

PANDA EXPRESS, INC.

CONSTRUCTION CONTRACT
(LONG FORM 6071)

In consideration of the following mutual promises the parties agree as follows:

BASIC PROVISIONS

The following references define terms used in this contract (this “**Contract**”) and shall be construed in accordance with all the provisions and conditions set forth in this Contract:

- A. Contract Date:** _____.
- B. Owner:** Panda Express, Inc., a California corporation.
- C. Owner’s Contact Information, Notice Address, and Authorized Representative:**

Notice to: PANDA EXPRESS, INC.
1683 Walnut Grove Avenue
Rosemead, CA 91770
Attn: Construction Contract Administrator

With a copy to: PANDA EXPRESS, INC.
1683 Walnut Grove Avenue
Rosemead, CA 91770
Attn: Legal Department

Owner’s Authorized Representative: Mark Schultz
Panda Restaurant Group, Inc.
1683 Walnut Grove Avenue
Rosemead, CA 91770
Phone: (626) 799-9898

- D. Contractor:** _____, a _____.
- E. Contractor’s Contact Information:**

Attn: _____
Phone: _____ Fax: _____

Payment: _____

Attn: _____
Phone: _____ Fax: _____

- F. Premises:** A parcel of property or leased space of approximately 3,515 square feet located at 2096 Interstate Drive, the City of Opelika, State of Alabama, zip code of _____

36801, and as shown on the Plans and Specifications for Owner's Panda Express Store #3307, Project Number D-7163.

- G. **Contract Sum:** Owner shall pay Contractor the sum of _____ Dollars (\$____), for Contractor's Work, among other things, in accordance with the terms of this Contract. The Contract Sum includes, and Contractor shall pay, all federal, state, and local taxes, including, but not limited to, income taxes, excise taxes, sales and use taxes (excluding Owner's direct purchases), occupational taxes and the cost of the items listed on "Attachment A-1".

The Contract Sum does not include the purchase price and shipping cost of the items listed on "Attachment A-2".

- H. **Cost Itemization Form:** Contractor has attached a document setting forth all costs of labor and material to be supplied by Contractor for Contractor's Work totaling the Contract Sum is attached as "Attachment C".

- I. **Plans and Specifications, etc.:** Plans and specifications, the Landlord's Design Criteria for the Shopping Center (if applicable), the Soils Report for the Project (if this location is a freestanding store), and the Landlord's or the City's Pre-Construction Package (as applicable) have been delivered or made available through Expesite to Contractor. The Plans and Specifications have been approved by Owner on _____. Receipt of a copy of such documents for the Project is hereby acknowledged by Contractor, and indicated by the sheet numbers and revision dates as set forth on "Attachment A-3". Contractor may not make changes to such documents without the prior written consent of Owner.

- J. **Construction Commencement Date:** _____

- K. **Construction Completion Date:** The Construction Completion Date shall be ____ days from the Construction Commencement Date[, but no later than _____].

- J. **Surety:** Contractor warrants that it is not aware of any reasons or activities (past and present) that would cause it to be denied a surety bond nor has it been previously denied a surety bond. Contractor further warrants that it is not aware of any reasons or activities of any officers, directors, shareholders in the case of a corporation, partners, members, managers, or any other principals that would cause it to be denied a surety bond, nor have any of the above mentioned persons been denied a surety bond or involved in another entity that was denied a surety bond.

DEFINITIONS

Applicable Laws: All applicable codes, rules, regulations, restrictions, ordinances, and statutes of local, county, state and federal authorities, including, but not limited to, Americans with Disabilities Act, and Occupational Health and Safety Authorities.

Contractor's Work: The construction and services required by this Contract, whether completed or partially completed, including all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations hereunder in accordance with the Plans and Specifications.

Events of Force Majeure: Any wars, strikes, acts of God, fire, insurrection and riots which prevent the normal progress of construction.

Punch List: A formal list of construction deficiencies or remaining work to be completed.

Real Property: The building structure or any part of the building or structure permanently secured in place on the site, including, but not limited to foundations, walls, roofs, all building mechanical equipment, building attachments, fixtures and machinery belonging to and constituting a permanent part thereof.

Subcontractor: Each person or entity other than Contractor, who has properly performed work at, or delivered material to, the Premises pursuant to this Contract whether having a direct or indirect contract with the Contractor.

TERMS AND CONDITIONS

1. Contractor's Work.

A. Contractor shall construct on the Premises a Panda Express restaurant and other improvements in accordance with the Plans and Specifications (collectively defined as the "**Project**").

B. Contractor warrants to Owner that materials and equipment furnished under this Contract will be of first class quality and new, unless otherwise specifically required or permitted by this Contract, and that the Contractor's Work will be free from defects and conform to the requirements of this Contract. Contractor's Work not conforming to these requirements, including additions, modifications, and substitutions not properly approved and authorized, may be considered defective. If required, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment used.

1. **Roof Penetrations.** Any penetrations or altering of the roof of the Premises by Contractor, as part of Contractor's Work, must be made by landlord's roofing contractor or by a licensed roofing contractor approved by landlord in writing, at Contractor's expense. All work must be done in such a manner as not to void landlord's roof warranty. Contractor shall be liable for any and all damages, liabilities and claims, including those of landlord for the voiding of its roof warranty, which result from any roof penetrations or alterations which are not performed by landlord or by a licensed roofing contractor approved by landlord.

2. **Hazardous Materials.** The Contractor shall be obligated to immediately inform Owner if, in the course of performing Contractor's Work, Contractor encounters, uncovers, identifies, discovers, is advised of, or otherwise suspects through sight or smell that any Hazardous Materials or Hazardous Substances are present on the Property, including, without limitation, flammable, explosive or radioactive materials, asbestos, polychlorinated biphenyl's (PCBs), perchloroethylene or other chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products or fractions thereof. In the event that Contractor so informs Owner, Owner shall provide further direction to Contractor.

C. Contractor shall also comply with the following requirements as set forth in the applicable legal documents more specifically described below in "Attachment B", which may include: a lease(s), a purchase agreement or title documents, which the Owner is subject to with respect to the Premises. Such obligations and the cost of complying with same shall be incorporated into the Contractor's Work and the Contract Sum. Notwithstanding the foregoing, in

the event of a conflict between the requirements of this Contract and the requirements in "Attachment B", the requirements in "Attachment B" shall prevail.

D. This Contract shall not be construed to create a contractual relationship or privity of contract of any kind between Owner and any Subcontractor.

E. Contractor, as soon as practicable after award of this Contract and at all times thereafter, if not already provided, shall furnish in writing to Owner the names and contact information of persons and/or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Contractor's Work. Owner retains the right to approve such party. By separate written agreement, Contractor shall require each Subcontractor, to the extent of that portion of the Contractor's Work to be performed by the Subcontractor, to be bound by terms of this Contract and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner. Further, each subcontract agreement between Contractor and Subcontractor shall preserve and protect the rights of Owner under this Contract with respect to that portion of the Contractor's Work to be performed by said Subcontractor. Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors or suppliers who have performed work at the Premises pursuant to this Contract. Contractor shall upon written request of the Subcontractor or Owner, identify to the requesting party such terms and conditions of the proposed subcontract agreement which may be at variance with this Contract. Contractor agrees to provide to Owner within thirty (30) days after execution, all applicable Subcontractor agreements.

F. Contractor agrees, in the absence of a bond, to hold in trust payments received for Subcontractors or suppliers.

G. Owner shall not have an obligation to pay or to see to the payment of money to a Subcontractor.

H. Contractor will have an employee or other associate present at the opening of the Owner's store on the first two days of business, between the hours of 10:00 am – 9:00 pm, which employee or associate shall be someone capable of ensuring that any defects in Contractor's Work can be remedied without undue interference with the store operations.

