

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

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In re:	)	Chapter 11
SD-Charlotte, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 20-30149
	)	Joint Administration Requested
Debtors.	)	<b>NOTICE OF OPPORTUNITY FOR HEARING</b>
	)	(No Protest Notice: No
	)	Hearing Will Be Held Unless
	)	Request For Hearing Is Filed)
	)	

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**TAKE NOTICE** that SD-Charlotte, LLC, RTHT Investments, LLC, SD Restaurant Group, LLC, SD-Missouri, LLC and Southern Deli Holdings, LLC, debtors and debtors-in-possession in the above-captioned cases (the “Debtors”) have filed papers with the Court to reject certain non-residential real property lease agreements. A copy of these papers is included with this Notice.

**Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.**

If you do not want the Court to order the rejection of the non-residential real property lease agreements, or if you want the Court to consider your views on the motion, then on or before **FEBRUARY 20, 2020**, you or your attorney must do three things:

1. **File with the Court a written response requesting that the Court hold a hearing and explaining your position. File the response at:**

U.S. Bankruptcy Court  
401 West Trade Street  
Room 111  
Charlotte, North Carolina 28202

If you mail your request to the Court above for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above.

2. **On or before the date stated above for written responses, you must also mail or fax a copy of your written request to:**

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<sup>1</sup> The Debtors, together with the last four digits of each Debtor’s federal tax identification number, are: SD-Charlotte, LLC (7237); RTHT Investments, LLC (2540); SD Restaurant Group, LLC (0331); SD-Missouri, LLC (8294); and Southern Deli Holdings, LLC (9425).

U.S. Bankruptcy Administrator Office  
402 W. Trade Street  
Suite 200  
Charlotte, North Carolina 28202-1669

Moore & Van Allen PLLC  
100 North Tryon Street  
Suite 4700  
Charlotte, North Carolina 28202  
Attn: Hillary B. Crabtree  
Facsimile #: (704) 339-5968

Linda W. Simpson  
JD THOMPSON LAW  
P.O. Box 33127  
Charlotte, NC 28233  
Facsimile: (704) 943-1152

3. **Attend the hearing scheduled for February 26, 2020, at 9:30 a.m. in Courtroom C 1-5, United States Bankruptcy Court, Charles R. Jonas Federal Building, 401 West Trade Street, Charlotte, North Carolina 28202.**

If you or your attorney do not take these steps, **A HEARING WILL NOT BE HELD**, and the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Dated: February 7, 2020

/s/ Linda W. Simpson  
Linda W. Simpson  
N.C. Bar No. 12596  
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*Proposed Special Conflicts Counsel to the Debtors  
and Debtors-in-Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

In re: ) Chapter 11  
SD-Charlotte, LLC, *et al.*,<sup>2</sup> ) Case No. 20-30149  
Debtors. ) Joint Administration Requested

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**DEBTORS' MOTION TO REJECT CERTAIN  
NON-RESIDENTIAL REAL PROPERTY LEASE AGREEMENTS**

SD-Charlotte, LLC, RTHT Investments, LLC, SD Restaurant Group, LLC, SD-Missouri, LLC and Southern Deli Holdings, LLC, debtors and debtors-in-possession in the above-captioned cases (the “Debtors”), hereby move the Court (the “Motion”) for entry of an order authorizing the Debtors to reject certain unexpired leases of non-residential real property described below pursuant to sections 105(a) and 365(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this Motion, the Debtors state as follows:

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

<sup>2</sup> The Debtors, together with the last four digits of each Debtor's federal tax identification number, are: SD-Charlotte, LLC (7237); RTHT Investments, LLC (2540); SD Restaurant Group, LLC (0331); SD-Missouri, LLC (8294); and Southern Deli Holdings, LLC (9425).

2. The statutory predicates for the relief requested herein are sections 105(a) and 365(a) of the Bankruptcy Code and Rule 6006 of the Bankruptcy Rules.

### **GENERAL BACKGROUND**

3. On February 7, 2020 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their affairs as a debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code.

