

# Lease and Agreement

1. **Parties** THIS LEASE AND AGREEMENT, dated the 23 day of March 19 98 between Bill Vest party of the first part, hereinafter called Lessor, and party of the second part, hereinafter called Lessee, ElPorton of Mississippi, Inc.  
Felipe Aguirre/Vice President
  2. **Consideration** WITNESSETH: That each of the aforesaid parties acknowledges 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** That Lessor has and does hereby grant, demise and lease unto the said Lessee the following described premises situated 920 Stateline Road, Southaven, Ms. 38671  
See attached Legal.
- To be used only for the purpose of: Restaurant
4. **Term** TO HAVE AND TO HOLD the above described premises unto the Lessee for the period of three years years, commencing on the First day of April, 19 98 and ending on the Last day of March, ~~XX~~ 2001.
  5. **Rental** Lessee hereby covenants and agrees to pay to Lessor at the office of Bill Vest as rent for the aforesaid premises the sum of thirty nine hundred sixty one & 26/100 Dollars 3961.26, payable in advance in monthly installments, in amounts maturing as follows:  
which includes taxes  
By Lessor's authority the above amounts may be paid directly to Bill Vest at: 5950 Knight Arnold  
Memphis, Tn 38115
  6. **Proof of Payment** The burden of proof of payment of rent in case of controversy shall be upon the Lessee.
  7. **Lien on Leasehold, Etc.** A first lien is hereby expressly reserved by the Lessor and granted by the Lessee upon the terms of this lease and upon all interest of the Lessee in this leasehold, and upon all buildings, improvements, store fixtures, water fixtures and gas fixtures and all other fixtures erected or put in place or that may be erected or put in place upon the premises by or through the Lessee or other occupants, and also upon all the goods, wares, chattels, implements, trade fixtures, tools, and other property of the Lessee which are or may be put upon the demised premises by or through the Lessee or other occupants for the payment of rent and also for the satisfaction of any causes of action which may accrue to the Lessor by the provisions of this instrument.
  8. **Quiet Possession** The Lessor hereby covenants that if Lessee shall keep and perform all of the covenants of this lease on the part of Lessee to be performed, Lessor will guarantee to Lessee the quiet, peaceful and uninterrupted possession of the said premises.  
The Lessee hereby further covenants:
  9. **Lawful and Moral Uses** That the premises and all buildings and improvements thereon shall during the term of this lease be used only and exclusively for lawful and moral purposes, and no part of the premises or improvements thereon shall be used in any manner whatsoever for any purposes in violation of the laws of the United States, the State of Mississippi, or the ordinances and laws of the City of Southaven, Mississippi 38671 that are enforced;
  10. **Protection From Violation** To save and hold the Lessor harmless from violations of the laws of the United States, of the State of Mississippi, and the ordinances and laws of the City of Southaven, Mississippi 38671
  11. **Waste** Not to commit or permit to be committed any waste whatsoever;
  12. **Nuisances** Not to create or allow any nuisance to exist on said premises, and to abate any nuisance that may arise promptly and free of expense to Lessor;
  13. **Invalidation of Insurance** Not to suffer anything to be or remain upon or about the premises which will invalidate any policy of insurance which Lessor may now or hereafter have upon said building and ground area;
  14. **Increased Premiums** Not to suffer anything to be or remain upon or about the premises nor carry on nor permit upon the premises any trade or occupation or suffer to be done anything which may render an increased or extra premium payable for the insurance of the premises against fire, unless consented to in writing by the Lessor and if so consented to, the Lessee shall pay such increased or extra premium within ten days after the Lessee shall have been advised of the amount thereof;
  15. **Advertising** Lessor reserves the right to advertise on the outside walls, roofs, or other exterior portions of the premises, or of any building, or other improvements now or hereafter erected on the premises;
  16. **Alterations** Not to make any changes, alterations, or additions about the said building or premises without first obtaining the written consent of the Lessor and in no event to do anything that shall weaken the building or structure now on or that may hereafter be erected on the premises;
  17. **Damages Accidents, Etc.** To keep and to hold the Lessor harmless from any liability for loss or damages to persons, property, or things, both real or asserted, accruing from any cause or causes in or connected with or about the within leased premises, or on the sidewalk area adjacent thereto, or on the parking areas, the use of which is granted to Lessee hereunder, and driveways leading to and therefrom, during the term of this lease; Lessee is to carry \$300,000.00 coverage on building and one million (1,000,000.00) liability policy naming Lessor as payee.
  18. **Plate Glass** To carry adequate plate glass insurance on all plate glass on the premises in a company satisfactory to the Lessor with loss clause payable to the Lessor; or in lieu of such insurance to replace all plate glass damage during the term of this lease;