2. **Commencement and Time for Completion.** Contractor shall commence construction on the date agreed upon in Section J of the Basic Provisions, provided all necessary permits and approvals have been obtained and are in Contractor's or Owner's possession. Subject to Events of Force Majeure, Construction shall be completed by the Construction Completion Date. TIME IS OF THE ESSENCE IN THIS CONTRACT. Contractor shall prepare and submit for Owner's information a construction schedule for the Contractor's Work. The schedule may be revised upon mutual agreement of the parties, in appropriate intervals as required by the conditions of the Contractor's Work, including but not limited to Events of Force Majeure.

3. **Surety and Disclosure.**

A. If Owner elects to, it may require in writing, that Contractor obtain a bond for the performance of this Contract for the amount of the Contract Sum or balance of the Contract Sum if this Contract has already commenced, plus any other incidental costs and expenses. The actual fee for the performance bond shall be paid by Owner. In the event Contractor has not obtained a performance bond, Contractor shall be subject to a day for day penalty of five hundred dollars (\$500) or Owner may obtain such performance bond on its own and deduct the cost thereof from the Contract Sum.

B. Owner shall have the right to require Contractor to furnish bonds covering faithful performance of this Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in this Contract on the date of execution of this Contract or any time thereafter. In addition to, or in lieu of, any bond(s), at Owner's request, at any time during this Contract, Contractor will furnish Owner with information deemed necessary by Owner to show that Contractor is financially capable of meeting its obligations under this Contract. Owner shall have the right, with Contractor's aid and cooperation, to inspect the books and financial records of Contractor, including but not limited to, federal and state income tax returns, bank statements and statements prepared by independent auditing firms, and credit reports prepared by third party credit agencies. If the information supplied discloses that Contractor is not financially capable of meeting its obligations under this Contract, to Owner's satisfaction, Owner may immediately terminate this Contract at any time by serving written notice upon Contractor. Notwithstanding the above, if a Subcontractor or supplier notifies Owner of intent to place a lien on the project, Contractor shall immediately post a bond or provide other security, acceptable to Owner, to protect Owner against loss, or Owner may assess a day for day charge of five hundred dollars (\$500) and deduct such from the Contract Sum.

4. Permits and Approvals. Contractor shall obtain all licenses, permits, approvals, and certificates necessary to complete Contractor's Work. Contractor shall not be reimbursed for payment of the mechanical, electrical and plumbing permit fees, including, but not limited to, all backflow certified inspection requirements and charges. Prior to Contractor's application for a building permit, Contractor shall secure Owner's written approval of the project value to be used for permit purposes. At Owner's option, Owner may obtain any of the licenses or permits in lieu of Contractor, and Contractor shall cooperate with Owner's efforts thereto. Owner shall pay no more than the minimum amount for permit fees, as determined by the applicable government agency or municipality. In no event shall Contractor add additional fees to the cost of the permit fees.

5. Codes and Regulations. Contractor shall perform Contractor's Work in accordance with Applicable Laws. Contractor shall be responsible for verifying compliance with these laws. If the drawings and specifications are at variance with the Applicable Laws, Contractor shall notify Owner's Authorized Representative in writing before any portion of Contractor's Work is performed. The value of necessary changes shall be adjusted before proceeding with any portion of the Contractor's Work. If any portion of the Contractor's Work is done contrary to the Applicable Laws without such notice, Contractor shall bear all costs required to correct or remove the Contractor's Work.

6. Contractor's Insurance.

A. Contractor shall not commence the Contractor's Work until it has furnished Owner with duplicate policies or certificates of insurance evidencing that it has obtained the following insurance which shall be placed with companies having a general policyholder's rating of not less than "A-" and financial rating of at least category VIII as rated in the most current available Best's Insurance Reports. Such policies or certificates must provide that Panda Express, Inc., Panda Restaurant Group, Inc. and its subsidiaries are named as an additional insured as its interest may appear and that the insurer shall give Owner at least thirty (30) calendar days prior written notice of material change or cancellation of such insurance:

1. Worker's Compensation Insurance in accordance with the statutory requirements, including Employer's Liability Insurance in an amount not less than \$1,000,000.

2. Commercial General Liability Insurance, including but not limited to Bodily Injury, Property Damage, Personal and Advertising Injury, Medical Payments, Products/Completed Operations and Broad Form Property Damage with minimum limits of \$1,000,000 per occurrence/\$3,000,000 aggregate Bodily Injury including Wrongful Death and \$1,000,000 per occurrence/\$3,000,000 aggregate Property Damage. This insurance shall include Contractual Liability to cover the liability assumed by Contractor under the Indemnification set forth herein. If required, Contractor shall also maintain Scaffolding Insurance and Demolition Insurance and, where appropriate, coverage for the perils of Explosion, Collapse and Underground with limits of \$1,000,000 per occurrence/\$2,000,000 aggregate Bodily Injury, including Wrongful Death and \$1,000,000 per occurrence / \$2,000,000 aggregate Property Damage.
3. Commercial Automobile Liability, including Owned, Non-Owned, and Hired Vehicles, with a Combined Single Limit of \$1,000,000.
4. Builder's Risk Insurance or its equivalent, with per occurrence limits of coverage not less than one hundred percent (100%) of the full replacement cost of the Contractor's Work done on the Premises.
5. Umbrella policy of insurance in the amount of \$3,000,000.

B. In addition to the above, Contractor will also satisfy any insurance requirements required by any governmental authority and those required by "Attachment B".

C. Contractor's insurance coverage shall be endorsed to apply as primary / non contributory coverage. Contractor shall provide waivers of subrogation in favor of Owner and agrees to waive any subrogation rights against Owner with respect to general liability and workers compensation claims.

D. **Subcontractor's Insurance.** Contractor shall ensure that Subcontractors whose contracted work totals above \$15,000 shall obtain insurance that include Owner and Contractor as additional insured using ISO from CG2010(11/85) or other form acceptable to Contractor. Additional insured forms that exclude completed operations will not be accepted. Subcontractor's insurance will apply, as primary insurance and other insurance, which may be available to Owner and Contractor, will be non-contributory. Subcontractors shall provide waivers of subrogation in favor of Owner and Contractor. Subcontractor further agrees to waive any subrogation rights against Owner and Contractor with respect to general liability and workers compensation claims. The certificate evidencing the above required coverage shall provide such coverage and will not be cancelled or reduced except by written notice to Owner and Contractor at least 15 days prior to the effective date of such cancellation or material reduction of coverage. New or renewal certificates shall evidence all of the above required coverages. Contractor warrants that all Subcontractors used by Contractor will comply with the provisions of this section.

7. Safety Requirements and Job Site Meetings.

A. Contractor shall comply fully with all requirements set forth by the Occupational Safety and Health Administration (OSHA) and other state and local agency requirements. Contractor shall hold an on-site SAFETY MEETING at intervals not less than once every seven (7) calendar days or at lesser intervals if the law or other regulations require. All on-site personnel as well as all Subcontractors (on or off site) shall attend. An accurate record of each meeting shall be kept by Contractor. The record shall state the date and time of the meeting, the location

of the meeting, the topics discussed during the meeting, and a signature list of those attending the meeting. A copy of the record shall be delivered to Owner within five (5) business days of each meeting. In the event Contractor shall fail to hold Safety Meetings as required above, Owner shall have the following options:

1. For the first violation, a written warning will be issued. The warning will require immediate compliance with the terms of this Contract.
2. The second violation may result, at Owner's option, in a fee of 1% of the Contract Sum or \$500.00, whichever is greater.
3. The third violation, if any, shall result in an additional reduction in Contract Sum, in an amount equal to that outlined above and Owner, at its option, may hire a professional safety inspector to monitor the project at Contractor's expense. That amount shall be deducted from any monies owed Contractor. Owner reserves the right to terminate this Contract with Contractor upon the third violation or subsequent violations.