4. No request for the appointment of a trustee or examiner has been made, and no statutory committee or trustee has been appointed in these cases (the “Chapter 11 Cases”).

5. As additional background information, the Debtors rely on the *Declaration of Brian Rosenthal in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* (the “First Day Declaration”)<sup>3</sup>

### **BACKGROUND-LEASES AND ASSIGNMENTS**

6. The Debtors seek to reject certain of its leases related to three Fuzzy’s Taco Shop locations. Although these locations are operated by SD Restaurant Group, LLC, at least one location has RTHT Investments, LLC as a tenant. Shortly before the Petition Date, the Debtors determined that operations were not sustainable and closed the three restaurants. All of the employees were laid off and the restaurants were closed.

7. The Debtors are seeking to reject the leases as of the Petition Date to avoid unnecessary expense and burden to the estates of incurring administrative expenses.

### **The Berewick Lease**

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<sup>3</sup> Except where otherwise indicated, capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.

8. On or about July 7, 2017, Debtor RTHT Investments, LLC (the “Berewick Tenant”) entered into a Lease Agreement (as amended, supplemented or otherwise modified from time to time, the “Berewick Lease”) with FTS Berewick, LLC (the “Berewick Landlord”) with respect to non-residential real property located at 4824 Berewick Town Center Drive, Charlotte, North Carolina 28278 (the “Berewick Premises”). A copy of the Berewick Lease is attached hereto as Exhibit A.

9. As set forth in the Berewick Lease, the Berewick Premises is composed of (i) an approximately 0.81 acre of non-residential parcel of real property located in the Berewick Town Center retail project, as further described in the Conceptual Site Plan attached as Exhibit A to the Berewick Lease, and (ii) an approximately 3,825 square-foot building with adjacent patio, as depicted and labeled as the “Premises” on the Conceptual Site Plan attached as Exhibit A to the Berewick Lease and as shown on the Building Plan attached as Exhibit A-1 to the Berewick Lease.

10. The Berewick Lease has a ten (10) year term, which commenced on July 7, 2017 and expires on July 6, 2027. As of the Petition Date, the monthly base rent was \$11,793.75, plus Additional Rent (as defined in the Berewick Lease) and all other amounts to be paid by the Berewick Tenant to the Berewick Landlord under the Berewick Lease.

11. The Debtors have determined that it is in the best interest of the Debtors, their creditors, and their bankruptcy estates as a whole to reject the Berwick Lease effective as of the Petition Date in order to enable the Debtors to successfully reorganize their obligations and eliminate unsustainable expenses.

#### **The Matthews Lease**

12. Prior to the Petition Date, Debtor SD Restaurant Group, LLC (the “Matthews Tenant”) entered into that certain Assignment and Assumption of Interest in Lease Agreement

with Debtor RTHT Investments, LLC (in such capacity, the “Matthews Assignor”), pursuant to which the Matthews Tenant assumed all of the Matthews Assignor’s right, title and interest in and under that certain Shopping Center Lease Agreement dated as of October 3, 2017 (as amended, supplemented or otherwise modified from time to time, the “Matthews Lease”), by and between IA Matthews Sycamore, L.L.C. (the “Matthews Landlord”) and the Matthews Assignor with respect to non-residential real property located at 2225 Matthews Township Parkway, Suite C, Matthews, North Carolina 28105 (the “Matthews Premises”). A copy of the Matthews Lease is attached hereto as Exhibit B-1. A copy of the Assignment and Assumption of Interest in Lease Agreement by and between the Matthews Tenant and the Matthews Assignor is attached hereto as Exhibit B-2.

13. The obligations of the Mathews Tenant to the Mathews Landlord under the Mathews Lease have been guaranteed by Debtor SD-Missouri, LLC pursuant to that certain Guaranty dated as of September 26, 2017, by and between SD-Missouri, LLC and the Mathews Landlord (the “Matthews Guaranty”). A copy of the Matthews Guaranty is attached hereto as Exhibit B-3.

14. As set forth in the Matthews Lease, the Matthews Premises is composed of approximately 5,770 square feet of gross floor space as outlined on the Site Plan attached as Exhibit A to the Matthews Lease.