19. **Insolvency, Etc., of Lessee** That in the event of the insolvency of the Lessee, or the adjudication of the Lessee as a bankrupt, voluntarily or involuntarily, or in the event of a partial or general assignment for the benefit of a creditor or creditors being made by the Lessee, then the Lessor shall have the right to immediately terminate this lease;
20. **Delivery at End of Lease** And on the expiration of the term of this lease to deliver unto the Lessor the possession of said buildings, lot and premises, cleared of all persons, goods and things not properly belonging to the same, and in as good order and condition as the same were received, destruction or damage by fire, storm or other casualty and ordinary wear and tear excepted.
21. **Repairs** *Edw F.A.P.* ~~The Lessor is to make necessary repairs to roof, roof structure,~~ exterior walls and foundations, after notice from Lessee of the need for such repairs, unless repairs are occasioned by use or neglect of Lessee, in which event Lessee shall promptly make such repairs without cost to Lessor.  
It is further agreed and understood that all other repairs including, but not limited to exterior doors to the property herein leased are to be made by the Lessee, and all labor and material used by it in making any repairs or permitted alterations will be paid for promptly by Lessee and in no event shall any mechanics' liens be permitted to be fixed upon the leasehold interest or any other interest in the premises leased. The Lessee at its expense covenants and agrees to install any safety equipment or comply with any reasonable recommendations that might be made by the Lessor's insurance carrier as a result of the use and occupancy of Lessee promptly upon receipt of written notice from the Lessor.
22. **Right of Entry, Etc.** The Lessor reserves the right during the term of this lease, to enter said premises at reasonable hours to show the same to other persons who may be interested in renting or buying the property, and for the purpose of inspecting the premises and to make such repairs, additions or improvements as Lessor may deem necessary for the protection and preservation of the said building and premises; but Lessor is not bound to make any repairs whatever, or to be held liable for any damage in consequence of leaks, or for the stoppage of water, sewer, gas or drain pipes by reason of freezing or any other cause or obstructions, or for any other defects about the building and premises, the Lessee having examined the same and being satisfied therewith; but should such leaks, obstructions, freezings, stoppages, or other defects about the building and premises occur during the term of this lease, or while the Lessee is occupying the premises, then the Lessee shall remedy the same promptly at the Lessee's expense unless the Lessor by written instrument undertakes to do the same.
23. **Improvements, Fixtures, Etc.** All improvements, additions, and repairs made to the premises and building during the term of this lease shall at the expiration of same become the property of the Lessor, his heirs or assigns, without cost to him; it is agreed, however, that all Trade Fixtures, installed by the Lessee or his assigns for the business conducted by him shall remain the property of the Lessee, and that such Trade Fixtures may be removed at the expiration of this lease, provided this lease be not then in default, and provided any damage caused by such removal shall be repaired by the Lessee at his own expense and the premises left in good condition.
24. **Default of Rent, Etc.** 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 if Lessee should fail to pay when due any one of the aforesaid installments of rent, or should fail to perform or observe any of the covenants, agreements or obligations herein made or assumed by said Lessee, then, and thenceforth, in any of said events, this lease may be forfeited and thereby become null and void at the option of the Lessor, without demand or notice, demand and notice being hereby expressly waived, and said Lessor may immediately, or at any time after the breach of any said covenants, re-enter said premises and building, or any part thereof in the name of the whole, and repossess and have the same as of Lessor's former estate and remove therefrom all goods and chattels not thereto properly belonging, and expel said Lessee and all other persons who may be in possession of said premises and building, and that, too, without demand or notice, demand and notice being hereby expressly waived.