B. If a dispute arises among Contractor, Subcontractors and/or Owner as to the responsibility under their respective contracts for maintaining the Premises and surrounding area free from waste materials and rubbish, Owner may clean up and such costs will be allocated to Contractor and deducted from any monies owed to Contractor.

8. Risk of Loss and Owner's Insurance.

A. Subject to the provisions of Section 10(B), below, Contractor assumes all risks, hazards and conditions in connection with the performance of this Contract and the Contractor's Work; even if the performance of this Contract and the Contractor's Work involves a greater expenditure of money than Contractor expected at the time of bidding, no allowance will be made on account thereof, and Contractor shall continue with and complete the Contractor's Work. Contractor further agrees to protect the Contractor's Work from damage or injury of any kind, and it will be solely responsible for all of the Contractor's Work until final acceptance of the completed Contractor's Work by Owner.

B. In the event of damage or destruction of the Real Property during construction, Owner shall notify Contractor within a reasonable time thereof as to whether or not Owner elects to continue with construction of the building. If the damage or destruction of the Real Property is due to the negligence of Contractor and Owner elects to proceed, Contractor shall promptly commence to complete Contractor's Work at Contractor's sole cost. If Contractor fails to complete Contractor's Work, Owner shall have the right to complete Contractor's Work, and Contractor shall reimburse Owner the cost of completing Contractor's Work, plus 10%. If the damage or destruction is not due to the fault of Contractor and Owner elects to proceed, the cost of rebuilding or repairing shall be mutually and reasonably agreed upon by Owner and Contractor. All such payments shall be made following the same procedures specified in this contract for payment of the Contract Sum. If Owner elects not to have the building reconstructed or repaired, Owner may terminate this Contract by serving written notice upon Contractor and by paying Contractor for that portion of the Contractor's Work performed to the date of the damage or destruction of the Real Property as determined by a third party engineer. Notwithstanding any provisions of this section, Owner may elect to proceed with completing the construction without the use of Contractor, in which case Owner may terminate this Contract by serving written notice upon Contractor and by paying Contractor for that portion of the Contractor's Work performed to the date of the damage or destruction of the Real Property (less any costs incurred by Owner due to Contractor's negligence or intentional acts).

9. Custody of Plans.

A. Contractor shall retain in its sole custody, except as required for the performance of the Contractor's Work, the Plans and Specifications, all the drawings, and any other materials, or any copies thereof, furnished by Owner. A set of such materials shall be kept on the Premises at all times during the course of construction, and Contractor shall keep a co-signed set of drawings in his possession for one year after opening of the restaurant. All materials, and copies thereof, furnished by Owner, remain the property of Owner. They shall not be used in connection with any other work (other than the Contractor's Work), and, with the exception of the signed set, are to be returned to Owner at the completion of this Contract.

B. Contractor shall maintain at the site for Owner a copy of applicable documents, including without limitation, approved Plans and Specifications, addenda, change orders and other approved modifications in good order and marked currently to record field changes and selections made during construction. The Contractor's Work shall be in accordance with approved submittals except that Contractor shall not be relieved of responsibility for deviations from requirements of this Contract unless Contractor has specifically informed Owner in writing of such deviation at the time of submittal and either Owner or Owner's architect has approved in writing a change order. Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals.

10. Damages and Credits.

A. In no event shall Contractor commence construction prior to receiving written authorization to do so from Owner's project manager. For purposes of the preceding sentence, an e-mail notification will be sufficient. In the event Contractor commences construction without written consent, Owner shall be entitled to the amount of its actual and consequential damages and expenses, and Contractor shall immediately cease work.

B. Contractor agrees that, if the construction and the Contractor's Work is not completed within the above designated period of time, or within any extended time allowed by Owner, Owner will suffer substantial and irreparable damages and lost profits, rents, taxes and other costs which may be difficult to ascertain at this time or at the time of loss. **Contractor therefore agrees that Owner shall be entitled to a credit against the Contract Sum of \$500.00 per day as liquidated and ascertained damages for every day beyond the time for completion or extended time, as the case may be, during which Contractor's Work shall remain unfinished.** Contractor will not be held liable for delays beyond the control of Contractor, including but not limited to, Events of Force Majeure and delays caused by Owner's contractors or Owner's material suppliers that are not included in the scope of the Contractor's Work. Contractor shall, within three (3) days of the occurrence of a delay, make a request, in writing, to Owner for any additional time required to complete the balance of the Contractor's Work due to the delays as previously referenced. Owner shall review and determine the merit of the request for extension. In the event that an extension of the time required for completion is reasonably granted by Owner, Contractor will receive one (1) additional calendar day for every calendar day lost due to those events. In the event Contractor shall fail to make a request for additional time due to delays as previously referenced, it shall be deemed that the delay did not substantially effect the progress of the Contractor's Work and Contractor will not be given additional time to complete the Contractor's Work. Such damages may be deducted by Owner from any monies due Contractor, or Owner may prosecute its claim against Contractor in any court of law or arbitration or equity.

C. Owner agrees that Contractor shall be entitled to a credit toward the Contract Sum of \$500.00 per day up to a total amount not to exceed five percent (5%) of the Contract Sum to reward Contractor's efforts to complete the Contractor's Work prior to the mutually agreed upon completion date described herein, provided that the Contractor's Work shall not be considered complete unless Contractor has met all the conditions required in this Contract, the Contractor's Work is completed to the standards described herein, required Punch list Items are completed, and Owner's project manager has signed a written acceptance of the Premises. Such amount shall be calculated when processing the final payment as described herein.

D. In addition to the foregoing, if Contractor defaults or neglects to carry out the Contractor's Work in accordance with this Contract and fails within a seven-day period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may after such seven-day period without prejudice to other remedies Owner may have, correct such deficiencies. In such case an appropriate change order shall be issued deducting from payments then or thereafter due Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner immediately upon demand.

E. Owner may require that each subcontract agreement between Contractor and any Subcontractor be assigned by Contractor to Owner provided that:

1. Assignment is effective only after termination of this Contract by Owner for cause and only for those subcontract agreements which Owner accepts by notifying the Subcontractor and Contractor in writing, and
2. Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to this Contract.

F. Duties and obligations imposed by this Contract and rights and remedies available thereunder shall be in addition to, and not a limitation of, any other duties, obligations, rights and remedies otherwise imposed or available by law.

11. Method and Terms of Payment of the Contract Sum.

A. Owner will not make incremental progress payments to Contractor larger than One Hundred Thousand Dollars (\$100,000.00) each, for the proportionate part of the Contractor's Work actually performed to the date of a request for said progress payment with receipt of all notarized conditional releases (including notarized releases from Subcontractors) for the current charges and notarized unconditional releases for the charges of the prior pay-out. However, Owner, in its sole discretion, may permit larger payments for those Subcontractors that have larger contracts, provided (i) such payment is issued jointly in both Contractor and Subcontractor's name (joint payment amount shall not be less than \$5,000 per check) and (ii) the aforementioned releases are obtained. Subject to applicable laws, Owner will pay no more than ninety percent (90%) of the amount due Contractor on account of progress payments. Such ten percent (10%) or other retainage, as may be adjusted to comply with applicable laws, shall be held by Owner until completion of the project and further pending all final payment requests and receipt by Owner of all properly notarized unconditional mechanics' and materialmen's lien releases for all Subcontractors as described herein.