15. The Matthews Lease has a ten (10) year term, which commenced on October 6, 2017 and expires on April 30, 2028. As of the Petition Date, the monthly base rent was \$11,299.58, plus Additional Rent (as defined in the Matthews Lease) and all other amounts to be paid by the Matthews Tenant to the Matthews Landlord under the Matthews Lease.

16. The Debtors have determined that it is in the best interest of the Debtors, their creditors, and their bankruptcy estates as a whole to reject the Matthews Lease effective as of the

Petition Date in order to enable the Debtors to successfully reorganize their obligations and eliminate unsustainable expenses.

**The Rea Farms Lease**

17. On June 10, 2017, Debtor SD Restaurant Group, LLC (the “Rea Farms Tenant”) entered into that certain Assignment and Assumption of Interest in Lease Agreement with Debtor RTHT Investments, LLC (in such capacity, the “Rea Farms Assignor”), pursuant to which the Rea Farms Tenant assumed all of the Rea Farms Assignor’s right, title and interest in and under that certain Lease Agreement dated as of November 15, 2017 (as amended, supplemented or otherwise modified from time to time, the “Rea Farms Lease”, and together with the Berewick Lease and the Matthews Lease, collectively, the “Leases”), by and between RFR, LLC (the “Rea Farms Landlord”, and together with the Berewick Landlord and the Matthews Landlord, collectively, the “Landlords”) and the Rea Farms Assignor with respect to non-residential real property located at 9805 Sandy Rock Place, Unit 8, Charlotte, North Carolina 28277 (the “Rea Farms Premises”). A copy of the Rea Farms Lease is attached hereto as Exhibit C-1. A copy of the Assignment and Assumption of Interest in Lease Agreement by and between the Rea Farms Tenant and the Rea Farms Assignor is attached hereto as Exhibit C-2.

18. As set forth in the Rea Farms Lease, the Rea Farms Premises is composed of that certain space known as Building D, Space 8 in the Retail Development (as defined in the Rea Farms Lease) containing approximately 4,220 rental square feet of Floor Area (as defined in the Rea Farms Lease).

19. The Rea Farms Lease has a ten (10) year term, which commenced on October 21, 2018 and expires on October 20, 2028. As of the Petition Date, the monthly base rent was \$11,956.67, plus Additional Rent (as defined in the Rea Farms Lease) and all other amounts to be paid by the Rea Farms Tenant to the Rea Farms Landlord under the Rea Farms Lease.

20. The Debtors have determined that it is in the best interest of the Debtors, their creditors, and their bankruptcy estates as a whole to reject the Rea Farms Lease effective as of the Petition Date in order to enable the Debtors to successfully reorganize their obligations and eliminate unsustainable expenses.

**BASIS FOR RELIEF REQUESTED**

21. Section 365(a) governs the rejection of any executory contract or unexpired lease. A debtor in possession may, subject to court approval, assume or reject any executory contract or unexpired lease of the debtor. 11 U.S.C. § 365(a).

22. The significance of rejection under Section 365 is that it relieves the estate of onerous and burdensome future obligations. See In re Shangra-Law, Inc., 167 F.3d 843, 849 (4<sup>th</sup> Cir. 1999) (citing NLRB v. Bildisco & Bildisco, 465 U.S. 513 (1984)).

23. The decision to assume or reject an executory contract or unexpired lease is a matter within a debtors' "business judgment." See NLRB v. Bildisco (In re Bildisco), 682 F.2d 72, 79 (3d Cir. 1982), aff'd, NLRB v. Bildisco & Bildisco, 465 U.S. 513 (1984) (stating, "[t]he usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the 'business judgment' test."); see also Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098 (2d Cir. 1993); Control Data Corp. v. Zelman (In re Minges), 602 F.2d 38, 42 (2d Cir. 1979). Accordingly, courts generally defer to a debtor's decision to reject a contract that, in the debtor's business judgment, is burdensome and that rejection likely will benefit the estate. See Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.), 872 F.2d 36, 40 (3d Cir. 1989).