25. **Right to Terminate Not Exclusive** The right in the Lessor to terminate this lease as herein set forth is in addition to and not in exhaustion of such other rights that the Lessor has or causes of action that may accrue to the Lessor because of the Lessee's failure to fulfill, perform or observe the obligations, agreements or covenants of this lease, and the exercise or pursuit by the Lessor of any of the rights or causes of action accruing hereunder shall not be an exhaustion of such other rights or causes of action that the Lessor might otherwise have.
26. **Subletting** The Lessee shall not assign or sublet the premises or any part thereof without the written consent of the Lessor, and in no event shall any subletting or assignment of this lease relieve the Lessee of any of the covenants, agreements and obligations imposed upon Lessee in this lease;
27. **Renewal** No renewal of this lease will be binding on either party unless it be put in writing and signed by the Lessor and the Lessee.
28. **Waiver of Breach** It is hereby covenanted and agreed that no waiver of a breach of any of the covenants of this lease shall be construed to be a waiver of any succeeding breach of the same or any other covenant.
29. **Covenants Run to Heirs, Etc.** It is hereby covenanted and agreed between the parties hereto that all covenants, conditions, agreements and undertakings in this lease contained, including, without limitation of the scope of the foregoing, Lessor's covenant and obligation to pay commission as provided in paragraph 39 hereof, shall inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and assigns of the respective parties hereto the same as if they were in every case named and expressed; also, that the terms "Lessor" and "Lessee" shall be construed in the singular or plural number according as they respectively represent one or more than one person.
30. **Liquidated Damages** In the event that the Lessor shall terminate this Lease by reason of the failure of the Lessee to pay any rental installment when due or the Lessee's violation of any other provision of this Lease, then the Lessee shall pay to Lessor liquidated damages in the amount of 25% of the pro-rated rent that would otherwise be payable by Lessee for the balance of the term of the Lease, or an amount equal to the rental installments payable during the next succeeding three (3) calendar months, whichever is greater. Such damages shall be in addition to unpaid rent due from Lessee for the period prior to termination of the Lease by Lessor, provided that if Lessor is unable to regain possession promptly after such termination, Lessee shall continue to be liable for the full pro-rata amount of rent until Lessor regains physical possession of the premises. This paragraph is not to be construed as requiring Lessor to terminate this Lease if Lessor elects not to do so irrespective of violations by Lessee, and if Lessor elects not to terminate and to hold Lessee to full performance hereunder, there shall be no diminution of Lessor's right to collect the full amount of rent and enforce the other obligations of Lessee, it being the intent of this paragraph to give Lessor an additional and optional remedy in the event of a breach by Lessee.
31. **Attorney Fees** Lessee agrees to pay all costs of collection, including reasonable attorney fees, if all or any part of the rent reserved herein is collected after maturity with the aid of an attorney; also to pay reasonable attorney fees in the event it becomes necessary for the Lessor to employ an attorney to force the Lessee to comply with any of the covenants, obligations, or conditions imposed by this lease.
32. **Tax Escalator** As additional rental to become due under this lease, anything to the contrary notwithstanding, Lessee will pay 100 % of all real estate taxes and/or special assessments levied against the entire property, of which the above leased premises are a part, in excess of the highest total taxes and/or assessments levied and/or paid in included in lease payment. Also Lessee shall be responsible for and shall pay any sales tax levied against rentals due. Payment under this clause is due and payable when billed.

