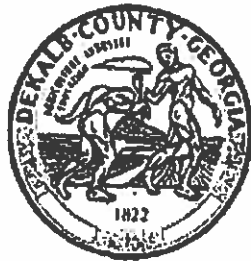


# Lease Agreement at DeKalb Peachtree Airport



**Between**

**DeKalb County, Georgia**

**and**

**BJS Plaza Fiesta, LLC**

DeKalb County Contract  
No. 17-903095

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**STATE OF GEORGIA  
COUNTY OF DEKALB**

**LEASE AGREEMENT**

THIS LEASE AGREEMENT, by and between **DEKALB COUNTY**, a political subdivision of the State of Georgia (hereinafter referred to as the "Lessor" or "PDK") and **BJS PLAZA FIESTA, LLC**, a limited liability company, organized and existing under the laws of the State of Delaware (hereinafter referred to as the "Lessee");

**WITNESSETH:**

**WHEREAS**, the Lessor is the owner of a tract of land in Land Lots 244, 245, 270, 279 and 280 of the 18<sup>th</sup> District of DeKalb County, Georgia, lying generally within an area bounded on the north by Chamblee-Tucker Road; on the west by Clairmont Road and Hardee Avenue; on the south by Dresden Drive; and on the east by Buford Highway, which is known as DeKalb Peachtree Airport (hereinafter referred to as "Airport"); and

**WHEREAS**, Lessee desires to lease from Lessor, and Lessor desires to lease to Lessee, that property on the DeKalb Peachtree Airport identified as a 4.93 acre parcel currently used as a parking lot at Plaza Fiesta Mall, 4206 Buford Hwy, Chamblee, Georgia 30345, and more particularly described by the legal description of Ground Lease Parcel prepared by Watts & Browning Engineers, Inc., Virgil T. Hammond, R.L.S. No. 2554, dated February 18, 1999, last revised July 20, 1999, which is hereby attached as Exhibit "A" and made a part of this Lease; and

**NOW THEREFORE**, for and in consideration of the premises and covenants herein contained and in further consideration of the payment of rent hereinafter stipulated, and of the terms and conditions herein set forth, the parties hereto do hereby agree as follows:

**SECTION 1. LEASED PROPERTY:**

A. Description. That property on DeKalb Peachtree Airport identified as a 4.93 acre parcel currently used as a parking lot at Plaza Fiesta Mall, and more particularly described by the legal description of Ground Lease Parcel prepared by Watts & Browning Engineers, Inc., Virgil T. Hammond, R.L.S. No. 2554, dated February 18, 1999, last revised July 20, 1999, attached hereto as Exhibit A and incorporated herein by reference (the "Leased

Property”);

B. Site. The subject site lies within the boundaries of the DeKalb Peachtree Airport (PDK) is a paved parking lot adjacent to the south of the Airport. The site generally encompasses 4.93 acres, or 214,894 square feet. The site is a parking lot in a community shopping center/mall and is not located within an area designated Restricted as defined in Section 6-42 of the DeKalb County Code, as revised 1988.

**SECTION 2. USE OF LEASED PROPERTY:**

A. Use by Lessee. Lessee shall, in a manner consistent with its present and past use, use the Leased Property for automobile parking purposes and no other. Leased Property includes the following Land: Approximately 4.93 acres (214,894 square feet) for paved parking lot.

B. Lessee shall not charge any fee for parking on said Leased Property.

C. Lessee accepts premises in their present condition and as suited for use intended by Lessee.

**SECTION 3. RESTRICTIONS ON USE OF LEASED PROPERTY:**

A. Leased Property to Be Used for Designated Purposes. The Leased Property shall not be used for any purposes except for the specific purposes herein designated without the written consent of the Lessor.

B. Control of Lighting. Lessee agrees to control all existing and future lighting on the Leased Property so as to prevent illumination from being a hazard to pilots landing on, taking off from, or taxiing on the Airport. The determination of whether lighting creates a hazard shall rest solely upon the judgment of the Airport Director.

C. Airport Master Plan. Lessee will at all times cooperate with all provisions of any Airport Master Plan to be adopted by the Airport and/or approved by the Board of Commissioners.

D. The Leased Property is subject to Runway Clear Zone requirements, in so far as applicable, pursuant to the rules and regulations of the Federal Aviation Administration (FAA).

**SECTION 4. TERM OF LEASE AGREEMENT:**

**Term.** The term of this Lease Agreement shall commence on February 1, 2018 and shall be for a period of twenty (20) years. This Lease Agreement shall terminate absolutely and without further obligation on the part of either Lessor or Lessee on January 31, 2038, unless renewed pursuant to Section B, Option for Renewal Term, or terminated earlier in accordance with the termination provisions of this Lease Agreement.

B. **Option for Renewal Term.** Lessee may renew this Lease Agreement in accordance with Section 6-136 of the DeKalb County Code as Revised, 1988. Failure to comply with Section 6-136 of the DeKalb County Code as Revised, 1988 shall be grounds to terminate this Lease Agreement and the parties shall have no further rights, duties or obligations hereunder, other than obligations that are accrued but unsatisfied as of the date of the termination.

**SECTION 5. LEASE PAYMENT:**

A. **Rent.** Lessee agrees to pay Lessor, as Basic Rent for the Leased Property an annual amount of Twenty-One Thousand Dollars (\$21,000.00). Rent is accrued on a monthly basis and shall be paid in equal monthly installments, in the amount of One Thousand, Seven Hundred and Fifty Dollars (\$1750.00) due and payable on the first day of each month in advance during the term of this Lease Agreement.

B. **Escalation.** The rent shall remain constant throughout the first five (5) years of the Lease Agreement. On February 1, 2023, and at the end of each five (5) year period, the following options for the Lessor shall be available to adjust the Basic Rent as of the Commencement of such five (5) year period, which basic rent shall then remain fixed for the entirety of such Five (5) year period. (1) Escalate the rent by eight percent (8%), or (2) Compute the Consumer Price Index (CPI) (All Urban Consumers, South Region) increase using the previous five (5) years of data, and if it is greater than eight percent (8%), divide the aggregate CPI figure by five (5) and increase the Basic Rent by this percentage rate.

C. **Audit.** The Lessor, at its sole discretion, but not more than once during any calendar year, may conduct an audit of the books and records as it relates to all lease payments made by the Lessee to determine the accuracy of said figures; the cost of the audit to be borne by Lessor.