B. Contractor shall use any monies paid by Owner under this Contract to satisfy any and all debt incurred by Contractor in connection with the Contractor's Work ONLY. Contractor

shall not convert any funds paid for the Contractor's Work to any other purpose other than that stipulated above in accordance with state law regarding conversion of funds.

C. Owner shall have the right to withhold any payment due Contractor under this Contract and for any other project done by Contractor for Owner, in order to protect Owner against any conversion, insolvency, non-performance, or any other financial problem, either real or perceived as real by Owner, as Owner shall deem fit to protect its interest.

D. Before any payments are made, Contractor must complete the following:

1. Before the first application for payment, Contractor shall submit a schedule of values allocated to various portions of the Contractor's Work reflecting an allocation to each Subcontractor and the portion of the Contractor's Work performed by same, prepared in such form and supported by such data to substantiate its accuracy. This schedule shall be used as a basis for reviewing Contractor's application for payment. At least ten (10) days before the date established for each progress payment, Contractor shall submit to Owner application for payment for operations completed in accordance with the schedule of values. Such application shall be notarized and supported by such data substantiating Contractor's right to payment as Owner may require such as copies of requisitions from applicable Subcontractors and reflecting retainage if provided for in this Contract. Attachment "F" further describes the payment request procedures for Contractor.
2. Progress Payment.
 - (i) Submit to Owner a completed "Application and Certificate for Payment" Form signed by Contractor.
 - (ii) Contractor shall submit properly notarized original lien waivers, on Panda Express, Inc.'s "Conditional and Unconditional Waiver of Lien" form, from Contractor and Subcontractors (Conditional and Unconditional Waiver of Lien Form) signed by Contractor and all Subcontractors. A list of Subcontractors and corresponding payment amounts for each progress payment must be submitted to Owner with each request for a progress payment. Contractor shall follow Owner's payment policies and procedures in order to receive proper and prompt payments.

E. In addition to the foregoing, if Contractor has completed fewer than three (3) projects for Owner, Contractor must comply with the following: all applications for payment shall include a joint check application for all payments to subcontractors and suppliers in amounts above five thousand dollars (\$5,000).

3. Final Payment. Within thirty (30) days of substantial completion of the Contractor's Work and in no event later than sixty (60) days from the date of the final inspection, Contractor shall submit to Owner the Certificate of Substantial Completion and final schedule of payment for written acceptance. In no event shall Owner make payment of retainage applying to such work or designated portion thereof. Such payment shall be adjusted for work that is incomplete or not in accordance with the requirements of this Contract. Neither final payment nor any remaining

retained percentage shall become due until Contractor submits all of the following:

- (i) An affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the work for which Owner or the Premises might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied.
- (ii) (Owner is in receipt of all final properly notarized original unconditional lien waivers and lien releases, signed and sworn to by Contractor and all Subcontractors within thirty (30) days from final inspection.
- (iii) Other data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of this Contract and such necessary paperwork required of Owner to collect any tenant improvement allowance due Owner, to the extent and in such form as may be designated by Owner.
- (iv) (A punch list completed and approved by Owner (although punch list items must be completed within ten (10) days pursuant to Section 15(B) hereunder, warranty items must be repaired/replaced within seventy-two (72) hours, unless they are items that are urgent or emergency in nature, then they must be repaired/replaced within eight (8) hours. A copy of the final punch list must be uploaded to the Expesite Document folder under "G.06.a Closeout Submittal" for the Project as a document entitled "PX Store Number 3307 Final Punch List", with immediate notification to all required parties, pursuant to the Project Closeout Guide;
- (v) A certificate evidencing that insurance required by this Contract to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner;
- (vi) Consent of surety, if any, to final payment;
- (vii) As Built drawings in electronic pdf format including any equipment specifications provided by Contractor (HVAC, Plumbing, Electrical) uploaded to the Expesite Document folder G.06.b As-Built Submittal for the Project as a document entitled "PX store number 3307 As-Built", with immediate notification to all required parties, pursuant to the Project Closeout Guide;
- (viii) Construction warranty statement uploaded to the Expesite Document folder "G.06.a Closeout Submittal" for the Project as a document entitled "PX store number 3307 GC Warranty Statement", with immediate notification to all required parties, pursuant to the Project Closeout Guide;
- (ix) Final list of all Sub-Contractors (template form 9014 to be provided by Owner to Contractor), uploaded in Excel format to the Expesite folder "G.06.a Closeout Submittal" for the Project as a document

entitled "PX store number 3307 Sub-Contractor List", with immediate notification to all required parties, pursuant to the Project Closeout Guide;

- (x) Final list of all equipment installed (template form 9051g to be provided by Owner to Contractor), uploaded in Excel format to the Exesite Document folder "G.06.a Closeout Submittal" for the Project as a document entitled "PX store number 3307 Equipment List", with immediate notification to all required parties, pursuant to the Project Closeout Guide;
- (xi) Certificate of Occupancy or, in the event that a Certificate of Occupancy can not be obtained with the applicable time period, a Final Inspection Record, uploaded to the Exesite Document folder "G.06.a Closeout Submittal" for the Project as a document entitled "PX store number 3307 Certificate of Occupancy", with immediate notification to all required parties, pursuant to the Project Closeout Guide;
- (xii) Certified (with stamp legible) air balance report uploaded to the Exesite Document folder "G.06.a Closeout Submittal" for the Project as a document entitled "PX store number 3307 Certified Air Balance Report", with immediate notification to all required parties, pursuant to the Project Closeout Guide;
- (xiii) Landlord sign off (if required);
- (xiv) Owner's manual and cut sheets for HVAC, uploaded to the Exesite Document folder "G.06.a Closeout Submittal" for the Project as a document entitled "PX store number 3307 HVAC Owner's Manual and Cut Sheets", with immediate notification to all required parties, pursuant to the Project Closeout Guide;
- (xv) Owner's manual and cut sheets for the water heater, uploaded to the Exesite Document folder "G.06.a Closeout Submittal" for the Project as a document entitled "PX store number 3307 Water Heater Owner's Manual and Cut Sheets", with immediate notification to all required parties, pursuant to the Project Closeout Guide;
- (xvi) Roof warranty, uploaded to the Exesite folder "G.06.a Closeout Submittal" for the Project as a document entitled "PX store number 3307 Roof Warranty", with immediate notification to all required parties, pursuant to the Project Closeout Guide.
- (xvii) Construction photos uploaded to the Exesite Document folder under Documents → A.Photo → A.01 Pre-Construction → A.02 During Construction → A.03 After Construction pursuant to the requirements set forth in Exhibit "D" attached hereto.

F. If a Subcontractor refuses to furnish a release or waiver required by Owner, Contractor may furnish a bond to indemnify Owner against such lien. If such lien remains

unsatisfied after payments are made, Contractor shall refund to Owner all money that Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

G. If Contractor does not comply with any of the requirements set forth above for the final progress payment, Owner may, at its election, retain the remainder of the Contract Sum or an amount sufficient to protect Owner against any outstanding mechanics' or materialmen's lien rights, until all requirements for the final progress payment have been satisfied. If all requirements for the final progress payment have been satisfied, Owner shall release the retainage withheld, less the amount Owner may withhold pursuant to Section 11(G) below.

H. All requests for payment received and approved by Owner will be paid within thirty (30) calendar days of receipt by Owner. For each progress payment, Contractor will submit invoices and a completed "Application and Certificate for Payment" Form or other such form required by Owner.

I. If a law or regulation requires Owner to withhold certain monies from Contractor for tax purposes, Owner is hereby authorized by Contractor to withhold such payments from each progress payment and forward the same to the proper authority as required by the Applicable Laws.