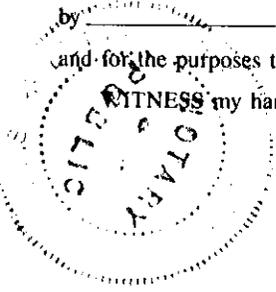
STATE OF Mississippi  
COUNTY OF Desoto

BOOK 77 PAGE 140  
Personally appeared before me, the undersigned, a Notary

Public in and for said State and County, duly commissioned and qualified, \_\_\_\_\_ the within named bargainer \_\_\_\_\_, with whom I am personally acquainted, and who acknowledged that \_\_\_\_\_ he \_\_\_\_\_ executed the within instrument for the purpose therein contained And the said \_\_\_\_\_ wife \_\_\_\_\_ of the said \_\_\_\_\_ having appeared before me privately and apart from \_\_\_\_\_ husband \_\_\_\_\_, the said \_\_\_\_\_ acknowledged the execution of the said instrument to have been done by \_\_\_\_\_ freely, voluntarily and understandingly, without compulsion or constraint from \_\_\_\_\_ said husband \_\_\_\_\_, and for the purposes therein expressed.

WITNESS my hand and Notarial Seal at office, this 30<sup>th</sup> day of March, 19 98.

Betty J. Hobbs  
Notary Public  
MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES JAN. 11, 1999  
BONDED THRU LEGAL NOTARY SERVICE



STATE OF Mississippi  
COUNTY OF Desoto

Before me, the undersigned, a Notary Public within and for said County and State, duly commissioned and qualified, personally

appeared \_\_\_\_\_ and \_\_\_\_\_ with whom I am personally acquainted, and who, upon their several oaths, acknowledged themselves to be respectively, the \_\_\_\_\_ President, and the \_\_\_\_\_ Secretary of the \_\_\_\_\_

the within named bargainer, a corporation; and that they as such \_\_\_\_\_ President, and \_\_\_\_\_ Secretary, being duly authorized so to do, executed the foregoing instrument for the purposes therein, by the said \_\_\_\_\_ subscribing thereto the name of the corporation, by himself as such \_\_\_\_\_ President, and by the the said \_\_\_\_\_ affixing and attesting thereon the corporate seal as such \_\_\_\_\_ Secretary.

WITNESS my hand and Notarial Seal at office, this 30<sup>th</sup> day of March, 19 98.

Betty J. Hobbs  
Notary Public  
MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES JAN. 11, 1999  
BONDED THRU LEGAL NOTARY SERVICE



LEASE
LESSOR
<u>Bail A. Webb</u>
LESSEE
<u>Julien Rogers</u>
PROPERTY
<u>920 Statehique Spd</u>
EXPIRES
<u>MARCH 2001</u>
STATE OF MISSISSIPPI
DeSoto County
Filed for Registration _____ 19 _____
at _____ o'clock _____ M., and noted in Note Book
No. _____ Page _____ and was recorded
_____ 19 _____ in Record Book
No. _____ Page _____ Fee \$ _____ Paid
By _____ Register _____ D.R. _____

- 33. **Delivery of Possession** Lessee agrees that if the Lessor is not able to deliver possession of the premises as herein provided, the Lessor shall not be liable for any damages to Lessee for such failure, but Lessor agrees to use due diligence to obtain possession for the Lessee at the earliest possible date, and an abatement of rent shall be allowed for such time as Lessee may be deprived of possession of said premises.
  
- 34. **Destruction by Fire, Etc.** Should the building upon the demised premises be totally destroyed by fire or other cause, or so damaged that rebuilding or repairs cannot be completed within Sixty (60) days from date of fire, or other cause of damage, this lease shall terminate and the Lessee shall be allowed an abatement of rent from the date of such damage or destruction. However, if the damage is such that rebuilding or repairs can be completed within Sixty (60) days, the Lessor, at Lessor's option and if Lessor so elects, agrees to make such repairs with reasonable promptness and dispatch, and to allow Lessee an abatement in the rent for such time as the building is untenable, and the Lessee covenants and agrees that the terms of this lease shall not be otherwise affected. If the Lessor elects not to make such repairs, this Lease shall terminate and the Lessee shall be allowed an abatement of rent from the date of such damage or destruction.
  
- 35. **Utilities** All heat, water, electric current, gas, sewer charge, or other utilities used on the leased premises to be paid by Lessee.
  