D. **Failure to Pay.** On failure of Lessee to pay rentals when due, Lessor has



the right, subject to the provisions under Sections 17, 18, and 19 hereof, at its option: (1) to declare this Lease Agreement void, and cancel the same, without the necessity of any legal proceedings; or, (2) enter and take possession of the Leased Property. Lessor at its option, upon a breach of this contract for any reason, may then sublet the Leased Property at the best price obtainable for any reasonable effort through private negotiations and charge the difference, if any, between said price of subletting and the contract price to Lessee and hold him liable therefore. Such subletting on the part of the Lessor will not in any sense constitute a breach of this contract on the part of the Lessor, but Lessor will act as agent for the Lessee to minimize the damage caused by Lessee's breach. These rights of the Lessor are cumulative and not restrictive of any other rights under the law, and failure on the part of the Lessor to avail himself of these privileges at any particular time shall not constitute a waiver of these rights.

**SECTION 6. IMPROVEMENTS BY LESSEE:**

No improvements, including landscaping, shall be erected or placed on the Leased Property, and no alterations shall be made in the improvements and facilities constructed, without prior written approval by Lessor, or of the Lessor's agent, the Airport Director. Such approval shall not be unreasonably withheld.

Notwithstanding the foregoing, all existing paving, lighting, landscaping on the Lease Property as of the effective date of this lease are hereby approved by the Airport Director.

**SECTION 7. COMPLIANCE WITH LAWS AND REGULATIONS:**

A. Subordination of Leased Property to U.S.A. It is agreed and understood that this Lease Agreement and the provisions hereof, shall be subject and subordinated to the terms and conditions of the instruments and documents under which DeKalb County acquired the airport property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions of said instruments and documents. This lease agreement is given effect only to the extent that such agreements with the United States of America permit the use of the Leased Property as contemplated herein.

B. Non-Discrimination. Lessee agrees that in its operation and use of the Leased Property it will not, on the basis of race, color, national origin, religion, sex, age or disability, discriminate against any person or group of persons in any manner prohibited by the Federal Aviation Regulations, federal, state or local laws. Lessee hereby agrees to include the

aforesaid language in any agreement it has with a sub-tenant who operates from or uses the Leased Property (excluding tenants, customers and invitees of the shopping center located adjacent to the Leased Property).

C. Airport Rules and Regulations. Lessee agrees to abide by all ordinances, rules and regulations concerning the Airport, operational safety, operational and airport security, parking of vehicles, and fire prevention promulgated by the Airport Director or the Governing Authority of DeKalb County, Georgia to the extent the same apply to the Leased Property. Copies of such rules and ordinances are available to Lessee in the office of the Airport Director.

D. FAA Rules and Regulations. Lessee shall at all times conduct its business in a lawful manner and at all times conform to the rules and regulations of the Federal Aviation Administration (FAA) insofar as applicable to Lessee's use and possession of the Leased Property.

E. No Derogation of Rights of Lessee. Lessee shall not knowingly omit or fail to do anything or permit anything to be done on or about the Leased Property, or bring or keep any thing on the Leased Property or in any improvement erected thereon, which will in any way conflict with any law, ordinance, rule or regulation required to be kept and observed by Lessee which is now in force or which may be hereinafter enacted or promulgated by any public authority having jurisdiction over the Leased Property.

F. Disturbance on Leased Property. Lessee shall not commit or suffer to be committed in or upon the Leased Property any other act or thing which may unreasonably disturb the quiet use and enjoyment of any other tenant at the Airport.

#### **SECTION 8. UTILITIES:**

A. Payment for Utilities. It is understood and agreed that the rent as noted in Section 5, Lease Payment, does not include payment for utilities. Lessee shall throughout the term of this Lease Agreement pay all utility bills which may accrue in the operation of Lessee's use of the Leased Property, including, but not limited to, installation of meters and utility connections for the calculation of utilities incurred by Lessee.

B. Right of Connection. Lessee may, at Lessee's expense, connect to all utilities at the nearest points of existing utility lines, and shall thereafter maintain, repair and

replace all such utilities to and including the points of such connections.

C. Waiver of Damage. Lessee hereby waives any claim against and releases Lessor (but not any third parties, such as other lessees) from any and all claims for damage arising or resulting from failures or interruptions of utility services, including but not limited to, electricity, gas, water, plumbing, sewerage, telephone, communications, heat, ventilation, or for the failure or interruption of any public or passenger services facilities.

**SECTION 9. CHARACTER AND STANDARDS OF OPERATION:**

A. Compliance with Permit Standards. Lessee shall comply with federal, state and local law permit standards, for air and water quality applicable to Lessor which are applicable to the to the Leased Property.

B. Operate in a First-Class Manner. Reserved. See Section 12A, Maintenance of Improvements, below.

C. Supervision by Manager. The Lessee or its designee shall be available on the Property as required in order to ensure compliance with all responsibilities as set forth in this Lease.

**SECTION 10. LESSEE TO HOLD HARMLESS:**

The Lessee shall be responsible from the time of signing this Lease Agreement, or from the time of the beginning of the first work, whichever shall come first, for all injury or damage, of any kind resulting from the work, or the occupancy of the Leased Property, to any persons or property. The Lessee shall exonerate, indemnify and hold harmless the Lessor from and against all claims or actions, and all expenses incidental to the defense of any such claims, litigation and actions, based upon or arising out of damage or injury (including death) to persons or property, including employees and property of the Lessor caused by or sustained in connection with the performance of this Lease Agreement or arising out of work performed under this Lease Agreement and shall assume and pay for, without cost to the Lessor, the defense of any and all claims, litigation and actions, suffered through any act or omission of the Lessee or any subcontractor or anyone directly or indirectly employed by or under the supervision of any of them, or in any way arising out of the use and occupancy of the Leased Property. The Lessee expressly agrees to defend at its expense against any claims brought or actions filed against the

Lessor where and to the extent such claim or action involves, in whole or in part, the subject of the indemnity contained herein.

**SECTION 11. LIABILITY:**

A. Indemnification. Lessee hereby waives and renounces for himself and family any and all homestead and exemption rights he or they may have under or by virtue of the laws of the State of Georgia or the United States as against any liability that may accrue under this Lease Agreement.

B. Abandonment. Lessee shall not vacate or abandon the Leased Property at any time during the term hereof; and if Lessee shall abandon, vacate or surrender the Leased Property or be dispossessed by operation of law or otherwise, any personal property belonging to Lessee and left upon the Leased Property and any or all of Lessee's improvements thereon shall, at the option of the Lessor, be deemed to be abandoned by Lessee and shall, at the option of the Lessor, become the property of Lessor or may be discarded, at the expense of Lessee, with no liability to Lessor therefore.

C. Liens. Lessee shall keep the Leased Property and all improvements thereon free from any and all liens and encumbrances arising out of any work performed, materials furnished or obligation incurred by Lessee, Lessee's employees, agents or contractors. Lessee agrees to indemnify and to save Lessor harmless from any such liens and to pay to Lessor, upon demand, the cost of discharging such liens with interest at the rate of ten-percent (10%) per annum from the date of such discharge, together with reasonable attorneys' fees in connection with the settlement, trial or appeal of any such lien matter.

