

## ASSIGNMENT OF LEASE

This Assignment of Lease is made and entered into this 21<sup>st</sup> day of December, 1999, by and between **TPI RESTAURANTS, INC.** (successor to Shoney's South, Inc.), a Tennessee Corporation (hereinafter referred to as "Assignor") and **SUPERIOR BAR & GRILL, INC.**, an Alabama Corporation (hereinafter referred to as "Assignee").

### RECITALS

WHEREAS, Mrs. Albert Huey Green, as Lessor, entered into that certain Lease Agreement dated January 18, 1985 (the "Lease") with Shoney's South, Inc., as Lessee, a Memorandum of Lease being recorded at Real Volume 47, Page 235, of the Shelby County Probate Office, a copy of which Lease and Memorandum Lease are attached as Exhibits "A" and "B" hereto, which Lease covers certain property and improvements located in Shelby County, Alabama, which property is more particularly described in the Lease as the Land and Improvements (the "Premises"); and

WHEREAS, Assignor is the successor to Shoney's South, Inc. and is the Lessee of the Lease; and

WHEREAS, Assignor, as Sublessor, subleased the Premises to Perry E. Cox, Jr., as Sublessee ("Cox"), on April 12, 1994 (the "Sublease"), a Memorandum of Sublease being recorded at Instrument No. 1995-03204, of the Shelby County Probate Office, a copy of which Sublease and Memorandum of Sublease are attached as Exhibits "C" and "D" hereto, which Sublease covers the Premises as herein described; and

WHEREAS, Cox, as Sublessor, subleased the Premises to Assignee, as Sublessee, on January 31, 1995 ("Sublease No. 2"), Sublease No. 2 being recorded at Instrument No. 1995-25757, of the Shelby County Probate Office, a copy of which Sublease No. 2 is attached as Exhibit "E" hereto, which Sublease No. 2 covers the Premises as herein described; and

WHEREAS, Cox defaulted in the performance of his obligations under the Sublease, and Assignee filed in the Shelby County Circuit Court, Civil Action No. CV98-660, to enforce its rights under Sublease No. 2; and

WHEREAS, in order to settle the pending litigation, Assignor agreed to assign to Assignee Assignor's interest in the Lease, and Assignee agreed to accept the assignment of the Lease, and to perform Assignor's obligations under the Lease.

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and conditions herein contained, and the mutual covenants and conditions of the Settlement Agreement and Mutual Release, executed and delivered simultaneously herewith, the receipt and sufficiency of which is acknowledged by all parties, the Assignor

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and the Assignee agree as follows:

1. **Assignment of Lease Agreement dated January 18, 1985.** Assignor hereby assigns all of its right, title and interest in and to the Lease to Assignee, to have and to hold the Lease and the leasehold estate created thereby unto Assignee, its successors and permitted assigns forever. Assignee hereby accepts such assignment and assumes effective as of the date hereof (the "Effective Date"), for the benefit of Lessor and Assignor, all liabilities, duties and obligations of Assignor as the lessee under the Lease, and hereby agrees to be bound by and upon all of the covenants, agreements, terms provisions and conditions of the Lease on the part of the lessee thereunder to be performed or observed.

2. **Assumption and Acceptance of the Premises.** Assignee is in possession of the premises. Assignee assumes and agrees to perform each and every obligation of Assignor under the Lease Agreement, effective as of the Date. Effective January 1, 2000, the Assignee will pay all rental payments as they come due directly to the Lessor under the Lease. Assignee will accept the premises in their condition as of the Date. Assignor and Assignee agree that the terms and conditions of the Lease are set forth in the copy of the Lease attached hereto as Exhibit "A."

3. **Assignor's Estoppel.** Assignor certifies and agrees as of the Effective Date as follows:

- (a) The term of the Lease commenced February 1, 1986;
- (b) The term of the Lease expires on January 31, 2006, and the Assignor has three (3) five (5) year options to extend the term of the Lease;
- (c) There are presently no offsets or credits against rents thereunder and no payments are due from Lessor to Lessee under the Lease and Lessor is holding no security deposits, or any tax or other escrows on behalf of Lessee;
- (d) The Lease is in full force and effect and the Lease has not been amended, modified or supplemented in any respect;
- (e) The Lease represents the entire agreement between Assignor and Lessor;
- (f) The current monthly rent in the amount of \$8,349 is payable on the 1st day of each month until February 1, 2001, and the monthly rent increases to \$9,188.33 per month for the remainder of the original term of the Lease. The monthly rent for the first option period is \$10,102.25; the monthly rent for the second option period is \$11,112.50; and the monthly rent for the third option period is \$12,223.75.
- (g) Assignor has not prepaid any rent which is not yet due and payable under the Lease and no concessions, rebates, allowances or other considerations for free

or reduced rent in the future have been granted other than as set forth in the Lease;

(h) Assignor has no knowledge of (1) any present defaults under the Lease; or (2) any present condition or state of facts which by notice or the passage of time, or both, would constitute a default by either party under the Lease;

4. **Assignor's Indemnification.** Assignor shall continue to be responsible for and shall defend, indemnify and hold Assignee harmless from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever (including, without limitation, reasonable attorneys' fees and expenses) paid, incurred or suffered by or asserted against, Assignee (and its successors and permitted assigns) that (a) relate to (i) the Lease, or (ii) Assignor's occupancy of the Premises, occurring prior to the Effective Date. Anything in this Assignment to the contrary notwithstanding, Assignee agrees that it shall look solely to the estate and property of Assignor in and to the Premises for the collection of any liability or judgment (or other judicial process) requiring the payment of money by Assignor pursuant to this Assignment and no other assets of Assignor shall be subject to levy, execution or attachment.

5. **Assignee's Indemnification.** Assignee shall be responsible for and shall defend, indemnify and hold Assignor harmless from and against any and all losses, liabilities, damages, injuries, penalties, fines, costs, expenses and claims of any and every kind whatsoever (including, without limitation, reasonable attorneys' fees and expenses) paid, incurred or suffered by or asserted against, Assignor (and its successors and assigns) that (a) relate to (i) the Lease, or (ii) Assignor's occupancy of the Premises, occurring after the Effective Date. Anything in this Assignment to the contrary notwithstanding, Assignor agrees that it shall look solely to the estate and property of Assignee in and to the Premises for the collection of any liability or judgment (or other judicial process) requiring the payment of money by Assignee pursuant to this Assignment and no other assets of Assignee shall be subject to levy, execution or attachment.

6. **Consent.** This Assignment is subject to the consent of the Lessor.

7. **Amendment of Agreement.** Assignee hereby covenants and agrees with Assignor that it shall not enter into any amendment or modification of the Lease that increases any liabilities, duties or obligations of the Assignor under the Lease without the prior written consent of Assignor, which Assignor may withhold in its sole discretion; provided, however, this provision shall not be applicable to the three (3) five (5) year options to extend the lease which Assignee intends to exercise and which Assignor hereby consents to Assignee's rights to exercise such options; provided, further, that if the Lessor, in writing acceptable to Assignor, fully releases Assignor from any duties or obligations under the Lease, then Assignee and the Lessor may amend or modify the Lease without the consent of Assignor. Assignor agrees that, by this Assignment, that Assignee shall have the right to exercise its option(s) to extend by given written notice directly to the original Lessor, Mrs. Albert Huey Green.

8. **Assignor Liability to Lessor.** Pursuant to the terms of the consent executed by Lessor below, after the expiration of the primary term of the Lease Agreement, the liability of Assignor to Lessor is fully released from any duties or obligations under the Lease Agreement under the terms and conditions of this Assignment. Assignee, pursuant to the terms and conditions herein contained, hereby assumes all of Assignor's obligations under the Lease Agreement and indemnifies Assignor on its obligations under the Lease Agreement. Nothing in this Assignment shall be deemed to release the Assignor during the primary term of the Lease Agreement.

9. **Novation of Lease Agreement.** The Assignor, the Assignee, and the Lessor agree and covenant that the Lease, for purposes of recordation, is the same as if executed and dated as of the date of this Assignment; provided, however, that the term of the Lease shall be measured as effective on February 1, 1986 and shall terminate as provided in the Lease. Upon recordation of this Assignment, the Code of Alabama, has been satisfied. The Assignee will pay for the costs and expenses in connection with recording this Assignment.

10. **Entire Agreement.** This Assignment embodies the entire agreement of Assignor and Assignee with respect to the subject matter of this Assignment, and it supersedes any prior agreements, whether written or oral, with respect to the subject matter of this Assignment. There are no agreements or understandings which are not set forth in this Assignment. This Assignment may be modified only by a written instrument duly executed by Assignor and Assignee.

11. **Binding Effect.** The terms and provisions of this Assignment, including the Consent, will inure to the benefit of, and will be binding upon, the successors, assigns, personal representatives, heirs, devisees, and legatees of the Assignor, the Assignee, and the Lessor.

*[SIGNATURES ON FOLLOWING PAGE]*

Assignor and Assignee have executed this Assignment on the respective dates set forth beneath their signatures below.