J. Contractor agrees that he will pay all Subcontractors in a timely manner so that no claims for mechanics' or materialmen's liens will be filed against the Premises. If Owner receives a notice of a claim (whether in the form of a Notice to Owner or other) to be filed, or if a claim is filed as a result of Contractor's non-payment, Owner shall have the right, after ten (10) days written notice to Contractor, to pay the full amount of any such claim or lien directly to the Subcontractor and deduct the same and any legal and administrative costs from the Contract Sum if the lien is not released or bonded by Contractor. Contractor waives any and all claims or causes of action it has or may have against Owner for the payments which are made under this Article. Owner shall have the right and option to require Contractor to provide Owner with a bond insuring over a lien in an amount at least equal to one hundred fifty percent (150%) of the amount of any such lien filed or notice of lien, including an amount sufficient to cover Owner's legal fees, interest and increased costs and expenses to enforce this Contract, as an alternative to payment by Owner, where Owner is satisfied that a legitimate dispute exists concerning the sums due to a Subcontractor. However, Contractor shall promptly defend a claim to conclusion in order to avoid long outstanding claims. By requiring the bond, Owner waives no rights it has against Contractor to require payment of a lien or to pay a lien itself. Owner shall have the right and option to make any and all payments by checks payable to Contractor and Subcontractors jointly. In the event Owner exercises this option, Owner may require Contractor to submit an acceptable waiver of lien to Owner with the next payment request. In addition, Owner may require properly notarized partial waivers of liens from each Subcontractor who has furnished labor or material in connection with the Contractor's Work and a completed "Contractor's Sworn Statement" Form or other certificate or affidavit as a condition of each progress payment.

K. Contractor must meet with Owner's Project Manager at least fourteen (14) days prior to the anticipated opening of the restaurant to establish a Punch List. Owner may withhold from the final progress payment an amount equal to Owner's estimated value of the work described on the Punch List. Contractor further agrees that the Punch List items will be corrected within ten (10) calendar days after the establishment of the Punch List. If these deficiencies are not corrected within ten (10) calendar days, Owner may hire an independent contractor to do the work, and Owner may deduct its costs from the monies retained from Contractor, or Owner may bill Contractor for these costs. Contractor agrees to pay all costs billed by Owner. If an item cannot be corrected within ten (10) calendar days, the reasons therefore shall be explained, in writing, to Owner's satisfaction. It is agreed that the preparation of the Punch List by the parties

shall in no way waive or alter any other rights of Owner under this Contract, including warranties or latent defects.

L. Owner may credit back the whole or a part of a previously issued payment to protect Owner from loss for which Contractor is responsible, including loss resulting from:

1. Defective work not remedied;
2. Third party claims filed or reasonable evidence indicating probable filing of such claims;
3. Failure of Contractor to make payments properly to Subcontractors for labor, materials or equipment;
4. Reasonable evidence that the work cannot be completed for the unpaid balance of this Contract;
5. Damage to Owner or another contractor;
6. Reasonable evidence that the work will not be completed within the timeframe provided for herein, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
7. Persistent failure to carry out the work in accordance with this Contract; or
8. The cost for an alternative Subcontractor to complete or correct any work omitted or not performed to the standards required under this Contract.

12. Changes in Contractor's Work:

A. Owner, without invalidating this Contract, may add to or deduct from Contractor's Work. All such work shall be executed under the conditions of this Contract, except that no extra work or change shall be done or paid for by the parties without a written order from Owner's project manager. The Contract Sum shall be increased by an amount equal to the unit cost of similar work performed under this Contract, or, if there is no similar work, as agreed to by the parties. If work is to be omitted, then proper credit for such omitted work shall be deducted from the Contract Sum or given to Owner (as applicable).

B. Contractor shall proceed to make such changes without causing delay and any claim by Contractor for an extension of time for the completion of the Contractor's Work due to changes or alterations shall be made to Owner's Authorized Representative within ten (10) days of such written order from Owner's Project Manager.

C. A written construction change directive (approved in writing by Owner's project manager) shall be used in the absence of total agreement on the terms of a change order. If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

1. Mutual acceptance of a lump sum properly itemized and supported by sufficient data to permit evaluation;
2. Unit prices stated in this Contract or subsequently agreed upon; or

3. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.
4. In no event shall any change order involve any markup greater than 10%.

D. All submissions for approvals for change orders shall be made to Owner's Authorized Representative within ten (10) days of the occurrence or identification of such changes in Contractor's Work. If approved, the approved change order shall be billed on the next sequence draw after the completion of the work for payment.

13. Owner's Right to Terminate or Require Correction.

A. Owner may terminate this Agreement upon any of the following: (a) termination of the underlying lease or purchase agreement for the Premises; (b) indefinite suspension of the Project based on any dispute, arbitration, or litigation with the landlord of the Premises; (c) a change in the Contract Sum in excess of ten percent (10%) due to any change orders related to the Project; or (d) the Construction Commencement Date is extended to a date greater than ninety (90) days after the Contract Date. In addition, after the Construction Commencement Date, in the event a change in any particular line item within the Cost Itemization Form exceeds ten percent (10%) of the original line item amount, Owner shall have the right to require: (i) a substitution of subcontractor for such work; (ii) a rebid by Contractor for such line item; or (iii) remove the work in such line item from the Project and have it completed by a different Contractor. In the event this Agreement is terminated or the Contractor is removed from the Project pursuant to this Section, Owner shall reimburse Contractor for any out-of-pocket expenses related to the Project based on third party invoices provided by Contractor and all work and materials for the Project which have been paid for by Owner shall become the property of Owner. Contractor shall sign any releases and waivers required by Owner in exchange for such reimbursement.

B. If Contractor shall do or permit any of the following: (a) be adjudged a bankrupt; (b) makes an assignment for the benefit of his creditors; (c) if a receiver is appointed on account of his insolvency; (d) persistently or repeatedly should refuse or fail, except in the cases for which extension of time is provided in writing, to supply enough properly skilled workmen or proper materials; (e) fail to make prompt payment to Subcontractors; or (f) disregard laws, ordinances or the instructions of Owner, or otherwise be guilty of a substantial violation of any provision of this Contract, then Owner may, without prejudice to any other right or remedy given hereunder, and after giving Contractor and his surety, if any, five (5) calendar days written notice, terminate the employment of Contractor and take possession of the real property and of all materials thereon, and finish the Contractor's Work by whatever method Owner may deem expedient. In such case, Contractor shall not be entitled to receive any payment in excess of reimbursement for his direct expenses related to the Contractor's Work. Contractor shall, however, remain liable to Owner for all damages incurred as a result of a breach of this Contract.

C. Contractor shall promptly remove from the Premises all materials rejected by Owner's project manager that fail to conform to this Contract, whether incorporated into the Contractor's Work or not. Contractor shall then promptly provide proper materials and perform the Contractor's Work in accordance with this Contract and without expense to Owner. Contractor shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or placement. If Contractor does not remove such rejected work and materials within a reasonable time, fixed by written notice, Owner may remove them and store the material at the expense of Contractor.

14. Indemnity:

A. Contractor agrees to indemnify and save Owner harmless from and against any and all claims, liability, loss, damage, cost and expense, including court costs and attorney's fees (whether or not litigation is commenced), of whatever nature or type that Owner may suffer, incur, be put to or pay by reason of:

1. Any injury or damage sustained or purported to have been sustained by any person or thing as a result of the Contractor's Work;
2. Any other act or omission of Contractor, its agents, representatives or other persons who are, at any time during the course of construction on the Premises under the direction, supervision, or sufferance of Contractor including, but not limited to the Subcontractors; or
3. Any breach or default of Contractor in the performance of its obligations in this Contract.