D. Bankruptcy. In the event that bankruptcy or state insolvency or receivership proceedings shall be filed and sustained for a period of greater than ninety (90) days against Lessee, its heirs, executors, administrators, successors or assigns, in any Federal or State Court, it shall give the right to Lessor, at its option, to immediately declare this contract null and void, and to at once resume possession of the Leased Property and improvements thereon. No Receiver, Trustee or other judicial officer shall ever have any right, title or interest in or to the Leased Property by virtue of this Lease Agreement.

E. Tenant at Will. If Lessee remains in possession of Leased Property after

expiration of the terms hereof, with Lessor's acquiescence and without any express agreement of the parties, Lessee shall become a tenant at will at the rental rate in effect at the end of the term of this Lease Agreement; and Lessee shall be bound by the terms and conditions of this Lease Agreement as far as applicable; and there shall then be no renewal of this Lease Agreement by operation of law.

**SECTION 12. DAMAGE, DESTRUCTION OR CONDEMNATION OF LEASED PROPERTY:**

If the Leased Property or improvements thereon are destroyed by fire or any other cause, or substantially damaged as to be unusable, Lessee shall have the option to either (a) terminate this Lease Agreement upon payment to Lessor of an amount equal to 1/20<sup>th</sup> of the insurance proceeds multiplied by the number of years the Lessee has been in possession under this Lease Agreement, which payment shall be made from the proceeds of insurance received by the Lessee and not from other assets of the Lessee; or (b) to restore as expeditiously as possible, using insurance proceeds therefore and to treat this Lease Agreement as continuing in effect. Lessee shall notify Lessor in writing of which alternative it elects within ninety (90) days after date of determination of the amount of insurance proceeds owed to Lessor.

In the event that a part of the Leased property is damaged by fire or other cause, this Lease Agreement shall be treated as continuing in effect, and Lessee shall restore and/or repair as expeditiously as possible, and, so long as Lessee is, in good faith, taking the action required to restore and/or repair such portion of the Leased Property as required herein, rent shall be reduced pro rata, based on the square footage of the affected Leased Property until such portion of the Leased Property is rebuilt and/or repaired, such that it may be occupied safely and used for its intended purpose by Lessee.

A. Maintenance of Improvements. Lessee shall, throughout the term of this Lease Agreement, at its own cost, and without any expense to Lessor, keep and maintain the Leased Property, including buildings and improvements of every kind which may be a part thereof, and all appurtenances thereto, including sidewalks adjacent thereto, in good, sanitary and neat order, condition and repair, and, except as specifically provided herein, restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty or any other cause whatsoever. Lessor shall not be obligated to make any repairs, replacements

or renewals of any kind, nature, or description, whatsoever to the demised Leased Property or any buildings or improvements thereon.

B. Condemnation.

1. Total Condemnation. In the event of a total condemnation, or any taking by eminent domain, by any governmental entity of the Leased Property, Lessor and Lessee shall have no interest in the award to the other, it being the intent of this Lease Agreement that each shall negotiate and litigate according to their separate interests, and this Lease Agreement shall terminate on the date of initiation of action taken by such governmental entity.

2. Partial Taking. In the event of the condemnation, or taking by eminent domain of a portion of the Leased Property, if the remainder of the leasehold is in an economically viable operating unit, as agreed by Lessor and Lessee, rental payments shall abate according to the ratio of square footage so taken. Condemnation award for the taking of any structure on the Leased Property shall be divided between Lessee and Lessor on the basis that Lessor shall receive an amount equal to the award divided by 20 and multiplied by the number of years remaining under this Lease Agreement.

If the remaining property is not an economically viable unit, as agreed by Lessor and Lessee, it shall be treated as a total condemnation as set forth in Subparagraph 1, Total Condemnation, above.

3. Temporary Taking. Should any portion of the Leased Property be condemned for any period, Lessor shall have no interest in such condemnation award, and the same shall go to Lessee, and the rent shall not abate to the extent that the award is equal to or in excess of the rent amount relating to such condemned portion of the Leased Property.

**SECTION 13. LIABILITY INSURANCE:**

A. Comprehensive General Liability. Lessee shall maintain in force and effect at all times during the term of this Lease Agreement comprehensive general liability insurance coverage, for terms and conditions deemed appropriate by the Lessee to protect its interests, with a minimum \$1,000,000, per occurrence limit. Comprehensive Liability coverage for Lessee's subcontractors, if any, shall be obtained by Lessee with a \$1,000,000 policy limit.

Contractor to name DeKalb County as Additional Insured including Completed Operations. Policy to be primary with Waiver of Subrogation.

B. Comprehensive Automobile Liability. Lessee shall maintain in force and effect at all times during the term of this Lease Agreement comprehensive automobile liability coverage for any vehicles used by Lessee on the Airport. Coverage shall be provided with a minimum limit of \$1,000,000 combined single limit and shall cover all owned, non-owned, and hired vehicles.

C. Workers' Compensation Liability. Lessee shall, if required by State of Georgia Law, maintain in force during the term of this Lease Agreement, statutory workers' compensation insurance coverage.

D. Policies. All Liability Insurance policies required under Section 13 hereof shall name Lessor as additional insured under such policy or policies of insurance. A Minimum standard of acceptability of a carrier should be an A.M. Best's rating of A-VI. Lessee shall pay the premiums for such policies in a timely manner.

E. Certificate of Coverage. Lessee shall furnish to the Airport Director within thirty (30) days after execution of this Lease Agreement, or prior to the initiation of any construction or development on the Leased Property, which ever shall first occur, a certificate or certificates evidencing such insurance coverage with companies doing business in Georgia and acceptable to Lessor covering:

- i. The coverage and policy limits contained herein.
- ii. The location and the operation to which the insurance applies.
- iii. The expiration date of the policy(ies).
- iv. The name and address of the party to whom the certificates should be issued:

DeKalb County, Georgia  
DeKalb Peachtree Airport  
2000 Airport Road  
Suite 212, Administration Building  
Atlanta, Georgia, 30341  
Attention: Airport Director

- v. If such coverage is canceled, reduced, or materially changed, Lessee shall, within fifteen (15) days of such event, notify the Airport Director of such cancellation, reduction, or material

change of coverage and file with said Airport Director a certificate showing that the required insurance has been reinstated or is being provided through another insurance company or companies.

- vi. Prior to ten (10) days before the expiration of any such certificate, Lessee shall deliver to the Airport Director a certificate renewing or extending the terms for a period of at least one (1) year, or a replacement certificate acceptable to Lessor evidencing the required insurance coverage.

#### **SECTION 14. INSPECTION OF LEASED PROPERTY:**

A. Inspection of Leased Property: With twenty-four (24) hours notice to Lessee, Lessor or its duly authorized representatives may enter upon the Leased Property at any and all reasonable times during the term of this Lease Agreement for the purpose of determining whether or not Lessee is in compliance with the terms and conditions hereof or for any other purpose incidental to the rights of Lessor.