24. The Court should accept a debtor's decision to reject an executory contract "except upon a finding of bad faith or gross abuse of [the debtor's] business discretion." Lubrizol Enters. Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.),

756 F.2d 1043, 1047 (4<sup>th</sup> Cir. 1985). “More exacting scrutiny would slow the administration of the debtor’s estate and increase its cost, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially.” Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5<sup>th</sup> Cir. 1985).

25. In the exercise of its business judgment, the Debtors have determined that the Leases are burdensome to the Debtors and their respective estates. As of the date of this Motion, the Debtors have closed the restaurants at the leased locations, but have not removed personal property assets of the Debtors at such locations. The Debtors have filed this Motion to avoid the administrative costs to their estates after closure of the locations and will make arrangements with the Landlords to turn over occupancy of the same.

26. As a result, the Debtors have determined that, in the exercise of their sound business judgment, the Leases are of no further value to their estates and hereby move for the rejection of the Leases effective as of the Petition Date.

### **NOTICE**

27. The Debtors have served notice of this Motion on: (i) the 30 holders of the largest general unsecured claims against Debtors; (ii) the Office of the United States Bankruptcy Administrator for the Western District of North Carolina; (iii) counsel for the Prepetition Secured Lender; (iv) counsel for the DIP Lender, (v) counsel for the MCA Parties, if known; (vi) the Securities and Exchange Commission; (vii) the U.S. Department of Treasury; (viii) all parties who have requested notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002; and (vix) the Landlords, and submits that, given the nature of the relief requested, no other or further notice need be given. No previous application for the relief requested herein has been made by Debtors to this or any other court.

### **CONCLUSION**

28. Based on the foregoing, the rejection of the Leases under Section 365(a) of the Bankruptcy Code is a sound exercise of the Debtors' business judgment and is in the best interest of the Debtors and the Debtors' estates.

WHEREFORE, the Debtors respectfully request that the Court enter an order (a) authorizing the rejection of the Leases and deeming the Leases rejected pursuant to Section 365(a) of the Bankruptcy Code effective as of the Petition Date and (b) providing such further relief as is just and proper.

*[Remainder of page intentionally left blank.]*

Dated: February 7, 2020.

/s/ Linda W. Simpson

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*Proposed Special Conflicts Counsel to the Debtors  
and Debtors-in-Possession*

**Exhibit A**

The Berewick Lease

**FUNDAMENTAL LEASE PROVISIONS**

**Date:**

*July*  
~~June~~ 2017

**Landlord:**

**FTS BEREWICK, LLC**

**Address of Landlord:**

c/o Aston Properties  
610 E. Morehead Street, Suite 100  
Charlotte, North Carolina 28202  
Attn: Jackson Smith

**With a Copy to:**

Aston Properties  
610 E. Morehead Street, Suite 100  
Charlotte, North Carolina 28202  
Attn: Jennifer Williams

**Tenant:**

**RTHT INVESTMENTS, LLC**

**Address of Tenant:**

Attn: Yaron Goldman  
131 East Lincoln Ave, Suite C  
Ft. Collins, CO 80524

**With a Copy to:**

Thomas J. Gorman, Esq.  
Gorman & Associates, P.A.  
13925 Ballantyne Corporate Place, Suite 200  
Charlotte, North Carolina 28277

**Tenant's Trade Name:**

Fuzzy's Taco Shop

**Property:**

That approximately 0.81-acre parcel of land depicted and labeled as the "Property" on the Conceptual Site Plan attached hereto as Exhibit "A."

**Town Center:**

The retail project to be named Berewick Town Center, consisting of approximately 16.2 acres bounded by Dixie River Road, Steele Creek Road, and Shopton Road West in Charlotte, North Carolina.

**Shopping Center:**

Parcel 3 of the Town Center, as such Parcel 3 is depicted and labeled as the "Shopping Center" on the Conceptual Site Plan attached hereto as Exhibit "A." Tenant acknowledges and agrees that HT Berewick, LLC, a North Carolina limited liability company ("Developer"), and not Landlord, controls and develops the Town Center and the Shopping Center and that the relationship between the Property and the Town Center and the Shopping Center shall be governed exclusively by the Charter (as defined herein) and the Parcel 3 Declaration (as defined herein).