- 36. **Eminent Domain** If a part of the leased premises shall be taken or condemned by any competent authority for any public use or purpose in such manner or to such extent that Lessee's rights under this Lease are substantially diminished, and the parties are not able to agree on an equitable adjustment of rent, then Lessee shall have the right to cancel this Lease, and Lessee will relinquish possession within ninety (90) days after such taking, and rent will be apportioned as of the date of such relinquishment of possession, provided, that Lessee's right to cancel shall terminate ninety (90) days after Lessee receives notice that a part of the premises will be so taken. If any condemnation proceedings are instituted which adversely affect the property of which the leased premises are a part, as a result of which Lessor desires to remodel, sell, or otherwise to make any material changes in the property or a substantial portion thereof, and cancellation of this Lease is reasonably necessary for Lessor's purposes, then Lessor shall have the right to cancel this Lease upon not less than ninety (90) days written notice to Lessee, which right shall terminate ninety (90) days after Lessor receives notice of such proceedings, and rent shall be apportioned as of the date of cancellation. In no event shall Lessee have the right to share in any condemnation award or in any judgement for damages in connection with any condemnation proceeding, and Lessee shall not be entitled to recover any sum from Lessor on account of interruption of or interference with Lessee's possession as a result of any condemnation or work by any competent public authority. Any awards for the taking of Lessee's equipment, fixtures or leasehold interest shall be the property of Lessee, and Lessor releases all claims thereto.
  
- 37. **Going Business** The Lessee hereby further covenants that a going business shall be conducted in the within leased premises throughout the full term of this lease.
  
- 38. **Agent's Subrogation** The Lessee further covenants as a part and consideration hereof with the Lessor for the Lessor's benefit and also for the benefit of \_\_\_\_\_ or any subsequent agent of the Lessor that all conditions, limitations and restrictions with reference to defects, repairs and liabilities of the Lessor or agreements with reference thereto shall apply with equal effect to \_\_\_\_\_ or its successors, as agents.
  
- 39. **Agency** This lease was negotiated by Rodger Motz, Pyramid Realtors, acting as Agent for the Lessor, and Lessor for itself and for its successors in title and assigns, agrees to pay \_\_\_\_\_, the following commission for services in negotiating this lease: Cash commission \$ \_\_\_\_\_ payable at commencement of lease; Deferred commission: \_\_\_\_\_ % of monthly rentals for balance of lease. On any renewal or extension of this lease covering the demised premises or any additional premises contiguous thereto, Lessor further agrees to pay to \_\_\_\_\_ a cash commission and/or deferred commission predicated upon length and rental of renewal or extension of this lease. If the demised premises are sold to Lessee or Lessee's successors or assigns ~~during the original or any extended or renewal term of this lease~~, Lessor agrees to pay to Pyramid Realtors a sales commission of 6 % of sales price.
  - \* Lessee has the option to purchase property on or before July 31, 1998 for three hundred five thousand dollars (\$305,000).
  - \* Lessee to pay all closing costs.
  - \* Taxes to be prorated the day of closing and the lease will become void.
  - \* Lessor to refund Lessee \$5,000.00 deposit from prior lease at the time of closing.
  - \* A late penalty of 10% shall be assessed if rent is received more than seven (7) days after due date.

This instrument contains all of the agreements and conditions made between the parties hereto, and no representations or statements claimed to have been made, not herein contained, shall vary or modify this agreement in any wise.

IN TESTIMONY WHEREOF, the above named Lessor and the above named Lessee have executed this and two other original instruments of identical tenor and date, on the day and year set forth in Clause 1 of this lease.

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

Part of Lots 1B and 1C, Revision of First Revision of Lot 1, Southview Commercial Park Subdivision, in Section 13, Township 1 South, Range 8 West, as per plat appearing of record in Plat Book 9, Page 50, in the Office of the Chancery Clerk of DeSoto County, Mississippi, being more particularly described as Beginning at the intersection of the North right of way of State Line Road and the West right of way of Southview Street, run thence North 1 degree 34' 13" East a distance of 250.00 feet along the said West right of way of Southview Street to a point; thence run North 89 degrees 07' 44" West a distance of 137.00 feet to a point; thence run South 1 degree 34' 13" West a distance of 250.00 feet to a point on the North right of way of said State Line Road; thence run South 89 degrees 07' 44" East along said North right of way of State Line Road a distance of 137.00 feet to the Point of Beginning.

STATE MS. - DESOTO CO.  
FILED

APR 13 3 20 PM '98

BK 77 PG 138  
W.E. DAVIS CH. CLK.