B. Inspection Report: Reserved.

#### **SECTION 15. TITLE:**

A. Newly Constructed Buildings and/or Replacement Structures: During the term of this Lease Agreement and upon completion of any improvements, title to any and all newly constructed buildings, i.e. new and/or replacement structures placed on the Leased Property by Lessee shall remain in Lessee. Consequently, the Lessee shall be responsible for paying any and all property taxes and the like on these newly constructed buildings and/or replacement structures through the entire period of the Lease.

B. Existing Property and Structures: Title to all existing structures and facilities reverted to the ownership of the County on June 30, 2017. Hence, no payment of property taxes on County/Airport property and existing facilities are due or required at any time beginning July 1, 2017 exclusive of newly constructed buildings and/or replacement structures outlined above. However, final determination of property taxes due remains with the Tax Commissioner, DeKalb County.



C. Reversion of Title: Title to any and all new improvements (including newly constructed buildings and/or replacement structures) on the Leased Property shall revert to the ownership of Lessor at the termination of this Lease Agreement.

**SECTION 16. TAXES:**

During the term of the Lease Agreement, Lessee shall pay or cause to be paid, prior to delinquency, all taxes, including possessory interest taxes, ad valorem taxes, and any other assessments levied or assessed:

- (a) On the Leased Property;
- (b) On all possessory interests hereunder or in the Leased Property;
- (c) On any improvements, fixtures and equipment now or hereafter existing on the Leased Property and on any personal property situated in, on or about the Leased Property, or in, on or about any buildings or improvements thereon. Lessee shall obtain and deliver receipts or duplicate receipts for all taxes, assessments, and other items required hereunder to be paid by Lessee, promptly on payment thereof, if so required by Lessor, and;

It is understood, however, that Lessee may pay any such taxes and assessments under protest, and without liability, cost or expense to Lessor, and may in good faith contest the validity or amount thereof.

**SECTION 17. EVENTS OF DEFAULT BY LESSEE:**

Each of the following events shall constitute an "event of default by Lessee", provided, however, that Lessee shall have thirty (30) days, (except in the case of Subparagraph (a) below, ten (10) days) after the receipt of written notice from Lessor of any such "event of default by Lessee" to cure.

- (a) Lessee's failure to pay the rent and other fees herein provided at the time fixed for payment thereof.
- (b) Lessee's failure to pay any taxes, including possessory interest taxes or assessments, agreed to be paid by Lessee in Section 18, Results of Lessee's Defaults, of this Lease Agreement in accordance with the terms of said Section. If the nature of any default by Lessee under this Subparagraph (b) is such that it cannot be cured within the thirty (30) day cure period provided above, Lessee shall be deemed to have cured such default if it shall, within such thirty (30) day period, commence performance and thereafter diligently prosecute the same to completion.
- (c) Lessee's failure to keep, perform or observe any term, covenant, or

condition of this Lease Agreement to be kept, performed, or observed by Lessee.

- (d) Lessee's filing of a voluntary petition in bankruptcy or the assignment of all or substantially all of Lessee's assets for the benefit of Lessee's creditors or the institution of proceedings in bankruptcy against Lessee or the appointment of a receiver of the assets of Lessee; provided, however, that if any such proceedings or appointments are involuntary, then they shall not be considered an event of default by Lessee unless Lessee fails to procure a dismissal thereof within ninety (90) days after the institution of such involuntary bankruptcy proceedings or the appointment of such receiver.

#### **SECTION 18. RESULTS OF LESSEE'S DEFAULT:**

Upon the occurrence of an "event of default by Lessee", which is not cured within the time period given, Lessor, in addition to any other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Leased Property with no liability to the Lessor therefore; such property may be removed and stored in a public warehouse or elsewhere at the expense of Lessee. Should Lessor elect to re-enter, as herein provided, or should it take possession pursuant to legal proceedings or pursuant to any notice required by law, it may either terminate this Lease, or relet the Leased Property and any improvements thereon or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease Agreement) and at such rental or rentals and upon such other terms and conditions as Lessor in its sole discretion may deem advisable, with the right to make alterations and repairs to improvements on the Leased Property. Upon such reletting:

- (a) Lessee shall be immediately liable to pay to Lessor, any indebtedness for the cost and expenses of such reletting and of such alterations and repairs incurred by Lessor, and the amounts, if any, by which the rent reserved in this Lease Agreement for the period of such reletting (up to but not beyond the term of this Lease Agreement) is less than the amount agreed to be paid as rent for the Leased Property for the period of such reletting, or
- (b) At the option of the Lessor, rents received by Lessor from such re-letting 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 costs and expenses of such re-letting and of such alterations and repairs; third, to the payment of rent due and unpaid hereunder, and the balance, if any, shall be held by Lessor and applied in payment to future rent as the same

may become due and payable hereunder.

If Lessee has been credited with any rent to be received by such reletting under option (a) and such rent shall not be promptly paid to Lessor by the new tenant, or if such rentals received from such reletting under option (b) during any month be less than that to be paid during that month by Lessee hereunder, Lessee shall immediately pay any such deficiency to Lessor. Such deficiency shall be calculated and paid monthly by Lessee. No such re-entry or taking possession of the Leased Property and any improvements thereon by Lessor shall be construed as an election on its part to terminate this Lease Agreement unless a written notice of such intention is given to Lessee. Notwithstanding any such reletting without termination, Lessor may, at any time thereafter, elect to terminate this Lease Agreement for any breach, in addition to any other remedy it may have, and in such event, Lessee's interest in any and all buildings and improvements on the Leased Property shall, at the option of the Lessor, automatically pass to Lessor; and Lessor may recover from Lessee all damages it may incur by reason of such breach, including the cost of recovering the Leased Property, 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 unpaid in this Lease Agreement for the remainder of the stated term, all of which amounts shall be immediately due and payable from Lessee to Lessor.

**SECTION 19. NON-WAIVER OF DEFAULTS:**

The waiver by Lessor or Lessee of any breach by Lessor or Lessee of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of same or any other term, covenant or condition of this Lease Agreement. No term, covenant, or condition hereof can be waived except by written consent of Lessor; and forbearance or indulgence by Lessor, in any regard whatsoever, shall not constitute a waiver of the term, covenant or condition to be performed by Lessee to which the same may apply; and until complete performance by Lessee of the term, covenant or condition, Lessor shall be entitled to invoke any remedy available to it hereunder by law, despite such forbearance or indulgence.