B. To the fullest extent permitted by law Contractor shall indemnify and hold harmless Owner and agents and employees from and against demands, losses, expenses (including, but not limited to, attorneys' fees) claims, causes of actions and liabilities of every kind and nature whatsoever arising out of or in connection with Contractor's Work performed under this Contract. Such indemnification shall extend to claims arising after this Contract is terminated, completed and while it is in force. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of Contractor's indemnity which would otherwise exist herein. This indemnity shall not be applicable to any injury or damage or other claim resulting solely from the act or omission of Owner. This indemnity shall apply regardless of any active and/or passive negligent act or omission of Owner, its agents or employees, but Contractor shall not be obligated to indemnify any party for claims arising from the sole negligence or the willful misconduct of Owner or its agents or employees or caused solely by the designs provided by such parties. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Contract. All work covered by this Contract done at the site or in preparing or delivering materials or equipment to the site shall be at the sole risk of Contractor until the completed work is accepted by Owner. Contractor's indemnification obligation under this Contract shall survive the Completion of Contractor's Work or earlier termination of this Contract.

15. Guarantee and Correction of Work.

A. Contractor guarantees to perform Contractor's Work in a first class workmanlike manner in accordance to industry standard and guarantees and warrants all work against defects in material or workmanship for a period of one (1) year from the opening date of the restaurant, unless stated otherwise in the specifications. If conditions are encountered at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in this Contract or unknown physical conditions of an unusual nature or if a defect in material or workmanship is latent, hidden or not normally observable, Contractor's warranty shall be extended to one (1) year from the date of discovery of the defect. Within a reasonable time after written notice of a defect, Contractor shall remedy and repair any defects in materials or workmanship, without expense to Owner, including damage to other work resulting therefrom. If Contractor fails to clean up as provided in the Contract documents, Owner may do so and the cost thereof shall be charged to Contractor. Additionally, at Owner's discretion, Owner may retain part or all of the Contract Sum if there appear to be any patent defects in the workmanship or anticipatory breach without limiting any other rights it may have hereunder or in law and equity. Contractor also agrees to maintain or cause to be maintained by Contractor's landscaping

subcontractor all landscaping installed in a first class manner for a period of ninety days from the date of delivery and acceptance of Contractor's Work.

B. Contractor agrees to meet with Owner's Authorized Representative, if required by Owner at time of signing of this Contract, within fourteen (14) days of the end of the eleventh month following the opening of the subject Panda Express restaurant for a structural inspection of the Contractor's Work. All structural deficiencies not caused by Owner shall be noted, and a list of deficiencies shall be given to Contractor. Contractor agrees to correct all deficiencies within thirty (30) days after the date of the meeting. If the deficiencies are not corrected, Owner may hire an independent contractor to do the work and bill Contractor. Contractor agrees to promptly reimburse Owner for its costs to correct the deficiencies. If any item cannot, with due diligence, be corrected within thirty (30) days, Contractor agrees to set forth in writing a reasonable schedule for completion of the follow-up work. If this schedule is not met, Owner may complete the follow-up work and receive reimbursement from Contractor.

C. Final payment, use of the improvements, or any other act of Owner shall not relieve Contractor of his responsibility for faulty workmanship or materials. Owner agrees to give notice of observed defects with reasonable promptness.

D. Contractor shall have each Subcontractor execute and deliver to Owner upon completion of the work a written guarantee covering all work not performed by Contractor. The guarantee shall be for a period of one (1) year, unless a guarantee or warranty for a longer period of time is required under the Specifications attached. All guarantees and warranties for the mechanical equipment included in the building, and supplied by Contractor, if any, such as, but not limited to, the hot water heater, sump pump, air conditioning units, exhaust fans, door closures and water softeners and all other equipment and material with a guarantee, shall be delivered to Owner by Contractor.

E. Contractor agrees that at Owner's option, Owner's calls for warranty work shall be handled directly with Owner or through a third party service vendor such as Service Channel. Contractor agrees to participate in and complete training in order to properly utilize such third party service vendor process.

16. Independent Contractor Status: It is the express intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer, or partner of Owner. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee between Owner and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor agrees to comply with all tax laws applicable to the operation of a business such as Contractor's, including, but not limited to, the reporting of all gross receipts therefrom as income from the operation of a business, the payment of all self-employment taxes, compliance with all employment tax requirements for withholding on any employees used by Contractor, and compliance with state employment workmen's compensation laws.

17. Notices. If at any time after the execution of this Contract, it shall become necessary for one of the parties to serve any notice, demand or communication upon the other party, such notice, demand or communication shall be in writing signed by the party serving the same, deposited in the registered or certified United States mail, return receipt requested, postage prepaid; or delivered by nationally recognized overnight courier service (e.g., FedEx, UPS, DHL, etc.) to the notice address for each respective party as listed in the Basic Provisions. Any notice so mailed shall be deemed to have been given as of the time the same is deposited in the United States mail or, if sent by the aforementioned courier service, the date of receipt of such notice based on a tracking confirmation provided by such service.

18. Miscellaneous Provisions.

A. Contractor acknowledges that Owner has entered into this Contract in reliance upon the reputation of, and the promise of personal service provided by the Contractor. Except as set forth herein, Contractor shall not assign or delegate this Contract or any portion thereof, without the express written consent of Owner.

B. No right or remedy conferred upon or reserved to Owner in this Contract is intended to be exclusive of any other right or remedy herein or by law provided but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

C. If any provision of this Contract is determined to be invalid or unenforceable, such determination shall not affect the enforceability or validity of the balance of the provisions of this Contract, and this contract shall, as to those provisions, remain in full force and effect.

D. This Contract shall be construed as a unit and shall not be considered severable. If Contractor fails to perform its obligations under this Contract and become obligated to pay Owner a sum of money which exceeds the amount of money retained by Owner under the terms of this Contract, Owner may, at its option, withhold or deduct the amount of money due from Contractor under this Contract from the monies Owner may be obligated to pay to Contractor under any other Contract between Owner and Contractor.

E. Contractor acknowledges receipt of all plans, specifications, drawings, forms and other items referred to in this contract. All exhibits and attachments to this Contract are hereby incorporated.

F. Contractor hereby certifies that he does not discriminate against any employee or applicant for employment based on race, color, sex, national origin, age, or handicap.

G. This Contract is binding upon the parties, their heirs, representatives, executors, administrators, conservators, successors and assigns.

H. Should any dispute arise concerning said project, any provision of this Contract, or any provision of any subcontract which is subject to this Contract, such dispute shall be settled by arbitration held in accordance with the Construction Industry Rules of the American Arbitration Association in effect at the time a demand for arbitration is filed with such association. Any party to any such dispute may file, in the manner provided by the Construction Industry Rules of such association, a demand for arbitration. The decision in writing of the arbitrator or arbitrators appointed by such association shall be final and conclusive as to all parties to such dispute. Should any party fail or refuse to appear or participate in such arbitration proceedings, the arbitrator or arbitrators so appointed may decide the dispute on the evidence presented in such proceedings by the other party or parties to such dispute. The arbitrator or arbitrators shall have power to award to any party or parties to any such dispute such sums for costs, expenses, and attorney's fees as such arbitrator or arbitrators may deem proper. This provision shall be binding on Owner, Contractor, and any Subcontractor(s) who shall sign this Contract or shall sign a contract which incorporates this Contract by reference.

I. Should any action be commenced between the parties hereto concerning said project, any provision of this Contract, or the rights and obligations of either in relation thereto, the party, Owner or Contractor, prevailing in such litigation shall be entitled, in addition to such

other relief as may be granted, to a reasonable sum as and for his attorney's fees and costs in such actions.