**ASSIGNOR:**

**TPI RESTAURANTS, INC., a Tennessee Corporation**

By: [Signature] [SEAL]

Its VICE PRESIDENT

DATE: DECEMBER 27, 1999

**ASSIGNEE:**

**SUPERIOR BAR & GRILL, INC., an Alabama Corporation**

By: [Signature] [SEAL]

Its President

DATE: 12/21/99

**CONSENT**

The undersigned, the original Lessor, Mrs. Albert Huey Green, hereby consents to and agrees to be bound by the foregoing Assignment, and the terms and conditions as contained in the Assignment.

*Mrs. Albert Huey Green a/k/a  
Mildred Volentine Green*

**LESSOR:**

By [Signature] attorney in fact [SEAL]

Mrs. Albert Huey Green a/k/a  
Mildred Volentine Green

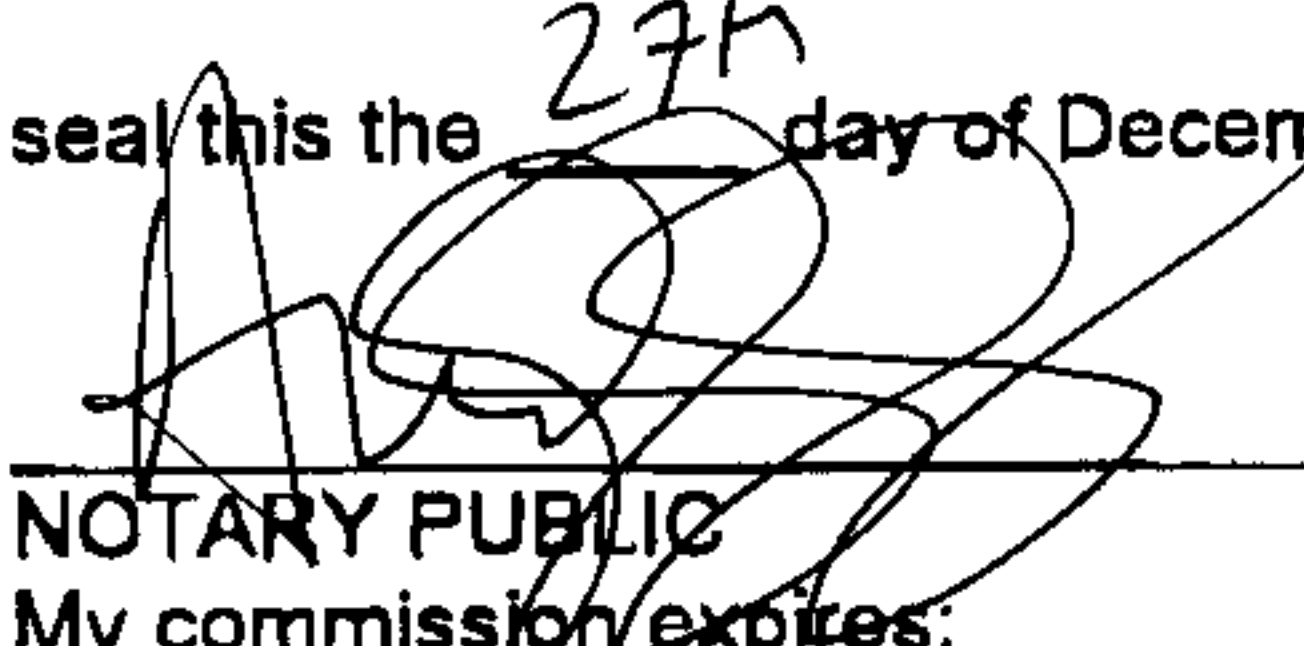
DATE: 12/27/99

STATE OF TENNESSEE )  
COUNTY OF DAVIDSON )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that JEFFREY GORDON, whose name as VICE PRESIDENT of TPI RESTAURANTS, INC., a Tennessee Corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the same that bears date.

Given under my hand and official seal this the 27<sup>th</sup> day of December, 1999.

[SEAL]

  
NOTARY PUBLIC

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

My Commission Expires JULY 26, 2003

STATE OF LOUISIANA )  
CADDOPARRISH )

I, the undersigned authority, a Notary Public in and for said Parrish, in said State, hereby certify that Philip R. Barbera, whose name as President of SUPERIOR BAR & GRILL, INC., an Alabama Corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the same that bears date.

Given under my hand and official seal this the 27<sup>th</sup> day of December, 1999.

[SEAL]

  
NOTARY PUBLIC

My commission expires: for life

Paul M. Adkins, Notary Public  
Caddo Parish, Louisiana  
My Commission Is For Life

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Mrs. Albert Huey Green, a/k/a Mildred Volentine Green, whose name is signed by **Maurice Oliver V. Green**, as Agent/Attorney-in-Fact for **Mrs. Albert Huey Green, a/k/a Mildred Volentine Green**, pursuant to a Durable Power of Attorney, is signed to the foregoing document and who is known to me, acknowledged before me on this day that, being informed of the contents of the document, he, in his capacity as Agent/Attorney-in-Fact for **Mrs. Albert Huey Green, a/k/a Mildred Volentine Green**, pursuant to a Durable Power of Attorney, and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 27<sup>th</sup> day of December, 1999.

[SEAL]

Andrew L. Se...  
NOTARY PUBLIC  
My Commission Expires:

My Commission Expires JULY 26, 2003

**EXHIBIT "A"**

*mt*  
[LEASE AGREEMENT DATED JANUARY 18, 1985] *JB*

LEASE AGREEMENT

1. PARTIES

THIS LEASE AGREEMENT made this 18<sup>th</sup> day of Jan. 1985, between MRS. ALBERT HUEY GREEN, party of the first part, hereinafter called "Lessor" and SHONEY'S SOUTH, INC., a corporation chartered under the laws of the State of Tennessee, party of the second part, hereinafter called "Lessee":

W I T N E S S E T H:

2. CONSIDERATION

That each of the aforesaid parties acknowledge the receipt of a valuable consideration from the other and that they, and each of them, act herein in further consideration of the engagements of the other as herein stated.

3. PREMISES

Lessor, in consideration of the covenants hereinafter made by Lessee, does hereby lease to Lessee the parcel of real estate (the "Land") in Birmingham, Alabama, as described in Exhibit "A" attached hereto, together with the improvements to be constructed thereon by Lessor and at Lessor's expense (the "Improvements"), and all easements and appurtenances in adjoining land, highways, roads, streets, lines, public or private, reasonably required for the installation, maintenance, operation, and services of sewer, water, gas, power, and other utility lines and for driveways and approaches to and from abutting highways, for the use of the Land and Improvements to be erected thereon, specifically including, without limitation thereto, an easement over the roadway to be provided by Lessor from U.S. Highway 280 for ingress to and egress from the demised premises as shown on the plot plan attached hereto as Exhibit B. Said Land and Improvements are hereinafter referred to as the demised premises.

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EXHIBIT A

Lessor, promptly upon execution hereof, and prior to the delivery of the final plot plan, will provide to Lessee an updated building line and topographical survey of the demised premises in accordance with the guidelines attached hereto as Exhibit C, which survey will confirm the demised premises to be substantially as shown on Exhibit B and suitable for Lessee's proposed Restaurant, recognizing its parking needs.

#### 4. TERM

The term of this Lease Agreement shall commence upon commencement of Rent as hereinafter set forth and shall extend for twenty (20) years from the first day of the month succeeding the commencement of Rent (or the date of commencement of Rent if the first day of the month), unless sooner terminated or unless extended as provided in Article 39.

#### 5. RENTAL

Lessee covenants and agrees to pay to Lessor for Minimum Rent the annual sums as set forth in the following schedule, payable in advance on the first day of each month in equal monthly installments:

|                                                       |                    |
|-------------------------------------------------------|--------------------|
| First Five Years (plus first month within Lease term) | \$ 82,800 annually |
| Second Five Years                                     | \$ 91,080 annually |
| Third Five Years                                      | \$100,188 annually |
| Fourth Five Years                                     | \$110,206 annually |
| First Option Term                                     | \$121,227 annually |
| Second Option Term                                    | \$133,350 annually |
| Third Option Term                                     | \$146,685 annually |

Minimum Rent shall commence on the earlier of (a) sixty days after completion of the Improvements by Lessor, or (b) the opening of Lessee's Restaurant on the demised premises for business. Rental for any partial month shall be on a proportionate basis. All amounts payable under the above provision, as well as all other amounts payable by Lessee to Lessor under the terms of this Lease Agreement shall be legal tender in payment of all debts and dues, public and private, at the time of payment.