**SECTION 20. LESSEE'S ENCUMBRANCES:**

A. Obligation. Lessee shall not encumber, mortgage or pledge or allow any lien upon Lessee's interest in the Leased Property or in any improvements Lessee places thereon by mortgage, deed of trust or other instrument without the prior written consent of Lessor, except

in connection with any financing for the adjacent shopping center. Any such mortgage, deed of trust or other instrument consented to by Lessor shall expressly provide therein that the trustee, mortgagee, or beneficiary in such instrument or payee in the note or other obligation secured by any such instrument shall provide Lessor with written notice of any event of default by Lessee or foreclosure action against Lessee, within ten (10) days of such event. In the event such encumbrance, pledge, mortgage, or lien is allowed, the trustee, mortgagee or beneficiary in said instrument or payee in the note or other obligation secured by any such instrument may deliver to Lessor written notice showing:

- (i) the amount of the obligation secured by such instrument and the date of maturity or maturities thereof; and
- (ii) the name and post office address of such mortgagee, beneficiary, payee, or trustee. Upon delivery of such notice to Lessor, Lessor shall thereafter serve on such mortgagee, beneficiary, payee or trustee, by registered or certified mail at the address given or at any subsequent address thereafter given, a copy of every notice thereafter served by Lessor upon Lessee under the terms of this Lease, during the existence of such mortgage, deed of trust, or instrument.

B. Cure of Default by Mortgagee. In the event that Lessee defaults in the performance of any covenant or provision of this Lease Agreement to be performed by Lessee during the existence of any such mortgage, lien, deed of trust, or other instrument, the beneficiary, mortgagee, payee, or trustee named in any such notice, or their nominee, shall have the right, within the time herein provided, plus an additional ten (10) days, to perform and comply with all the covenants and provisions of this Lease to be performed by Lessee and to make all payments required of Lessee by this Lease and, by so doing, to cure and remove any such default.

C. Cure by Commencement of Performance. If the nature of any default by Lessee is such that it cannot be cured within the additional ten (10) days, such beneficiary, mortgagee, payee, or trustee shall be deemed to have cured such default if it or its nominee shall, within such ten (10) day period, commence performance and thereafter diligently prosecute the same to completion.

D. Foreclosure of Liens. If, at any time, foreclosure proceedings are begun to

any lien secured by any mortgage, deed of trust, or other similar instrument on the Leased Property, for a period of thirty (30) calendar days from the date Lessor receives notice of such foreclosure, Lessor shall have the first option of assuming or discharging said lien at its actual face value, according to the terms thereof, and thereupon to then terminate this Lease Agreement and all interest in it and relet the Leased Property under the provisions of Section 22, Non-Waiver of Defaults, hereof.

E. Non-Relief of Liability. The execution of any encumbrance under this Section, or the foreclosure thereof, or any sale thereunder, either by judicial proceeding or by virtue of any power reserved in such encumbrance, or conveyance by Lessee to the holder of such indebtedness or encumbrance or the exercising of any right, power, or privilege reserved in any encumbrance, shall not be held as a violation of any of the terms or conditions hereof, or as an assumption by the holder of such indebtedness personally of the obligations hereof. No such encumbrance, foreclosure, conveyance, or exercise of right shall relieve Lessee from its liability hereunder.

#### **SECTION 21. TERMINATION BY LESSEE:**

The Lessee may cancel this Lease Agreement at any time, without penalty, if the Airport ceases to be used for airport purposes pursuant to local/County/State/Federal/or FAA regulations or laws.

#### **SECTION 22. RIGHTS PRIOR TO TERMINATION:**

If Lessee is not in default hereunder, Lessee shall have the right to remove during the term hereof any and all fixtures which Lessee may have placed or installed upon the Leased Property; provided, however, that upon said removal, Lessee shall repair, at Lessee's own expense, any damage resulting therefrom and leave the Leased Property in their original condition, normal wear and tear excepted.

#### **SECTION 23. REDELIVERY OF LEASED PROPERTY:**

Lessee shall, upon termination of this Lease in any manner, quit and deliver up the Leased Property to Lessor peaceably, quietly, and in as good order and condition as the same now are or may be hereafter improved by Lessee or Lessor, reasonable wear and tear thereof excepted.

**SECTION 24. LESSOR'S LIEN:**

If Lessee is in default under any covenant, term or provision of this Lease Agreement or has abandoned the Leased Property, in addition to the rights of Lessor under Section 11, Liability, hereof, Lessee hereby grants to Lessor a lien upon any improvements, personal property and trade fixtures of Lessee upon the Leased Property, which lien Lessor may satisfy by selling said improvements, personal property or trade fixtures at public or private sale without notice to Lessee and from the proceeds of said sale satisfy first any costs of storage, removal and sale, and any other debts due from Lessee to Lessor; and secondly, satisfy the total amount of unpaid rent due hereunder and hold any balance for the account of Lessee. This lien shall inure to Lessor's benefit whenever Lessee is in default hereunder and when Lessor exercises any right, which Lessor may have at law, in equity or under this Lease Agreement.

**SECTION 25. QUIET ENJOYMENT:**

Lessee, upon payment of the fees and all other payments and charges to be paid by Lessee under the terms of this Lease Agreement and upon observing and keeping the agreements and each of the covenants of this Lease Agreement on the part of Lessee to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Leased Property during the term of this Lease for the purposes and uses set out herein. Lessee covenants that it will not commit or allow to be committed by any other sub-tenant, any act on the Leased Property which may disturb the quiet enjoyment of any other adjoining tenants.

**SECTION 26. SALE, ASSIGNMENT, TRANSFER AND SUBLETTING:**

Lessee shall not, except as security as provided in Section 20, Lessee's Encumbrances, hereof, sell, assign, or transfer this Lease Agreement without the prior written consent of the Lessor. Lessee shall not sublease the Leased Property or any portion thereof, nor shall Lessee sublet any privileges granted with respect to the operation of said Leased Property or any portion thereof, without the prior written consent of the Lessor (but nothing herein shall limit Lessee's right, without Lessor consent, to allow Lessee to permit its tenants licenses, customers and invitees of the shopping center to use the parking on the Leased Property as long as it is in compliance with the terms of this Lease Agreement.) Lessee may also provide equipment storage space and/or office space to any such sublessee without Lessor's prior written consent.

No assignee for the benefit of Lessee's creditors, and any trustee, receiver, or referee in bankruptcy shall acquire any rights under this Lease by virtue of this paragraph.

**SECTION 27. WAIVERS:**

Any waiver by Lessor or Lessee at any time of any of the terms, conditions, covenants or agreements of this Lease Agreement, or non-compliance therewith, shall not be deemed or taken as a future waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof required by Lessee. No delay, failure or omission of Lessor to re-enter the Leased Property or to exercise any right, power, privilege or option arising from any default, nor the subsequent acceptance of fees then or thereafter accrued, shall impair any future right, power, privilege or option, nor shall it be construed to be a waiver of any such default or acquiescence therein. No notice by Lessor shall be given to Lessee to restore or revive any "time is of the essence" clause after any waiver by Lessor. No option, right, power, remedy or privilege of Lessor shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to Lessor by this Lease Agreement are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law, and that the exercise of one right, power, option or remedy by Lessor shall not impair its right to any other right, power, option or remedy.