**Premises:**

The approximately 3,825 square-foot building with adjacent patio to be developed by Landlord on the Property, as depicted and labeled as the "Premises" on the Conceptual Site Plan attached hereto as Exhibit "A" and as shown on the Building Plan attached hereto as Exhibit "A-1."

**Permitted Use:**

Subject to that certain Charter for Berewick Town Center recorded in Book 29472 at Page 744 in the Office of the Register of Deeds of Mecklenburg County (as amended and/or supplemented from time to time, the "Charter") and that certain Declaration of Easements and Cost Sharing Agreement (Berewick Town Center, Parcel 3) recorded in Book 31143 at Page 518 in the Office of the Register of Deeds of Mecklenburg County (as amended and/or supplemented from time to time, the "Parcel 3 Declaration"), the Premises shall be used for the operation of a Fuzzy's Taco Shop restaurant, similar to other Fuzzy's Taco Shop restaurants in the Atlanta, Georgia Metropolitan Area, as a limited service Mexican food restaurant with take-out, serving beer and wine, and for no other purpose. Tenant reserves the right to offer delivery service in the future.

**Lease Term:**

The term of this Lease and Tenant's obligation to pay Base Rent and Additional Rent shall commence on the Rent Commencement Date and shall expire, unless sooner terminated pursuant to the terms hereof, at midnight on the date which is ten years after the Rent Commencement Date.

**Renewal Options:**

Provided Tenant is not then in default beyond any applicable cure period, Tenant shall have two consecutive, five year options to renew the Lease, each to be exercised with six months' advance notice.

**Opening Date:**

Tenant agrees that it will open for business fully stocked and staffed, for at least one (1) day for the Permitted Use on or before the date which is one hundred twenty (120) days following the Delivery Date (the "Opening Date"). Notwithstanding any other remedy available to Landlord herein, in the event Tenant is not open for business for the Permitted Use to the public, fully stocked and staffed within forty-five (45) days after the Opening Date, Landlord shall have the right to charge Tenant two times the monthly Base Rent from that date until Tenant's opening.

**Rent:**

Base Rent, Additional Rent, and all other amounts to be paid by Tenant to Landlord under this Lease.

**Base Rent:**

<u>Years</u>	<u>PSF</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>
1-5	\$37.00	\$11,793.75	\$141,525.00

6-10	\$40.70	\$12,973.13	\$155,677.50
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Option Periods

<u>Years</u>	<u>PSF</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>
11-15	\$44.77	\$14,270.44	\$191,245.25
16-20	\$49.25	\$15,698.44	\$188,381.25

**Additional Rent:**

Beginning on the Rent Commencement Date and in addition to the Base Rent, Tenant shall be responsible for paying to Landlord in equal monthly installments, its Proportionate Share (as hereinafter defined) of the Taxes, Insurance Costs and Utilities (as each of such terms is hereinafter defined), which Landlord estimates during the first Lease Year shall be as follows:

Estimated Real Estate Taxes:	\$3.00 Per sq. ft.
Insurance:	\$0.30 Per sq. ft.

Additionally, beginning on the Rent Commencement Date and in addition to the Base Rent, Tenant shall be responsible for paying to Landlord, within fifteen (15) days after the same are assessed by Developer, (a) Tenant's Proportionate Share of any assessments levied against the Shopping Center pursuant to the Charter (the "Charter Assessments"), and (b) any special assessments levied against the Property pursuant to the Parcel 3 Declaration (the "Special Assessments"). Tenant acknowledges that Landlord has no control over the Charter Assessments or the Special Assessments, including, without limitation, those attributable to the Shopping Center and the Property.