In addition to the Minimum Rental provided for above, the Lessee covenants and agrees to pay to Lessor each lease year during the term of this Lease Agreement an amount equal to five and one-half percent (5 1/2%) of all gross sales and business transacted by and from, upon or on, the herein demised premises for that year, over and above gross sales and business in the amount arrived at by dividing the annual Minimum Rent by five and one-half percent (5 1/2%). Lessee shall provide Lessor annual statements of the business transacted on or before ninety (90) days following the end of each lease year. Lessee shall provide for Lessor a statement certified by an officer of Lessee of the gross sales and business transacted as described above for the previous year and there shall be accompanying such statements any percentage overage rental due pursuant to this paragraph. Lessee may first deduct from such excess otherwise due Lessor the amount of accruals in its books for ~~real estate~~ and ~~all valorem taxes and fire~~ and ~~extended coverage insurance~~ premiums to be paid by Lessee pursuant to the provisions of Articles 14 and 28 for said year, but this provision shall not be cumulative and shall be from year to year. Lessee agrees that it will keep records of all sales and business transacted in such manner that Lessor shall have an opportunity and the right to examine all records appertaining to such business within one year following the receipt of such annual statement of sales. In the event Lessor has not requested the right to so examine said records within one (1) year from the receipt of Lessee's annual statement, then it shall be concluded that Lessor is satisfied with same, and Lessor shall have no further right to examine the records appertaining to that particular year's sales without approval of Lessee. Said percentage rental payments may be converted to correspond to the calendar year, or Lessee's annual fiscal year, at Lessee's election, and if so elected, percentage payments for the first and last partial years shall be adjusted proportionately.

In the event that Minimum Rental commences on other than the first day of a month, then for purposes of percentage overage rental for the first lease year, the first lease year shall be extended by the number of days in the first partial month and the gross sales amount shall be increased proportionately.

Gross sales shall not include (1) meals sold or furnished to employees, (2) the amount of any tax required to be collected or collected by Lessee as and for Federal, state and municipal or local sales taxes and other taxes in the nature of sales taxes imposed by any governmental authority and (3) receipts from the sale of tobacco products.

Nothing contained in this Lease Agreement shall be deemed or construed to create a partnership or joint venture between Lessor and Lessee or between Lessor and any other party, or cause Lessor to be responsible in any for the debts or obligations of Lessee or any other party, it being the intention of the parties that the only relationship hereunder is solely that of landlord and tenant.

#### 6. PROOF OF PAYMENT

The burden of proof of payment of rent in case of controversy shall be upon the Lessee.

#### 7. QUIET POSSESSION

Lessor hereby covenants that if Lessee shall keep and perform all of the covenants of this Lease Agreement on the part of Lessee to be performed, Lessor will keep the Lessee in the quiet and peaceful possession of the said demised premises, including the easement area. Lessor covenants that the demised premises are zoned for commercial usage including, without limitation, a restaurant.

#### 8. LAWFUL AND MORAL PURPOSES

Lessee covenants that the demised premises shall, during the term of this Lease Agreement, be used only and exclusively for lawful and moral purposes, and no part of the demised premises shall be used in any manner whatsoever for any purpose in violation of the laws of the United States, the State of Alabama, or of the applicable county and municipal ordinances and laws that are enforced.

#### 9. PROTECTION FROM VIOLATIONS

Lessee covenants that it shall save and hold Lessor harmless from violations by Lessee, its agents or sublessees, of the laws of

the United States, the State of Alabama and the applicable county and municipal ordinances and laws.

#### 10. NUISANCE

Lessee agrees not to create or allow any nuisance to exist on said demised premises, and to abate any nuisance that may arise, promptly and free of expense to Lessor.

#### 11. ADVERTISING

Lessor agrees that Lessee may, at Lessee's expense, place and maintain signs identifying its operations along the exterior walls of its building and also freestanding signs located within the demised premises at such locations as Lessee shall choose as allowed by governing authorities and zoning ordinances.

#### 12. ALTERATIONS OR IMPROVEMENTS

Lessor grants Lessee and Lessee reserves the right to make changes or alterations about the said demised premises which it reasonably deems necessary for its efficient usage of the premises without first obtaining the written consent of Lessor so to do; it being understood and agreed that Lessee shall not make any changes or alterations which would diminish the value of the demised premises or weaken the building improvements erected on the premises or reduce the insurability of same.

In all events, Lessee shall conform with the Building Code and ordinances of the municipality, county and city, and all alterations and/or changes will be made in conformance to good engineering and building practices.

Any such changes or alterations made pursuant to the right granted herein shall be at the expense of Lessee and without cost to Lessor and such changes or alterations shall immediately become part of the demised premises and belong to Lessor.

#### 13. MECHANIC'S LIEN

If any mechanic's liens be filed against the demised premises

by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee, Lessee, if same is not disputed by Lessee, shall cause such lien to be discharged within twenty (20) days after the date such lien is filed; or, if such lien is disputed by Lessee, Lessee shall have the right, at Lessee's expense, to contest the same and if and to the extent such lien is substantiated, Lessee shall cause the same to be discharged within twenty (20) days after the date any such judgment of a Court of competent jurisdiction shall become final. If Lessee fails to discharge such mechanic's lien within the time as above provided, then Lessor may, but are not obligated to, discharge the same by payment of the amount claimed to be due, and the amount so paid by Lessor shall be deemed additional rent and payable on the next due date.

#### 14. INSURANCE

A. At all times subsequent to the commencement date of the term of this Lease and during its full term, Lessee shall keep the building, the building service equipment and all Improvements upon the demised premises covered by fire and extended coverage insurance to the full extent of their insurable value, (all such insurance being with a deductible clause of not more than Ten Thousand and No/100 (\$10,000.00) Dollars). The cost of such insurance shall be deductible from percentage rent as provided in Article 5.

B. All policies of insurance required to be maintained by Lessee shall name Lessee and Lessor as the insured as their respective interests may appear. Upon the effective date of this Lease Agreement, and thereafter not less than ten (10) days prior to the expiration dates of the expiring policy theretofore furnished pursuant to this paragraph, the usual certificates of the insurance carrier, certifying that such insurance is in force, shall be delivered by Lessee to Lessor.

C. At all times subsequent to the commencement date of and the term of this Lease Agreement, Lessee shall, at its sole cost and expense, maintain for the benefit of Lessor and Lessee comprehensive general liability insurance against claims for personal injury or pro-

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erty damage with limits of at least \$500,000.00/\$1,000,000.00 for bodily injury and \$100,000.00 for property damage. Lessee agrees to deliver to Lessor, on the inception date of such policy and thereafter not less than ten (10) days prior to the expiration dates of the expiring policy theretofore furnished pursuant to this paragraph, the usual certificates of the insurance carrier, certifying that such insurance is in force.

D. Lessor and Lessee hereby mutually release each other, from any and all liabilities for any loss or damage caused by casualty, even if such casualty shall be brought about by the fault or negligence of Lessee or Lessor, respectively, or any persons claiming under them, provided said waivers shall not adversely affect the aforementioned insurance and any additional cost for insurance waivers shall be paid by the party for whose benefit said waiver is obtained (not to be deductible from percentage rental), and said waivers shall be held to the subrogation rights of the insurance carriers.

#### 15. DELIVERY AT END OF LEASE

Lessee agrees to deliver up to Lessor, or Lessor's agents or assigns, the said premises at the end of this Lease Agreement, with the keys of same, cleared of all persons and property not belonging to same, and in the same good order and condition as the same were received by Lessee, ordinary wear and tear, and damage by fire or other casualty excepted. No demand or notice of such delivery shall be necessary.

#### 16. RIGHT OF ENTRY

Lessor reserves the right during the term of this Lease Agreement to enter the demised premises at reasonable hours to show the same or inspect the same, but have no obligation to make an inspection of said property.

#### 17. DEFAULT OF RENT, ETC.

The happening of any one or more of the following shall be deemed an event of default under this Lease Agreement:

(a) Lessee makes an assignment for the benefit of its creditors;

(b) A receiver is appointed for Lessee or Lessee's leasehold interest hereunder;

(c) A writ of execution or attachment is levied on or against Lessee's fixtures, equipment, or any other personal property within the demised premises, used in connection with Lessee's business if such writ is not released or discharged within thirty (30) days thereafter or otherwise bonded by Lessee to prevent any loss;

(d) Proceedings are instituted in a court of competent jurisdiction for the reorganization, liquidation or involuntary dissolution of Lessee, or for its adjudication as a bankrupt or insolvent, and said proceedings not being dismissed, and any trustee or liquidator appointed therein not being discharged within ninety (90) days after the institution of such proceedings;

(e) Lessee's failure to pay any installment of rent or other charge or money obligation herein required to be paid by Lessee within the time same is due and payable and after ten (10) days receipt of written notice from Lessor;

(f) Lessee's failure to comply with any other covenant or provision of this Lease Agreement, other than the payment of rent as described in (e) above, within thirty (30) days after receipt of written notice from Lessor, or if such failure cannot reasonably be cured within such thirty (30) day period, Lessee shall fail to attempt cure within such thirty (30) day period and thereafter continue with due diligence until such failure has been cured.