**SECTION 28. PUBLIC USE AND FEDERAL GRANTS:**

A. Grant Agreements. The Leased Property and the Airport are subject to the terms of those certain sponsors' assurances made to guarantee the public use of the Airport as incidental to grant agreements between Lessor and the United States of America, as amended ("Sponsor's Assurance Agreement"), and Lessor represents that none of the provisions of this Lease Agreement violate any of the provisions of the Sponsor's Assurance Agreement.

B. Non-Exclusive Rights. Nothing contained in this Lease Agreement shall be construed to grant or authorize the granting of an exclusive right within the meaning of 49 USC Section 40103(e) (formerly, Section 308 of the Federal Aviation Act of 1958).

C. Right to Develop Airport. Lessor reserves the right to further develop or improve the Airport and all roadways, parking areas, terminal facilities, landing areas, and

taxiways as it may see fit, regardless of the desires or views of the Lessee.

D. Subordination of Lease. This Lease Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States of America, its Boards, Agencies, or Commissions relative to the operation or maintenance of the Airport.

E. Right to Amend. In the event that the Federal Aviation Administration or its successors shall require any modifications or changes in this Lease Agreement as a condition precedent to the granting of funds for the improvement of the Airport, Lessee hereby consents to such amendments, modifications, revisions, supplements, or deletions of any of the terms, conditions or requirements of this Lease Agreement as may reasonably be required to obtain such funds; provided, however, that in no event will Lessee be required, pursuant to this paragraph, to accept an increase in fees or rent provided for hereunder or accept a change in the use of, accept a reduction in the size of the Leased Property, or to accept any change which would adversely affect the rights of any mortgagee, beneficiary, payee or trustee registered with Lessor as provided in Section 20, Lessee's Encumbrances.

**SECTION 29. CONSENT NOT TO BE UNREASONABLY WITHHELD:**

Whenever consent or approval is required hereunder by either party, such consent is not to be unreasonably withheld, nor to be delayed for any unreasonable period of time.

**SECTION 30. PREVENTION OF TRESPASS:**

Reserved.

**SECTION 31. SIGNS AND ADVERTISING:**

Lessee is granted the right to install identification signs on and about the Leased Property, subject to the Airport's prior written approval with regard to the size, design, text and location of such sign and the approval of applicable local government authority. Those signs currently erected on the property are exempt from this requirement.

**SECTION 32. RELATIONSHIP BETWEEN THE PARTIES:**

Lessor is neither a joint venture with, nor a partner or associate of the Lessee with respect to any matter provided for in this Lease Agreement. Nothing herein contained shall be construed to create any such relationship between the parties other than that of Lessor and Lessee or to



subject Lessor to any obligation of the Lessee whatsoever.

**SECTION 33. TIME OF THE ESSENCE:**

Time is of the essence in this Lease Agreement.

**SECTION 34. LEASE MADE IN GEORGIA:**

This Lease Agreement has been made in and shall be construed in accordance with the laws of the State of Georgia.

**SECTION 35. HEADINGS:**

The headings contained herein, including the Title Page and the Table of Contents, are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease Agreement.

**SECTION 36. NOTICES:**

All notices to be given hereunder shall be in writing and shall be deemed given when deposited in the United States mail, postage prepaid, certified, and addressed as follows (or at such other address as from time to time may be designated by either party by written notice to other party):

- (a) **LESSOR:**  
DeKalb County, Georgia  
The Maloof Center  
1300 Commerce Drive  
Decatur, Georgia 30030
- With a copy to: Airport Director,  
DeKalb County, Georgia  
DeKalb Peachtree Airport  
212 Administration Building  
2000 Airport Road  
Atlanta, Georgia 30341
- LESSEE:**  
BJS Plaza Fiesta, LLC  
4166 Buford Highway  
Atlanta, Georgia 30345  
Attention: Mall Manager
- With a Copy to:  
BJS Plaza Fiesta, LLC  
c/o Sarofim Realty Advisors Co.  
8115 Preston Road, Suite 400  
Dallas, Texas 75225  
Attention: Asset Manager, Plaza Fiesta

**SECTION 37. SURRENDER AND MERGER:**

The voluntary or other surrender or termination of this Lease Agreement by Lessee, or a

mutual cancellation thereof, shall not work as a merger, and shall, at the option of Lessor, terminate all or any existing subleases, or subtenancies, or may, at the option of Lessor, operate as an assignment to Lessor of any or all such subleases or subtenancies.

**SECTION 38. SUCCESSORS AND ASSIGNS:**

Subject to the terms and conditions of Section 26, Sale, Assignment, Transfer, and Subletting, hereof, the provisions of this Lease Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.

**SECTION 39. PERMITS AND LICENSES:**

All necessary permits, licenses, or permissions from the Airport Director shall be obtained in writing, and shall not be valid or binding upon any person unless and until said writing is obtained.

**SECTION 40. AIRPORT DIRECTOR:**

The Lessor, through an Airport Director shall have the exclusive right and responsibility during the term of this Lease Agreement of managing and operating said Airport for civilian flying adjacent to the Leased Property, including the promulgating of such rules and regulations, including traffic rules, so that said Airport may be operated safely, efficiently and to the further end that all take offs, landings, taxiing and flying in the immediate vicinity of the field shall be performed with maximum safety.

**SECTION 41. TRASH AND REFUSE:**

A. Removal and Disposal. It is hereby agreed that the quick and efficient removal and disposal of trash, clippings, refuse, garbage and other debris from the Leased Property is essential, and Lessee shall arrange for such removal and disposal of trash, clippings, refuse, garbage and other debris from the Leased Property at Lessee's own expense in accordance with all applicable laws and ordinances.

B. Storage. Trash, clippings, refuse, garbage and other debris shall be stored in closed containers suitably screened and protected from public view, pending their removal and disposal, and such storage shall at no time, be allowed to generate odors, attract rodents or insects, or become offensive in any manner. The containers shall have paved access for the service providing their removal and disposal. The storage area shall be kept neat and clean at all

times.

C. Waste Products. Lessee shall not cause the entrance from the Leased Property of quantities of petroleum products and other harmful wastes in excess of amounts permitted by applicable laws and regulations in the sewerage and storm water drainage systems serving the County, and shall treat the same in accordance and in full compliance with all applicable local, State and Federal laws and regulations.

**SECTION 42. LATE PAYMENT CHARGE:**

Lessee agrees to pay a penalty charge to Lessor in an amount equal to five percent (5%) of each monthly payment not received by Lessor within ten (10) days of date of which payment is due.

**SECTION 43. VENUE:**

This Lease Agreement has been executed and is to be wholly performed in DeKalb County, Georgia, and for the purposes of venue, all suits or causes of action arising out of this Lease Agreement shall be brought in the courts of DeKalb County, Georgia.