J. This instrument constitutes the sole and only Contract of the parties hereto relating to said Project and correctly sets forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Contract are of no force and effect.

K. This Contract shall be construed in accordance with, and governed by the laws of the State of California. The venue of any arbitration or action will be in the County of Los Angeles.

L. The time of commencement and completion shall be extended for an Event of Force Majeure. The extension shall be the same number of days as construction is delayed; provided, however, that the party seeking such extension shall provide written notice to the other party of the Event of Force Majeure within ten (10) calendar days of its occurrence.

M. Contractor's Work on the Premises shall conform to the specifications on Owner's Work Letter as stated on "Attachment E". "Attachment E" shall supersede any conflicting terms in this Contract and any work letter not attached hereto.

Contractor warrants that title to all work covered by an application for payment will pass to Owner. Contractor further warrants that upon submittal of an application for payment all work for which certificates for payment have been previously issued and payments received from Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Contractor's Work.

To indicate their consent to this Contract, the parties or their authorized representatives or officers have signed this document as set forth below.

OWNER:

PANDA EXPRESS, INC.,
a California corporation

By: _____
Name: _____
Its: _____

CONTRACTOR:

_____,
a _____ corporation

By: _____
Name: _____
Its: _____

ATTACHMENT "A-1"

CONTRACT SUM ITEMS

The following items, per bidding negotiation, are included in the Contract Sum:

1. Items as indicated on the BIDDING INSTRUCTIONS RESPONSIBILITY MATRIX.
2. Installation of small kitchen items including mop racks, order intercom, can openers, hanging signs, wall mounted logo can, menu board, etc.
3. Installation of Owner supplied exhaust fans, make up air per plans.
4. Installation of Owner supplied hood and coordination of owner supplied Ansul system.
5. Assembly of Owner supplied shelving.
6. Unloading of Owner supplied equipment.
7. Completion of Subcontractor list.
8. Complete as built drawings.
9. Install Owner supplied service counter, beverage counter and counter top.
10. Install Owner supplied dining table, eating counter with core-drill table base.
11. Install Owner supplied decoration items, includes banner, paper lantern, picture.
12. Coordinate installation of Owner supplied security alarm system, music system, CCTV system, Pepsi, chemical system.
13. Obtaining Certificate of Occupancy.
14. Handling and coordination of light fixture delivery. Contractor to be responsible for receipt of deliveries, condition of deliveries and quantities.
15. Equipment list to include all applicable fixtures, furniture and equipment items, furnished by Owner and Contractor, including model and serial numbers for each item, subject to Owner's approval.
16. Coordination of Drive-Through Order System installation, if applicable.

ATTACHMENT "A-2"

EXCLUSIONS FROM CONTRACTOR'S WORK

The Contract Sum **does not include** the purchase price and shipping cost of the following items:

1. Architectural Service
2. Borings and Soil Tests
3. Building Permit and Impact Fees
4. Survey - topographical
5. Contingencies and Freight for items furnished by Owner
6. Compaction Test/Core Samples
7. Utility Assessment Fee, including water, storm, sanitary sewer, electric and gas utility fees
8. Kitchen equipment and exhaust hoods, **except any items specifically designated as "by CONTRACTOR"**.

ATTACHMENT "A-3"

CONTRACTOR'S WORK DRAWINGS

All Plans were prepared under the direction of _____, dated __/__/08.

<u>Sheet Number</u>	<u>Sheet Name</u>	<u>Revision</u>	<u>Date</u>
T-1.0	Cover Sheet	N/A	
T-2.0	Specifications	N/A	
T-2.1	Specifications	N/A	
D-1.0	Demolition Plan	N/A	
A-1.0	Floor Plan / Finish Schedule	N/A	
A-1.1	Reflected Ceiling Plan / Lighting Schedule	N/A	
A-1.2	Finish Floor Plan	N/A	
A-2.0	Interior Elevations	N/A	
A-2.1	Interior Elevations	N/A	
A-2.2	Kitchen and Restroom Elevations	N/A	
A-3.0	Architectural Details	N/A	
A-3.1	Architectural Details	N/A	
K-1.0	Kitchen Equipment Plan	N/A	
F-1.0	Casework / Counter	N/A	
S-1.0	Foundation & Roof Framing Plan	N/A	
S-2.0	Foundation & Roof Details	N/A	
M-1.0	Mechanical Plan	N/A	
M-2.0	Mechanical Plan Notes, Spec's and Schedule	N/A	
M-3.0	Mechanical Details / Kitchen Hood Details	N/A	
M-3.1	Hood Details Plan	N/A	
M-3.2	Hood Details Plan	N/A	
P-1.0	Plumbing Water & Gas / Waste & Vent Floor Plan	N/A	
P-2.0	Plumbing Notes and Specifications	N/A	
P-3.0	Water & Gas / Waste & Vent Risers	N/A	
P-4.0	Plumbing Details	N/A	
E-1.0	Floor Power Plan	N/A	
E-2.0	Lighting Plan	N/A	
E-3.0	Roof Power Plan	N/A	
E-4.0	Notes & Single Line Diagram	N/A	

ATTACHMENT "B"

ADDITIONAL CONTRACTOR'S WORK SPECIFICATIONS

Construction requirements, restrictions, and approvals:

Contractor shall comply with all matters of record with the Official Public Records County of Lee, City of Opelika, State of Alabama.

Declaration of Reciprocal Easements and Restrictions (Ex. 11) – see attached document

Section 2.02 Signage.

All signs installed and operated on any of the Outparcels during the term of this Declaration ("Signage") shall be subject to the prior written approval of the Declarant (and the Prior Declarations) and shall conform to the criteria shown on Exhibit "B" attached hereto.

Section 3.01 Restrictions on Outparcels

(b) Staging for the initial construction of Buildings or the replacement, alteration or expansion of any Building, sign or Common Area improvements including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall (i) be located solely on the constructing Owner's Parcel, or (ii) be limited to specific areas ("Staging Area") designated on the Site Plan or otherwise approved in writing by the Declarant

Section 3.01 Restrictions on Outparcels (Required Screening)

(f) Decorative screening or landscaping shall be installed to obscure from public view all trash rooms, trash holding receptacles, loading or service areas, mechanical or electrical equipment, storage facilities or bins, and other unsightly building appurtenances. Appropriate screening shall be provided to obscure any roof-mounted equipment and appurtenances, roof vents, and similar items from public view.

Section 3.02 Development Guidelines

(a) Declarant reserves the right to review and approve or disapprove Owner's final site plan to include:

1. Building and parking areas to include elevations, colors and materials.
2. Site lighting
3. Grading and drainage plan
4. Landscape and irrigation plan
5. Signage plan

(b) Owner shall furnish Declarant three (3) sets of all plans (as outlined above) for review and Declarant shall notify Owner of its approval or disapproval within thirty (30) days after receipt of said plans or said plans shall be deemed disapproved. Owner warrants to Declarant that If requested Outparcel owner shall furnish Declarant with 3 copies of development plans. Declarant will approve or disapprove of plans within 30 days. Owner will construct all improvements substantially in accordance with the approved plans as required herewith unless changed in whole or part in writing by mutual consent.

(j) No improvements shall be constructed, erected, expanded or altered on an Outparcel until the plans for same (including site layout, exterior building materials and colors and parking) have been approved in writing by Declarant, which approval shall not be unreasonably delayed

Hazardous materials; related requirements:

An asbestos survey (ACM) has been or will be conducted on the Premises. Results for this survey is still pending.