#### 18. REMEDIES

Upon the occurrence of any event of default, Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand whatever:

(a) Terminate this Lease Agreement, in which event Lessor shall so notify Lessee and Lessee shall immediately surrender

the demised premises to Lessor, and if Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have, enter upon and take possession of the demised premises and expel or remove Lessee and any other person claiming under or through Lessee who may be occupying the demised premises or any part thereof, and remove the property of any of them, which property may be removed and set out or stored in a warehouse or elsewhere for the account of Lessee, all without service of process or any liability or claim for damages for doing anything reasonably necessary or appropriate in connection therewith;

(b) Terminate Lessee's right to possession of the demised premises without terminating the term of this Lease Agreement. In such event, Lessor shall notify Lessee of its intention to do so, and Lessor may, at its option, in addition to exercising such rights as Lessor may have under Sub-Paragraph 18(a), make such alterations and repairs as may be necessary to relet the demised premises or any part thereof at such rent and subject to such terms and conditions as Lessor may deem advisable and receive the rent therefor. Upon each such reletting, all rentals received by Lessor shall be applied first, to the payment of any indebtedness other than rent due hereunder from Lessee to Lessor; second, to the payment of any loss and expense of such reletting, including brokerage fees and attorneys fees and cost of such alterations and repairs; third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Lessor and applied in payment of future rent as the same may become due and payable hereunder. In the event rentals received from such reletting be less than that to be paid by Lessor hereunder, Lessee shall pay to Lessor monthly any deficiency that may arise by reason of same. No such re-entry or taking possession of the demised premises by Lessor shall be construed as an election on its part to terminate this Lease Agreement unless a written notice of such intention be given to Lessee or unless the termination hereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting of the demised premises without termination of this Lease Agreement, Lessor may at any time thereafter elect to terminate this Lease Agreement for such previous breach;

(c) Should Lessor, in lieu of exercising its rights under Sub-Paragraph 18(b), at any time terminate this Lease Agreement for any breach, it may recover from Lessee all damages it may incur by reason of such breach, including the cost of recovering the demised premises, reasonable attorneys fees, and including the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease Agreement for the remainder of the term over the then reasonable rental value of the demised premises for the remainder of the term, all of which amounts shall be immediately due and payable from Lessee to Lessor;

(d) If default consists in whole or in part of Lessee's failure to expend funds, Lessor may, but shall not be obligated to make the necessary expenditures for the account of Lessee who shall upon demand reimburse Lessor therefor with interest at the rate of eleven percent (11%) per annum from the date of expenditure.

It is expressly understood and agreed that the provisions of this Paragraph 18 shall not be construed to limit or impair any other right, claim or remedy to which Lessor may be entitled at law or in equity in case of Lessee's default; nor shall pursuit of any of the foregoing remedies preclude pursuit of any of the other remedies provided in this Lease Agreement; nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any rent due to Lessor hereunder or of any damages accruing to Lessor by reason of the violation of any of the covenants and provisions herein contained. Forebearance by Lessor to enforce one or more remedies herein set forth upon an event of default shall not be deemed or construed to constitute a waiver of such default.

#### 19. SUBLETTING

Lessee may sublet the demised premises or assign this Lease Agreement, without the written consent of Lessor, provided, however, that in any event, Lessee shall not be in any respect released from any obligations, express or implied, undertaken by it herein for the payment of rent and for the performance of all other terms of this Lease Agreement, and any sub-tenant or assignee of Lessee shall be

subject to and bound by all covenants and agreements of Lessee hereunder.

20. DAMAGE TO PREMISES

In the event that the Improvements which are erected on the demised premises shall be damaged or destroyed by fire or other insured casualty, then Lessor agrees that it will promptly commence repair or restoration, and during the period of repair or restoration the rental shall be abated to the extent Lessee is unable to continue operation of its business in the demised premises. Provided, however, Lessor shall not be so obligated if the demised premises are so damaged or destroyed within the last three (3) years of the primary lease term or first or second extended term, unless Lessee shall exercise its first, second or third option to extend, as the case may be; in the event the occurrence is within the third extended term, or Lessee does not elect to extend, this Lease Agreement shall terminate unless either Lessor or Lessee assumes the responsibility of such repair or restoration.

21. WAIVER OF BREACH

It is hereby covenanted and agreed that no waiver of a breach of any of the covenants of this Lease Agreement shall be construed to be a waiver of any succeeding breach of the same or any other covenant.

22. COVENANTS RUN WITH LAND, ETC.

It is hereby covenanted and agreed between the parties hereto that all covenants, conditions, agreements, and undertakings in this Lease Agreement contained shall be taken, deemed and treated as covenants running with the land, and shall extend to and be binding upon the respective heirs, successors and assigns of the respective parties hereto (including any sublessee of Lessee), the same as if they were in every case named and expressed; also that the term "Lessor" and "Lessee" shall be construed in the singular or plural number according as they represent one or more than one person.

23. ATTORNEYS FEES

Lessee covenants to pay all costs of collection, including reasonable attorneys' fees, if all or any part of the rent reserved herein is collected after maturity and after expiration of the grace period provided for with respect to forfeiture in Article 18 with the aid of an attorney; also either Lessor or Lessee shall pay reasonable attorneys fees to the prevailing party's attorney in the event it becomes necessary for the nondefaulting party to employ an attorney to force the defaulting party to comply with any of the other covenants, obligations or conditions imposed by this Lease Agreement on the respective parties.

24. DEFAULT OF LESSOR

All covenants and agreements herein made and obligations assumed are to be construed also as conditions, and these presents are upon the express condition that should Lessor fail to perform or observe any of the covenants, agreements or obligations herein made or assumed by said Lessor and such failure shall continue for thirty (30) days after the mailing of written notice by certified or registered mail to Lessor by Lessee of such default, or if such failure cannot reasonably be corrected within thirty (30) days, if correction of such failure is not commenced within thirty (30) days, after the mailing of written notice by certified or registered mail to Lessor by Lessee of such default and prosecuted to completion with due diligence, then and thenceforth, in any of said events, this Lease Agreement may be forfeited and thereby become null and void, at the option of Lessee or Lessee may correct such default and Lessor shall reimburse Lessee for any sums expended in correcting such default or Lessee may pursue such remedies as are available to it in law or in equity, any election hereunder not being exclusive, but cumulative.

25. UTILITIES

Lessor agrees at Lessor's cost and expense to provide to the building Improvements to be constructed on the demised premises throughout the term hereof such sewer facilities and such utilities

(including but not limiting the same to water, electric current and gas, if the latter is available for commercial use) as Lessee may require. Lessee agrees to pay, at the usual local rate, for any connection or tap-in fees, deposits, and for all such utilities consumed by Lessee during the term hereof.

#### 26. HOLDING OVER

It is mutually understood and agreed that in the event Lessee should hold over after the termination of this Lease Agreement, either by expiration of the term herein stated or otherwise, that such holding over shall not be construed as a holding over from month to month, year to year, or term of years, or for a periodic term of any kind, but such holding over shall be from day to day and solely at the will of Lessor.

#### 27. REPAIRS

Lessor shall maintain and repair, as needed, the roof, foundation, structural supports, and exterior walls (including the painting thereof) of the building Improvements so as to maintain said elements in good order, condition and appearance at all times during the term of this Lease Agreement, or any extension thereof. Said repairs and maintenance shall be made by Lessor promptly upon demand therefor by Lessee. All other maintenance and repairs to the Improvements shall be promptly performed by Lessee at its sole expense so as to maintain same in good order, condition and appearance at all times during the term of this Lease Agreement, or any extension thereof.

#### 28. TAXES

Lessee shall at all times during the term hereof, and any extended term, pay for all real estate and ad valorem taxes and special assessments against the demised premises, and applicable to said term. Lessee and Lessor will cooperate with one another in maintaining the lowest possible taxes and assessments on said property. Real estate taxes for the first and last partial lease years shall be prorated.

29. FINANCING AND REMOVAL OF EQUIPMENT

Lessee shall have the right to obtain financing with respect to its furniture, fixtures and equipment. Lessor agrees to execute any consents, approvals or the like that may be required by any lender in connection therewith. Under no circumstances shall this paragraph be construed to require Lessor to pledge its right, title or interest in the demised premises.

At the termination of the Lease Agreement, Lessee, if not in default, shall have the right to remove all furniture, fixtures and equipment which it installs in the demised premises.

30. NOTICE

All notices to be given to either party by the other shall be by certified or registered mail, return receipt requested, whether or not it is specifically designated as such in this Lease Agreement. All notices to be given to Lessor shall be addressed to it at 2416 Country Club Lane, Birmingham, Alabama 35223, and sent by certified or registered mail, return receipt requested, and all notices herein provided to be given to Lessee shall be sent by registered or certified mail to its office at 2158 Union Avenue, Memphis, Tennessee, 38104, with a copy to Harkavy, Shainberg, Kosten & Pinstein, 770 Estate Place, Memphis, Tennessee, 38119, or to such other address as shall hereafter be directed in writing to either party by the other. The time of any such notice shall begin to run with the date of the mailing of such notice. All notices to be given to Lessor by Lessee shall also be given to any mortgagee of the demised premises of whom Lessee has been advised in writing by Lessor. Said notices shall be by certified or registered mail also, return receipt requested.

