sublessor and sublessee.

20. This Sublease shall be construed in accordance with, and governed by, the laws of the State of Tennessee.

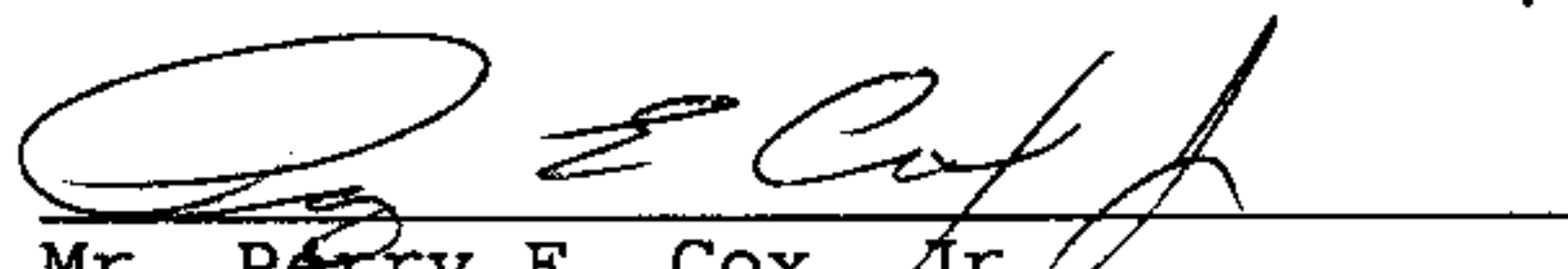
21. This Agreement constitutes the entire contract between Sublessor and Sublessee concerning the subleasing of the Premises and the consideration therefor, and shall not be modified in any manner whatsoever except by an instrument in writing executed by Sublessor and Sublessee.

IN WITNESS WHEREOF, the parties have executed this Agreement all as of the day and date first above written, each by their duly authorized representatives.

TPI RESTAURANTS, INC.

By: 

Title: V.P. of Development


Mr. Perry E. Cox, Jr.

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