**SECTION 44. AMENDMENT OF LEASE AGREEMENT:**

All duties, obligations, and liability of Lessor and Lessee may only be amended in writing. No amendment or modification of this agreement shall be enforceable unless in writing and approved by action of the Board of Commissioners of DeKalb County.”

**SECTION 45. POSSESSION OF LEASED PROPERTY:**

Possession and title to all Leased Property including all capital improvements and facilities shall be vested in Lessor and is deemed to begin on the start date of this Lease, February 1, 2018. From this date forward throughout the term of the agreement, the Lease Agreement is considered to be a “triple-net” lease whereas the Lessee is responsible for the all maintenance, routine and/or emergency, of all facilities and capital improvements, maintenance of insurance, regular and unscheduled / unforeseen / emergency maintenance on any part of the facility, capital improvements, ramps, parking areas, access control gates, etc.

**SECTION 46. ENVIRONMENTAL LAWS:**

Environmental laws means all laws relating to environmental matters, including without

limitation, those relating to fines, orders, injunctions, penalties damages, contribution, cost recovery compensation, losses, or injuries resulting from the release or threatened release of Hazardous Materials and to the generation, use, storage, transportation, or disposal of Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Clean Air Act (41 U.S.C. § 7401 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.) , the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the Emergency Planning and Community Right-to-Know Act (42U.S.C. § 11001 et seq.), the Georgia Underground Storage Tank Act (O.C.G.A. § 12-13-1 et seq.), Georgia Water Quality Control Act, (Georgia Laws 1964, p.416, as amended), each as heretofore and hereafter amended or supplemented, and any analogous future or present local, state, or Federal statutes, rules and regulations promulgated thereunder or pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive regulating, relating to or imposing liability standards of conduct concerning any Hazardous Material by the Federal government, any government, any state or any political subdivision thereof, exercising executive, legislative judicial, regulatory or administrative functions.

**SECTION 47. STORM WATER COMPLIANCE:**

(A) Acknowledgements.

(1) Notwithstanding any other provisions or terms of this Lease Agreement, Lessee acknowledges that the Airport is subject to Federal Storm Water regulations 40 C.F.R. Part 122, for vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations and/or deicing operations that occur at the Airport as defined in these regulations and in the Georgia Water Quality Control Act, Georgia Laws 1964, page 416, as amended. Lessee further acknowledges that it is familiar with these Storm Water regulations; that it may conduct or operate "vehicle maintenance" (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations and/or deicing activities as defined in the Federal

and state Storm Water regulations if the Lessee submits a Notice of Intent (NOI) to EPD and participates in Storm Water Pollution Plan (SWPPP) coordination with DeKalb Peachtree Airport; and that it is aware that there are significant penalties for submitting false information, including fines and imprisonment for knowing violations.

(2) Notwithstanding any other provisions or terms of this Lease Agreement, Lessee acknowledges that it will obtain coverage under the NPDES General Permit GAR050000 by filing a NOI with EPD before conducting industrial activities at DeKalb Peachtree Airport as required by the applicable regulations for the Airport, including the Property occupied or operated by the Lessee. Lessee acknowledges that the Storm Water discharge permit issued to the Airport may name the Lessee as a co-permittee. If no industrial activities are being performed by the Lessee, then applying for NOI coverage and implementing Stormwater BMPs may not be necessary. However, if at any time industrial activities are performed on the property, coverage shall be obtained at that time. If Airport downstream sampling shows issues with pollutants in Stormwater from Lessee, Lessor shall inspect site and Lessee shall implement necessary BMPs to comply with the Permit and other applicable local, state and federal regulations.

(3) Notwithstanding any other provisions or terms of this Lease Agreement, including the Lessee's right to quiet enjoyment, Lessor and Lessee both acknowledge that close cooperation is necessary to ensure compliance with any Storm Water discharge permit terms and conditions, as well as to ensure safety and to minimize costs. Lessee acknowledges that, as discussed more fully below, it will minimize the pollution potential of storm water by implementing and maintaining the "Best Management Practices" listed in the DeKalb Peachtree Airport Storm Water Pollution Prevention Plan.

(4) Lessee acknowledges that the Airport's Storm Water discharge permit is incorporated by reference into this Lease and made a part hereof.

(5) Lessee acknowledges that DeKalb County and the Airport will pass all storm water fees as related to the Leased Property to the Lessee.

(B) Permit Compliance.

(1) When industrial activities are being performed by the Lessee, the

Lessor will provide Lessee with written notice of those Storm Water discharge permit requirements, that are in the Airport's Storm Water permit, that Lessee will be obligated to perform from time to time, including, but not limited to: certification of non-Storm Water discharges; submission of a NOI to EPD, coordination with Lessor in ensuring SWPPP adequately (to the extent mandated by Federal and state law) and perpetually encompasses all industrial activities conducted by the Lessee at DeKalb Peachtree Airport; implementation of Storm Water pollution prevention or similar plans; implementation of Best Management Practices and maintenance of necessary records. Such written notice shall include applicable deadlines. Lessee, within fifteen (15) days of receipt of such written notice, shall notify Lessor in writing if it disputes any of the Storm Water discharge permit requirements it is being directed to undertake. If Lessee does not provide such timely notice, it is deemed assent to undertake such requirements. If Lessee provides Lessor with timely written notice that it disputes such Storm Water discharge permit requirements, Lessor and Lessee agree to negotiate a prompt resolution of their differences. Lessee warrants that it will not object to written notice from the Lessor for purposes of delay or avoiding compliance.

(2) Lessee agrees to undertake, at its sole expense unless otherwise agreed to in writing between Lessor and Lessee, those Storm Water discharge permit requirements for which it has received written notice from the Lessor. Lessee warrants that it shall meet any and all deadlines that may be imposed on or agreed to by Lessor and Lessee.

(3) Lessor agrees to provide Lessee, at its request, with any non-privileged information collected and submitted to any governmental entity(ies) pursuant to applicable Storm Water regulations.

(4) Lessee agrees that the terms and conditions of the Airport's Storm Water discharge permit may change from time to time and hereby appoints Lessor as its agent to negotiate with the appropriate governmental entity(ies) any such permit modifications.

(5) Lessor will give Lessee written notice of any breach by Lessee of the Airport's Storm Water discharge permit or the provisions of this section. If such breach is material, and, if of a continuing nature, Lessor may seek to terminate the lease pursuant to the terms of this Lease Agreement. Lessee agrees to cure promptly any breach.

(6) Lessee agrees to participate on the Airport's Pollution Prevention

Team established to coordinate Storm Water activities at the Airport.

(C) Indemnification.