31. COVENANT OF TITLE AND QUIET ENJOYMENT

Lessor covenants that it has good title to lease the demised premises and grant the easement rights, free and clear of all liens and encumbrances, does warrant and will defend the title thereto, will keep Lessee in quiet and peaceful possession of said demised premises and easement rights, and will indemnify Lessee against any damage and

expense which Lessee may suffer by reason of any lien, encumbrance, restriction or defect in the title or description herein of the demised premises and easement rights, so long as all of the obligations and covenants of Lessee specified herein are performed. If at any time Lessor's title or right to receive rent hereunder is disputed or there is a change of ownership of Lessor's estate by act of the parties or operation of law, Lessee may withhold rent thereafter accruing until Lessee is furnished proof satisfactory to it as to the party entitled thereto. Lessee acknowledges easements to be recorded relating to a sewer line which may cross the parking and/or driveway areas, provided said sewer easement shall not restrict the usage of said parking and driveway areas for their intended purposes. Such easement may be maintained in the event of malfunction at no cost to Lessee, by its user. Any damage to the parking and/or driveway areas due to such easement shall be required by Lessor or the user.

Within thirty (30) days after execution hereof, Lessor shall furnish to Lessee a certification by Lessor's attorney that title to said demised premises and easement rights is in Lessor, free and clear of all prior tenancies, occupancies, restrictions, violations, liens, and encumbrances, that Lessor has full power and authority to enter into this Lease Agreement without the need of further signatures, and that this Lease Agreement constitutes a valid lease to Lessee of the demised premises and grant of the easement rights free and clear of any intervening rights or equities.

Lessor covenants and warrants that it has the full right to enter into this Lease Agreement, that there are no provisions or restrictions in any other instruments in or affecting the demised premises and easement rights that restrict or limit in any way Lessee's rights to sell, or offer for sale, any goods, merchandise, or services common to a typical Shoney's restaurant in or from the demised premises, and that there are no provisions or restrictions in any other deeds, leases or other instruments in or affecting the demised premises that restrict or limit (i) the leasing of the demised premises and grant of easement rights to Lessee in accordance with the terms hereof, and (ii) the construction of the Improvements and signs on the

demised premises. It is recognized and agreed that these covenants and warranties are a material consideration to Lessee and a breach thereof will constitute a material breach of this Lease Agreement by Lessor for which Lessee shall be entitled to the remedies of cancellation, specific performance, and damage, or one or more of said remedies, not to be deemed mutually exclusive, including attorneys fees inconnection therewith.

### 32. CONDEMNATION

In the event that any of the building on the demised premises or such part of the exterior areas of the demised premises or easement area as to make the remainder unsuitable for Lessee's purposes herein provided, considering Lessee's need for parking, shall be taken under power of eminent domain, Lessee may, at its option, declare this Lease Agreement terminated from the date on which Lessee shall be deprived of the possession, use or enjoyment of the demised premises and easement area, and Lessee shall be relieved of any further obligations hereunder. In the event this Lease Agreement is not so terminated upon a taking under the power of eminent domain, Lessor shall diligently restore the premises as nearly as possible to their condition and status prior to such taking, the annual minimum rental to be equitably reduced. If Lessee cannot reasonably conduct its business during such period of restoration, the rental shall fully abate during said period of time.

Lessee shall be entitled to make claim against the governmental authorities for the amount of the actual provable damage done to Lessee for loss of its leasehold, by such taking if such separate claim is permitted by law; otherwise, Lessor and Lessee shall cooperate with one another in making a joint claim, the proceeds of which shall be shared as their interests may appear.

### 33. REAL ESTATE COMMISSION

Lessor shall pay any real estate or leasing commissions in connection with this Lease Agreement.

#### 34. CONSTRUCTION

Lessor shall construct the improvements (including exterior areas as hereinafter set forth) in accordance with the plans and specifications attached hereto as Exhibit D so as to deliver possession not later than six (6) months from the date of execution hereof by the last party to sign. Promptly upon receipt of survey from Lessor as provided for in Article 3 (within 15 working days thereafter) Lessee shall adapt its proposed building, parking, drive, walkway and landscape areas to the actual site and furnish the final plot plan to Lessor. Lessor shall deliver a complete building, including the exterior parking, drive, walkway, landscaping, and service areas (with any required fencing thereof), ready for Lessee to install its furniture, fixtures, equipment and signage. Lessor shall permit Lessee's architectural and construction representatives to inspect the construction as frequently as Lessee desires so as to assure itself that the plans and specifications are being accurately followed and that a first quality building and exterior improvements will be delivered to Lessee. Lessor agrees to correct any faults in construction as discovered by Lessee's representatives.

Lessor hereby covenants and warrants that the Improvements (both building and exterior areas) will be free from defects in workmanship and materials, and if not, any such defects pointed out to Lessor within twelve (12) months from the commencement of the term hereof will be promptly corrected by Lessor. All mechanical warranties will be assigned to Lessee, effective from and after the Lessor's twelve (12) month warranty period.

#### 35. RELATIONSHIP OF THE PARTIES

Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the rent nor any other provision contained herein, nor any acts of the parties hereto are other than the relationship of Lessor and Lessee. The numerical headings or titles to paragraphs are not a part of this

Lease Agreement and shall have no effect upon the construction or interpretation of any part hereof.

### 36. INVALIDITY OF PROVISIONS

If any provision of this Lease Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease Agreement, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.

### 37. AMENDMENTS

No waivers, alterations or modifications of this Lease Agreement or any agreements in connection herewith shall be valid unless in writing, duly executed by both Lessor and Lessee.

### 38. MEMORANDUM OF LEASE

The parties agree to execute a short form memorandum of this Lease Agreement for recordation purposes.

### 39. OPTIONS FOR EXTENDED TERMS

Lessor hereby agrees that Lessee shall have and is hereby granted three (3) successive options to extend the term of this Lease Agreement for terms of five (5) years on each such option, such extended terms to be upon the same terms and conditions herein provided for the initial term (subject to Rent adjustment as provided in Article 5). The exercise of any such option to extend shall be by notice in writing given by Lessee to Lessor not later than six (6) months prior to the expiration of the then current term. In the event that Lessee fails to notify Lessor of any renewal option hereunder prior to the date set forth above (the "notice date"), its option(s) to renew shall nevertheless remain in full force and effect for a period of thirty (30) days after receipt of written notice from Lessor subsequent to the notice date setting forth the expiration date of the

Lease Agreement and advising Lessee that notice of renewal has not been received.

IN TESTIMONY WHEREOF, the above named Lessor and the above named Lessee have caused this instrument to be executed in quadruplicate on the date and year set forth in Paragraph 1 of this Lease Agreement.

IN THE PRESENCE OF:

Carl W. Green - 1-18-85  
Sam F. King 1/18/85  
As to Lessor  
Lynne S. Davenport  
Richard A. King  
As to Lessee

Mrs. Albert Huey Green  
MRS. ALBERT HUEY GREEN, LESSOR

SHONEY'S SOUTH, INC.  
BY: James H. Prentiss  
Its: President LESSEE

STATE OF Alabama  
COUNTY OF Jefferson

On this 7th day of March, 1985, before me, a Notary Public in and for said State and County, duly commissioned and qualified, personally appeared MRS. ALBERT HUEY GREEN, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

WITNESS my hand and Notarial Seal at office the day and year above written.

Priscilla J. Carter  
Notary Public

My Commission Expires 1988  
My Commission Expires 1988

STATE OF TENNESSEE  
COUNTY OF SHELBY

Before me, the undersigned Notary Public in the State and County aforesaid, personally appeared James H. Prentiss, with whom I am personally acquainted and who, upon oath, acknowledged himself to be the President of SHONEY'S SOUTH, INC., the within named bargainer, a corporation, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such President.

WITNESS my hand and Official Seal at office this 5th day of March, 1985.

Robert M. McNamee  
NOTARY PUBLIC

My Commission Expires:  
1/20/88

EXHIBIT A TO LEASE AGREEMENT

BETWEEN

MRS. ALBERT HUEY GREEN, LESSOR, AND  
SHONEY'S SOUTH, INC., LESSEE  
DATED January 18, 1985

A part of the SW1/4 of the NE1/4, NW1/4 of the SE1/4 of Section 36, Township 18S, Range 2 West, Shelby County, Alabama, more particularly described as follows. From the Southeast Corner of said SW1/4 of the NE1/4; thence west along the south quarter section line of said SW1/4 of the NE1/4 959.23 feet, to point of beginning; thence right 90° northerly 95.0 feet; thence left 45° northwesterly 127.0 feet; thence right 43°30' northerly 75.00' to the southeast right of way of a proposed road; thence left 126°38'19" along said right of way southerly 130.32', to point of a curve; thence continue along curve of said right of way having a curve radius of 377.81 feet an arc length 150.36 feet, a delta angle of 22°48'11" a tangent of 76.19 feet, to the northeast right of way of U.S. Highway No. 280; thence left 90° to tangent of said curve southeasterly along a chord of the northeast right of way of said U.S. Highway 280, 235.0 feet; thence left 91°54'15" from said chord northeasterly 54.50 feet to the south quarter section line of said SW1/4 of the NE1/4; thence right 62°50'45" easterly 60.90 feet along said quarter section to point of beginning. Said property containing 1.08 acres, more or less.



**EXHIBIT "B"**

*[MEMORANDUM OF LEASE RECORDED AT REAL VOLUME 47, PAGE 235]*

**EXHIBIT "C"**

**[SUBLEASE DATED APRIL 12, 1994]**

SUBLEASE

THIS SUBLEASE made and entered into as of this 12<sup>th</sup> 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

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> |
|--------------------------------------|--------------------|---------------------|
| May 1, 1994 - January 31, 1999       | \$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 contracts, 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.