Additional insurance including performance bond:

N/A

Requirements, if any, for collection of any improvement allowance:

N/A

Miscellaneous:

N/A

ATTACHMENT "C"

COST ITEMIZATION FORM

EXHIBIT D

Construction Photo Standards

General Requirements:

- Digital camera resolution: 5 Megapixel minimum
- All photos require "Date Stamp"
- Refer to "Sample photos" file in Accruent for the minimum shots required
- Elevation photos to be taken from various angles
- Always show the reference point, such as building, street pole light etc. for freestanding underground and site utilities

A0.2 During Construction

GC to take during construction:

1. **A. 02.a Underground:** plumbing, electric, loop detectors (drive-thru): overall shots (bird view if possible) & close-up shots
2. **A. 02.b Utility:** underground site utilities to include gas, electrical, water, grease trap, phone, storm sewer line and catch basins
3. **A. 02.c Site:**
 - a. Overall site, such as trenches for utilities, pole light, sign footings etc.
 - b. Slab preparation – for construction progress purpose
4. **A. 02.d Framing:**
 - a. Interior – overall metal framing
 - b. Exterior – various elevations during progress stages, sheathing
 - c. Roof – all curbs, 4 corners, towers
5. **A. 02.e Rough-in MPE:**
 - a. Cook-line – water and gas lines; electrical conduits; backing
 - b. 2-comp sinks – water and electrical conduits; backing
 - c. 3-comp sinks – water lines; backing
 - d. Hand sink – water line; backing
 - e. Mop sink – water lines (faucet, hose bibb); backing
 - f. Water heater – water and gas lines; electrical conduits
 - g. Soda rack – backflow, water line and electric outlet; backing
 - h. Manager station (3 walls) – electrical conduits for phone, data, low voltage; backing
 - i. Microwave – electrical
 - j. Steam table low-wall – electrical, phone, data, water; Shims
 - k. Beverage station – electrical, water, refrigeration line
 - l. Restrooms (men & women) – water, electrical; backing
 - m. Drive-thru
 - i. Soda machine, cash register wall – electrical, phone, data; backing
 - ii. Steam table wall – water, electrical, data; backing
 - iii. Window wall – electrical, timer,
 - iv. Hand sink – water, electrical, hood control box; backing
 - v. Manager Station
6. **A. 02.f Drywall and water proofing:** all the kitchen area; demising wall for inline and endcap stores
7. **A. 02.g Kitchen equipment installation stage**
 - a. Walk-in Cooler, Freezer: sealant at bottom and ceiling panel joints; inside completion

- b. Main Gas and Water shut-off valves, Ansul valve – show reference point for the valve location

8. A.02.h Change of Scope (Change Order)

A.03 After Construction

GC to take when project completed:

1. **A.03. a** all 4 exterior elevations day and night, overall site
2. **A.03. b** Pylon, Monument sign, Pole sign day and night
3. **A.03. c** Landscaping and irrigation all elevations, Patio
4. **A.03. d** Roof – finished roof including all equipment, minimum 4 angles of each corner, tower back
5. **A.03. e** interior
 - a. FOH – menu board, service line, drink station, ceiling, dining, doors, glaze
 - b. BOH – cook line, prep table, WIC, WIF, water heater, manager station, safe, back door, soda rack, CO2 tank
 - c. Restroom: inside - all fixtures including lighting and outside - doors, ADA sign

ATTACHMENT "E"
OWNER'S WORK LETTER

ATTACHMENT “F”
PAYMENT REQUEST PROCEDURES FOR CONTRACTORS

This package includes the following forms to be completed when requesting payments, and instructions for completing these forms:

3. Application and Certificate for Payment (6102f)
4. Project Payment Tracking Report (6103f)
5. Lien Release Forms
 - a. Conditional Waiver & Release upon PROGRESS payment(6104a)
 - b. Unconditional Waiver & Release upon PROGRESS payment(6104b)
 - c. Conditional Waiver & Release upon FINAL payment(6104c)
 - d. Unconditional Waiver & Release upon FINAL payment(6104d)
6. Contractor Acknowledgement—Responsibility for sales tax(6111)
7. Project Close Out Check List (8201)

1. Application and Certificate for Payment (6102f)

- a. When requesting a payment from Panda Express Inc., the general contractor (“Contractor”) shall complete an “Application and Certificate for Payment” form, and only the Panda Express, Inc. form is acceptable.
- b. Please ensure the “Current Payment Due” portion is correct.
- c. Contractor must submit an updated Subcontractor list with every Application and Certificate for Payment. This list must indicate all Subcontractors currently working on the job, or who have previously worked on the job, at the time of the payment request.

2. Project Payment Tracking Report (Contractor 6103f)

- a. The “**Project Payment Tracking Report**” shall breakdown the lump sum of the Contractor’s Contract amount into amounts to be paid to the Contractor, Subcontractors, suppliers, and others for work on the project. Contractor shall indicate 100% of the original amount of each projected expense on the lines provided under the heading Base Contract Amount.” The Contractor shall breakdown any approved change orders into their component parts and distributes those amounts in the Addition/Deletion column provided.
- b. The amount indicated in the column labeled Total Revised Amount should be the total of the Base Contract Amount + any **APPROVED** addition/deletion change orders.
- c. Total Paid to Date shall indicate 100% of any prior requests for payment that were approved and paid.
- d. The Subcontractor’s name should be provided in the appropriate categories along with the amount to be paid.
- e. Under pay periods and amounts tendered, input amount under payment number. (**NOTE:** Change the number under amount for request to the corresponding payment number.)

3. Lien Releases Forms

The contractor, prior to receiving payment for the amount requested in each application for payment, shall provide the following waivers of lien:

- a. **Notarized Conditional Waiver & Release upon Progress Payment (6104A)**

SUBCONTRACTOR--Submit this form to indicate that when you receive and cash your next check, you will release your lien rights for this amount.

GENERAL CONTRACTOR--Submit this form completed by all subcontractors with your requests for progress payments before your 90% request. Submit this form completed by you with your requests for progress payments through 90% payment request.

b. **Notarized Unconditional Waiver & Release upon Progress Payment (6104B)**

SUBCONTRACTOR--Submit this form to indicate the total sum of all payments that you have actually received to this date. By doing so, you release your lien rights for this amount.

GENERAL CONTRACTOR--Submit this form completed by all subcontractors with your requests for progress payments through your 90% request. Submit this form completed by you with your requests for progress payments through your final payment request.

These amounts must match the previous payment request amounts.

c. **Notarized Conditional Waiver & Release Upon Final Payment (6104C)**

SUBCONTRACTOR--Submit this form to indicate that when you receive your next check, this amount will make the sum of all payments equal to the original subcontract amount.

GENERAL CONTRACTOR--Submit this form completed by all subcontractors with your request for 90% payment. Submit this form completed by you with your request for final payment with notary signature.

d. **Notarized Unconditional Waiver & Release Upon Final Payment (6104D)**

SUBCONTRACTOR--Submit this form to indicate that you have been paid in full for original subcontract amount.

GENERAL CONTRACTOR--Submit this form completed by all subcontractors with your request for final payment, along with your conditional waiver & release upon final payment form. Then, submit this form after you are paid in full for original contract amount.

Note:* Original must be received before the final payment to be processed.

4. **Contractor Acknowledgement—Responsibility for sales tax(6111)**

The contractor, prior to receiving final payment, shall provide the completed form.

5. **Project Close Out Check List (8201)**

The General Contractor, prior to receiving final payment, shall complete all open punch list items and shall provide all items listed on the Project Close Out Check List (8201).

NOTE:

If the contractor cannot or will not provide the required waivers, payment will not be made directly to the contractor. If the contractor is not able to provide all the required lien releases for their subcontractors and suppliers, then Panda Express Inc. has the right to issue dual payee checks to both the contractor and the subcontractors and suppliers.