(1) Notwithstanding any other provisions of this Lease, Lessee agrees to indemnify and hold harmless Lessor for any and all claims, demands, costs (including attorneys fees), fees, fines, penalties, charges and demands by and liability directly or indirectly arising from Lessee's actions or omissions, including failure to comply with Lessee's obligations under this Section, the applicable Storm Water regulations, and Storm Water discharge permit, unless the result of Lessor's sole negligence. This indemnification shall survive any terminations or non-renewal of this Lease.

(D) Definitions.

(1) **Storm Water** means: storm water runoff, snow melt runoff, and surface runoff and drainage.

(2) **Storm Water discharge associated with industrial activity** means the discharge from any conveyance which is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in Appendix D of the 2017 Industrial General Permit, the term includes, but is not limited to, stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from

the excluded areas is not mixed with stormwater drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State or municipally owned or operated that meet the description of the facilities listed in Appendix D of 2017 Industrial General Permit) include those facilities designated under 40 CFR 122.26(b)(14)(i)-(ix) and (xi). See Appendix D of 2017 Industrial General Permit for categories of facilities considered to be engaging in "industrial activity" for purposes of this permit.

(3) **Significant Materials** means: raw materials; fuels; materials such as solvents, detergents and plastic pellets; finished materials such as metallic products, raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have a potential to be released with Storm Water discharges.

(4) **Best Management Practices (BMP)** means: schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State of Georgia. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**SECTION 48. SEVERABILITY:**

In the event any provision of this Lease Agreement is held to be unenforceable for any reason, the remainder of the Lease Agreement shall be in full force and effect and enforceable in accordance with its terms.

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**[SIGNATURES APPEAR ON NEXT PAGE.]**



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in four (4) counterparts, each to be considered as an original by their authorized representatives this 1<sup>st</sup> day of February, 2017.<sup>8</sup>

**BJS PLAZA FIESTA, LLC**

By: [Signature]  
Signature (SEAL)

Matthew P. Layer  
Name (Typed or Printed)

Vice President  
Title

20-4877 567  
Federal Tax Identification Number

10/19/17  
Date Signed by Lessee

ATTEST:

Andy Norman (Seal)  
Name (Typed or Printed)

Asset Manager  
Title

Signed, sealed and delivered as to Lessee in the presence of:

[Signature] (Seal)  
Notary Public

My Commission Expires:  
JUNE 23, 2018

APPROVED AS TO SUBSTANCE:

[Signature] Asst  
Department Director



**DEKALB COUNTY, GEORGIA**

[Signature] by Dir. (SEAL)

MICHAEL L. THURMOND  
Chief Executive Officer  
DeKalb County, Georgia

ATTEST:

[Signature]

BARBARA H. SANDERS, CCC, CMC  
Clerk of the Chief Executive Officer and  
Board of Commissioners of  
DeKalb County, Georgia

Signed, sealed and delivered as to County in the presence of:

[Signature] (Seal)  
Notary Public

My Commission Expires:  
9/17/18

APPROVED AS TO FORM:

[Signature]  
County Attorney Signature

Max Ming Chang  
County Attorney Name (Typed or Printed)



DeKalb County Contract  
No. 17-903095

**Exhibit A**  
**Legal Description**  
**Prepared by Watts & Browning Engineers, Inc., Virgil T. Hammond, R.L.S. No. 3554**  
**Dated February 16, 1999 Last Revised July 20, 1999**

**Ground Lease Parcel**

Exhibit A

Legal Description

Prepared by Watts & Browning Engineers, Inc., Virgil T. Hammond, R.L.S. No. 3554

Dated February 16, 1999 Last Revised July 20, 1999

Ground Lease Parcel

All that tract or parcel of land lying and being in Land Lot 244 of the 18<sup>th</sup> District of DeKalb County, Georgia, and being more particularly described as follows:

To reach the point of beginning: commence at the intersection formed by the southeasterly r/w of Dresden Drive (variable r/w) and the easterly r/w of Clarmont Road (variable r/w) and proceed thence northeasterly along the southeasterly r/w of Dresden Drive (variable r/w) for the following courses and distances: North 81 degrees 13 minutes 54 seconds East, 88.55 feet; thence North 74 degrees 08 minutes 44 seconds East, 47.73 feet; thence North 76 degrees 19 minutes 44 seconds East, 27.14 feet; proceed thence South 28 degrees 35 minutes 49 seconds East, and departing the southeasterly r/w of Dresden Drive, for a distance of 172.90 feet to a point; proceed thence North 80 degrees 08 minutes 26 seconds East for a distance of 87.38 feet to a point; proceed thence North 28 degrees 52 minutes 12 seconds West for a distance of 181.08 feet to a point on the southeasterly r/w of Dresden Drive (variable r/w) and which point is the point of beginning: from the point of beginning thus established running thence northeasterly along the southeasterly r/w of Dresden Drive (variable r/w) the following courses and distances: North 79 degrees 33 minutes 57 seconds East, 99.85 feet; thence North 76 degrees 08 minutes 57 seconds East, 99.78 feet; thence North 71 degrees 57 minutes 57 seconds East, 100.02 feet; thence North 65 degrees 26 minutes 57 seconds East, 100.50 feet; thence North 65 degrees 24 minutes 57 seconds East, 100.74 feet; thence North 65 degrees 32 minutes 57 seconds East, 50.91 feet; thence North 00 degrees 47 minutes 57 seconds East, 11.01 feet; thence North 65 degrees 56 minutes 57 seconds East, 144.10 feet; thence North 68 degrees 33 minutes 57 seconds East, 94.97 feet; thence North 72 degrees 10 minutes 42 seconds East, 117.03 feet to an iron pin found; running thence South 01 degrees 52 minutes 37 seconds East, and departing the southeasterly r/w of Dresden Drive, a distance of 414.30 feet to a point; running thence South 57 degrees 12 minutes 23 seconds West a distance of 76.40 feet to a point; thence South 58 degrees 12 minutes 15 seconds West, 117.50 feet; thence North 11 degrees 19 minutes 43 seconds West, 217.00 feet; thence South 61 degrees 08 minutes 17 seconds West, 252.85 feet; thence North 27 degrees 03 minutes 48 seconds West, 39.88 feet; thence South 73 degrees 26 minutes 17 seconds West, 174.95 feet; thence South 76 degrees 50 minutes 16 seconds West, 87.87 feet; thence South 80 degrees 08 minutes 26 seconds West, 86.85 feet; thence North 26 degrees 52 minutes 12 seconds West, 181.08 feet to the southeasterly r/w of Dresden Drive (variable r/w) and the point of beginning; said lease area containing 4.93328 acres or 214,894 sq.ft., as more particularly shown on that certain ALTA/ASCM Land Title Survey for Peachtree DeKalb Crossings, LLC, Prudential Mortgage Company, LLC and First American Title Insurance Company, dated February 16, 1999, last revised July 20, 1999, prepared by Watts & Browning Engineers, Inc., Virgil T. Hammond, R.L.S. No. 2554, which survey is incorporated herein and made a part hereof by reference.