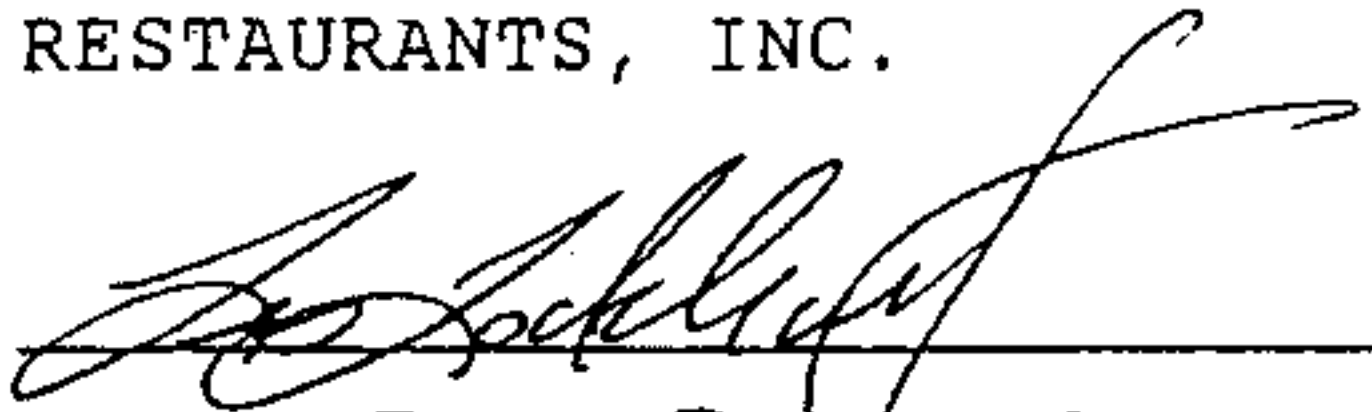
19. Sublessor shall not be construed or held to be a partner or associate of Sublessee in the conduct of Sublessee's business, it being expressly understood and agreed that the relationship between the parties hereto is, and shall at all times remain during the term of this Sublease, that a sublessor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

EXHIBIT A

[Attach Copy of Lease]

**EXHIBIT "D"**

*[MEMORANDUM OF SUBLEASE RECORDED AT INSTRUMENT NO. 1995-03204]*

EXHIBITS "C" AND "D"

SUBLEASE

THIS SUBLEASE made and entered into as of this 12<sup>th</sup> 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 - <del>January 31, 1999</del> <sup>Tan 31, 1995</sup> | \$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 contracts, 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.

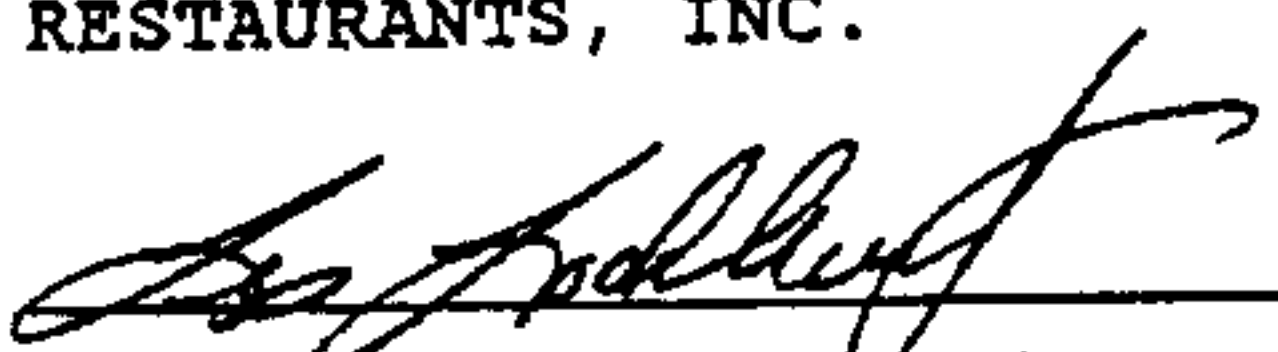
19. Sublessor shall not be construed or held to be a partner or associate of Sublessee in the conduct of Sublessee's business, it being expressly understood and agreed that the relationship between the parties hereto is, and shall at all times remain during the term of this Sublease, that a sublessor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

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

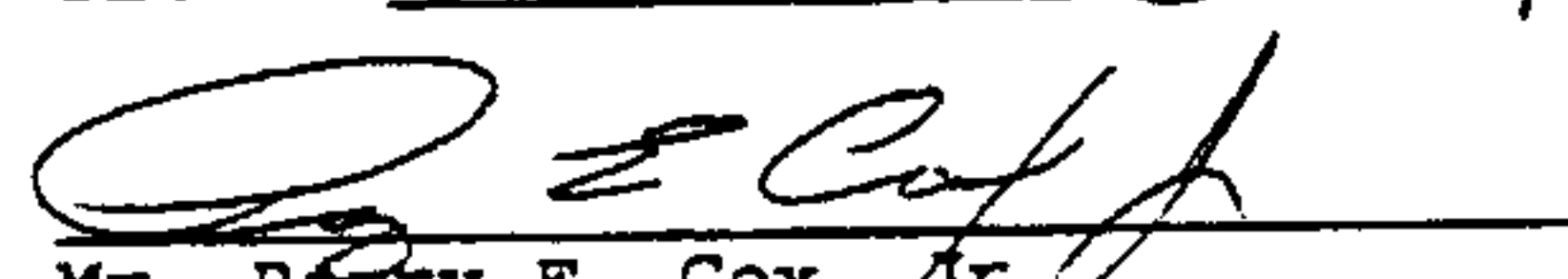
21. This Agreement constitutes the entire contract between Sublessor and Sublessee concerning the subleasing of the Premises and the consideration therefor, and shall not be modified in any manner whatsoever except by an instrument in writing executed by Sublessor and Sublessee.

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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EXHIBIT "E"

A part of the Southwest 1/4 of the Northeast 1/4, Northwest 1/4 of the Southeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, more particularly described as follows:

From the Southeast corner of said Southwest 1/4 of the Northeast 1/4; thence West along the South quarter section line of said Southwest 1/4 of the Northeast 1/4 959.23 feet, to point of beginning; thence right 90° Northerly 95.0 feet; thence left 45° Northwesterly 127.0 feet; thence right 43°31' Northerly 75.0 feet to the Southeast right of way of a proposed road; thence left 126°38'19" along said right of way Southwesterly 130.32 feet, to point of a curve; thence continue along curve of said right of way have a curve radius of 377.81 feet, an arc length 150.36 feet, a delta angle of 22°48'11" a tangent of 76.19 feet, to the Northeast right of way of U.S. Highway No. 280; thence left 90° to tangent of said curve Southeasterly along a chord of the Northeast right of way of said U.S. Highway No. 280, 235.0 feet; thence left 91°54'15" from said chord Northeasterly 54.50 feet to the South quarter section line of said Southwest 1/4 of the Northeast 1/4; thence right 62°50'45" Easterly 60.90 feet along said quarter section to point of beginning. Said property containing 1.08 acres, more or less.

a/k/a as 4701 Highway 280 E.  
Birmingham, AL 35242

Inst # 1995-25757

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**EXHIBIT "E"**

[SUBLEASE NO. 2 DATED JANUARY 31, 1995,  
RECORDED AT INSTRUMENT NO. 1995-25757]

SUBLEASE NO. 2

COPY

THIS SUBLEASE NO. 2 made and entered into as of this 31<sup>st</sup> day of January, 1995, by and between **Perry E. Cox, Jr.** (hereinafter referred to as "Sublessor") and **Superior Bar & Grill, Inc.**, an Alabama corporation (hereinafter referred to as "Sublessee").

WITNESSETH

WHEREAS, Mrs. Albert Huey Green, as Lessor, entered into that certain Lease Agreement dated January 18, 1985 (the "Lease") with Shoney's South, Inc., as Lessee, a Memorandum of Lease being recorded at Real Volume 47, Page 235, of the Shelby County Probate Office, a copy of which Lease and Memorandum of Lease are attached as **Exhibits "A" and "B"** hereto, which Lease covers certain property and improvements, located in Shelby County, Birmingham, State of Alabama, which property is more particularly described in the Lease as the Land and Improvements (the "Premises"); and

WHEREAS, TPI Restaurants, Inc., is the successor to Shoney's South, Inc., and is the Lessee of the Lease Agreement dated January 18, 1985; and

WHEREAS, Lessee, as "Sublessor", subleased the Premises to Perry E. Cox, Jr., as "Sublessee" on April 12, 1994 (the "Sublease"), a Memorandum of Sublease being recorded at Instrument No. 1995- 03204, of the Shelby County Probate Office, a copy of which Sublease and Memorandum of Sublease are attached as **Exhibits "C" and "D"** hereto, which Sublease covers the Premises as herein described; and

WHEREAS, Sublessor to this Sublease No. 2 wishes to sublease the Premises to Sublessee under the terms and conditions hereafter 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 February 1, 1995 and terminating at midnight on the 31st day of January, 1999, unless extended or sooner terminated as herein provided.

2. Sublessee shall have and is hereby given four (4) separate options to renew and extend the term hereof for four (4) successive periods of seven (7) years for Option No. One (1), and five (5) years each for Options Two (2), Three (3) and Four (4). All

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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 nine (9) 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. Sublessor will take the necessary steps to exercise its Option with the original Lessee and the original Lessor, and confirm the exercise of the Option to this Sublessee. 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 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 closing date (the "annual minimum rental").

| <u>Period</u>                                      | <u>Annual Rent</u> | <u>Monthly Rent</u> |
|----------------------------------------------------|--------------------|---------------------|
| First Term<br>February 1, 1995 to January 31, 1999 | \$117,000.00       | \$9,750.00          |
| First Option Term (No. One)                        | \$128,700.00       | \$10,725.00         |
| Second Option Term (No. Two)                       | \$141,564.00       | \$11,797.00         |
| Third Option Term (No. Three)                      | \$155,724.00       | \$12,977.00         |
| Fourth Option Term (No. Four)                      | \$171,300.00       | \$14,275.00         |

(b) Superior will reimburse Sublessor for the two (2) months security deposit for the last two (2) months rent in the following manner: (a) Superior shall pay to Sublessor the sum of \$5,000.00 per month for the months of May, June and July, 1995; and (b) the sum of \$4,500.00 for the month of August, 1995.

(c) In addition to the annual minimum rental, Sublessee shall pay to Sublessor, as additional rental, an amount equal to five and one-half percent (5.5%) of the gross sales as follows: (i) First Term 5.5% in excess of \$2,127,273.00; (ii) First Option

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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 \$2,000,000.00. 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, Sublessee 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:**

Perry E. Cox, Jr.  
No. 1 Country Ridge  
Sterrett, AL 35147  
(205) 672-7799

**To the Sublessee:**

Superior Bar & Grill, Inc.  
c/o Philip Barbaree  
6123 Line Avenue  
Shreveport, LA 71106  
(318) 869-3243

**Copy to:**

Zachary Hutto  
c/o Commercial Alabama, Inc.  
3300 Cahaba Road, Suite 301  
Birmingham, AL 35223  
(205) 871-8711

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 of a Sublessor and Sublessee.

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

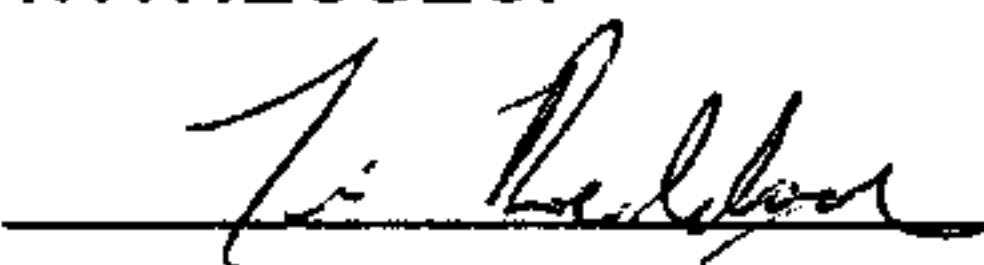
21. The parties agree to execute a short form Memorandum of Sublease NO. 2 for recordation purposes.

22. TPI Restaurants, Inc. joins in the execution of this Sublease No. 2 to evidence its approval and consent of same.

23. 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.

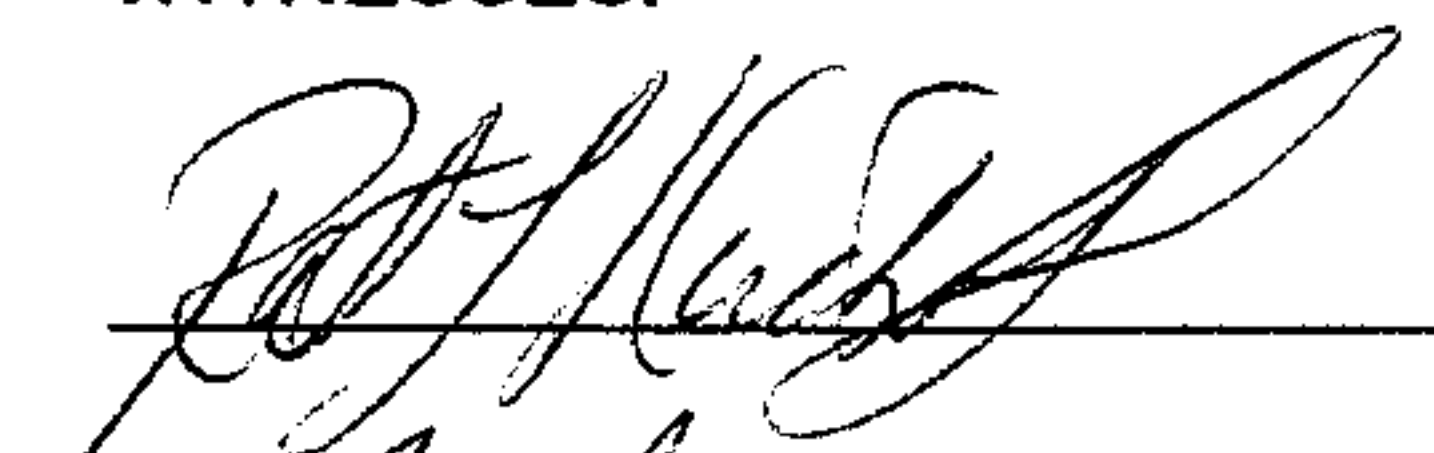
WITNESSES:


SUBLESSOR:

  
PERRY E. COX, JR.

WITNESSES:


SUBLESSEE:

SUPERIOR BAR & GRILL, INC.  
an Alabama Corporation

BY:   
Its President

APPROVED BY LESSEE:

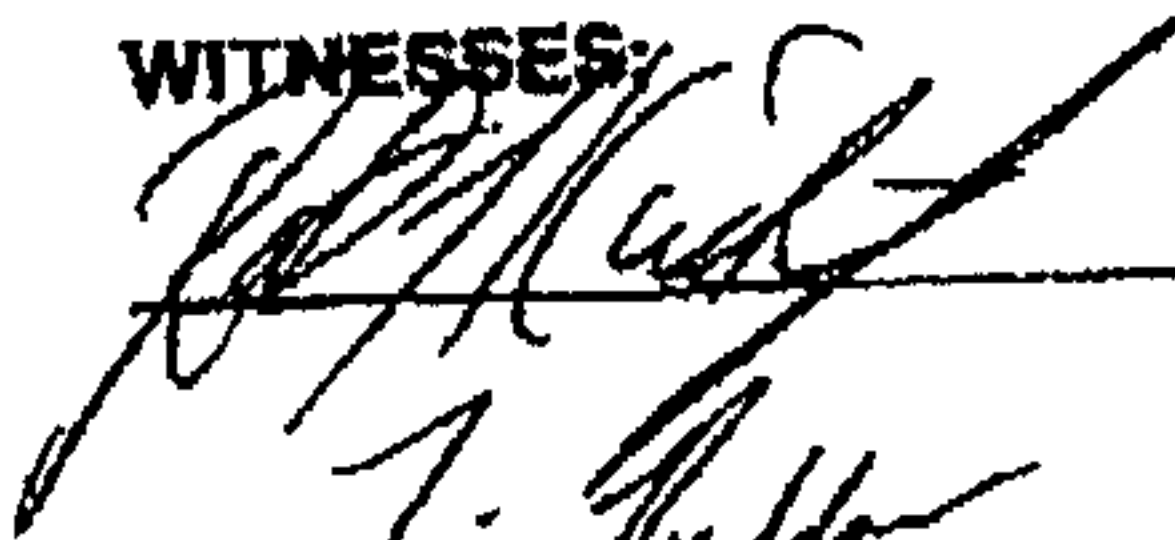
TPI RESTAURANTS, INC. (Successor  
to Shoney's South, Inc.)

BY: \_\_\_\_\_  
Its \_\_\_\_\_

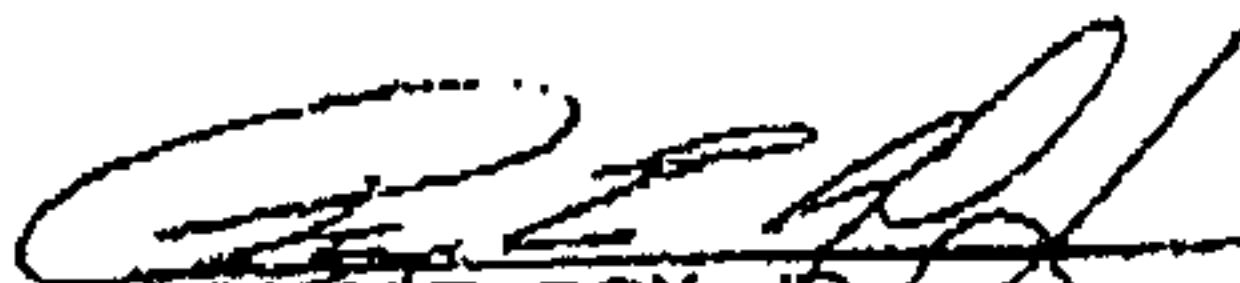
23. This Agreement constitutes the entire contract between Sublessor and Sublessee concerning the subleasing of the Premises and the consideration therefor, and shall not be modified in any manner whatsoever except by an instrument in writing executed by Sublessor and Sublessee.

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.

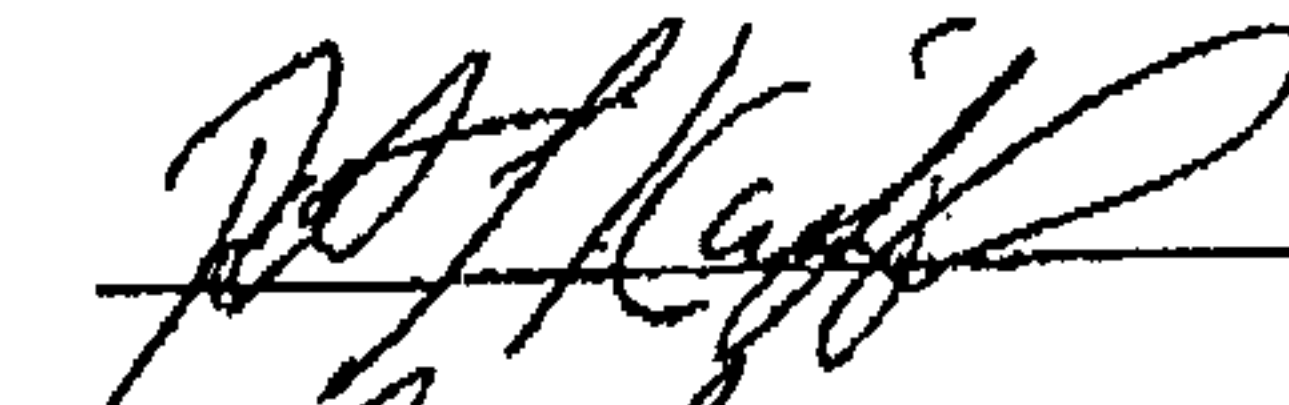
WITNESSES:


SUBLESSOR:

  
 PERRY E. COX, JR.

WITNESSES:


SUBLESSEE:

SUPERIOR BAR & GRILL, INC.  
 an Alabama Corporation

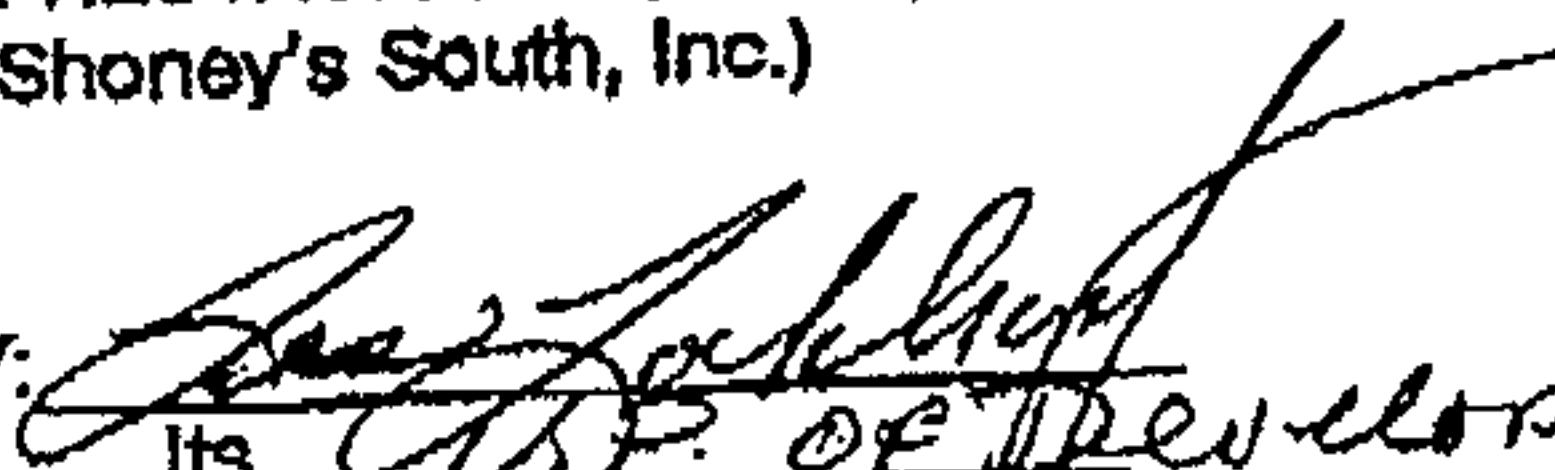
BY:

  
 Its 

APPROVED BY LESSEE:

TPI RESTAURANTS, INC. (Successor  
 to Shoney's South, Inc.)

BY:

  
 Its 

C:\ALB\1256422

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P.9

JAN 31 '95 12:15 COMMERCIAL ALABAMA

P.10

FAX NO. 9017256422

TPI DEV DEPT

JAN-31-95 TUE 12:36

**EXHIBITS "A" AND "B"**  
**INTENTIONALLY OMITTED**

EXHIBITS "C" AND "D"

SUBLEASE

THIS SUBLEASE made and entered into as of this 12<sup>th</sup> 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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Inst # 1995-03204

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> |
|-------------------------------------------------------------------|--------------------|---------------------|
| May 1, 1994 - <del>January 31, 1999</del> <sup>Jan 31, 1995</sup> | \$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.

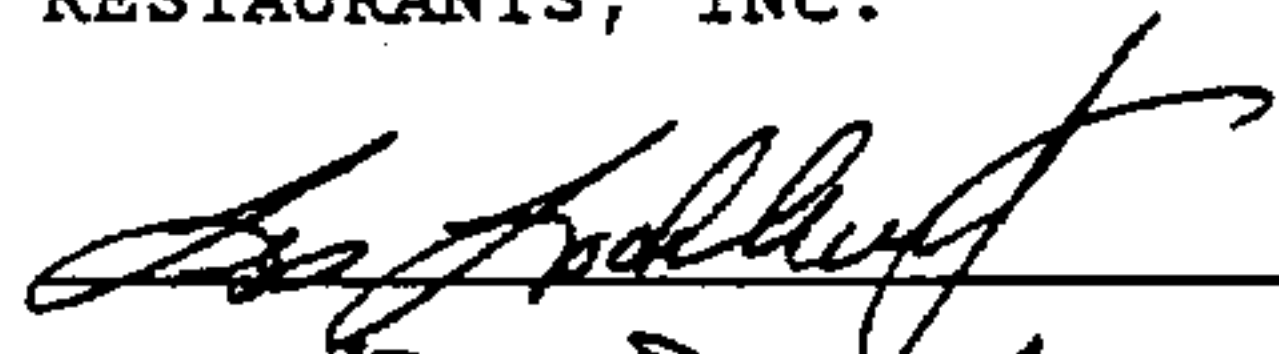
19. Sublessor shall not be construed or held to be a partner or associate of Sublessee in the conduct of Sublessee's business, it being expressly understood and agreed that the relationship between the parties hereto is, and shall at all times remain during the term of this Sublease, that a sublessor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

  
Mr. Perry E. Cox, Jr.

Inst # 1995-03204

02/06/1995-03204  
08:24 AM CERTIFIED  
-7-SHELBY COUNTY JUDGE OF PROBATE  
007 MCD 137.00 W6:JFK0329941.SG

Inst # 1995-03204

EXHIBIT "E"

A part of the Southwest 1/4 of the Northeast 1/4, Northwest 1/4 of the Southeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, more particularly described as follows:

From the Southeast corner of said Southwest 1/4 of the Northeast 1/4; thence West along the South quarter section line of said Southwest 1/4 of the Northeast 1/4 959.23 feet, to point of beginning; thence right 90° Northerly 95.0 feet; thence left 45° Northwesterly 127.0 feet; thence right 43°31' Northerly 75.0 feet to the Southeast right of way of a proposed road; thence left 126°38'19" along said right of way Southwesterly 130.32 feet, to point of a curve; thence continue along curve of said right of way have a curve radius of 377.81 feet, an arc length 150.36 feet, a delta angle of 22°48'11" a tangent of 76.19 feet, to the Northeast right of way of U.S. Highway No. 280; thence left 90° to tangent of said curve Southeasterly along a chord of the Northeast right of way of said U.S. Highway No. 280, 235.0 feet; thence left 91°54'15" from said chord Northeasterly 54.50 feet to the South quarter section line of said Southwest 1/4 of the Northeast 1/4; thence right 62°50'45" Easterly 60.90 feet along said quarter section to point of beginning. Said property containing 1.08 acres, more or less.

a/k/a as 4701 Highway 280 E.  
Birmingham, AL 35242

Inst # 2002-04545  
01/25/2002-04545  
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SHELBY COUNTY JUDGE OF PROBATE  
066 CH 209.00

Inst # 1995-25757

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