**Estimated Delivery Date:**

Subject to delays attributable to Force Majeure (as hereinafter defined) or Tenant Delay (as hereinafter defined), Landlord estimates that Landlord shall deliver the Premises to Tenant with Landlord's Work substantially complete on or before the date that is one hundred thirty-five (135) days following the Closing Date (as defined herein) (the "Estimated Delivery Date"). If possession of the Premises is not delivered by the date that is one hundred eighty (180) days following the Closing Date for reasons other than Force Majeure or Tenant Delay, Tenant will receive a rent credit of one (1) day of Base Rent for each day of delay. If the Premises are not delivered to Tenant by the date that is two hundred ten (210) days following the Closing Date for reasons other than Force Majeure or Tenant Delay, then Tenant may terminate the Lease without penalty or elect to continue to receive said rent credit until possession is received, of which election Tenant shall notify Landlord in writing no later than the date that is

two hundred twenty (220) days following the Closing Date, and in any event prior to Landlord's delivery of the Premises to Tenant.

<b>Lease Commencement Date:</b>	The date of this Lease.
<b>Rent Commencement Date:</b>	Base Rent and Additional Rent will commence on the earlier of: a) one hundred and fifty (150) days after the Delivery Date or b) the date Tenant opens for business to the public.
<b>Condition of Premises:</b>	The space shall be delivered to Tenant in a modified raw shell in accordance with the Landlord's Work, as described in Exhibit "B" attached hereto, which Landlord's Work shall include, without limitation, delivering the Premises with utility lines for Tenant's use as specified in said Exhibit "B."
<b>Tenant Improvement Allowance:</b>	Landlord will provide Tenant a "Tenant Improvement Allowance" of up to One Hundred Eighty-Two Thousand Seven Hundred Fifty and 00/100 Dollars (\$182,750.00) payable as provided herein. See Section 4 herein.
<b>Parking:</b>	Pursuant to the terms, conditions and restrictions contained in the Parcel 3 Declaration, Tenant shall be entitled to the non-exclusive use, in common with all other tenants and occupants of the Shopping Center and at no charge to Tenant, of all parking spaces located from time to time in the Shopping Center.
<b>Guarantor:</b>	Yaron Goldman and spouse, Tiffany Goldman.

**Effect Of Reference To A Fundamental Lease Provision:** Each of the Fundamental Lease Provisions contained above shall be construed to incorporate all the references thereto contained in the other provisions of this Lease and shall be limited by such provisions. Each reference in this Lease to any of the Fundamental Lease Provisions shall be construed to incorporate all of the terms provided under each such Fundamental Lease Provision. In the event of any conflict between any Fundamental Lease Provision and the remainder of the Lease, the remainder of the Lease shall be controlling.

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF MECKLENBURG

THIS LEASE, made and entered into this the 24<sup>th</sup> day of <sup>July</sup> June, 2017, by and between FTS BEREWICK, LLC, a North Carolina Limited Liability Company (hereinafter called "Landlord") and RTHT INVESTMENTS, LLC, a Delaware Limited Liability Company (hereinafter called "Tenant");

W I T N E S S E T H:

That for and in consideration of the mutual agreement of the parties, including the Rent agreed to be paid by Tenant to Landlord, Landlord leases and demises to Tenant, and Tenant leases, demises and rents from Landlord the following described Premises on the terms and conditions set out in this Lease and in the Fundamental Lease Provisions (the "Fundamental Lease Provisions"), as follows:

**1. Description of Leasehold Premises.**

(a) The Premises are identified in the Fundamental Lease Provisions and are shown on "Exhibit A" hereto. The parties agree that the 3,825 rentable square feet of the Premises is an approximation, which shall be from the outside of any exterior walls and from the middle of any interior walls. Landlord and Tenant agree that within the thirty (30) day period following the date on which Landlord delivers possession of the Premises to Tenant, Tenant may elect, at its sole cost and expense, to determine the number of rentable square feet in the Premises. If the actual number of rentable square feet in the Premises is less than or greater than 3,825 square feet, and the determination is certified by a qualified architect (who shall be subject to the Landlord's reasonable approval), then this Lease shall be amended so as to reflect the actual number of rentable square feet of the Premises and a proportionate adjustment of Base Rent and all other charges hereunder which are based upon the rentable square footage of the Premises.

(b) Tenant shall also have the exclusive right to use the Common Areas adjacent to the Premises, at a minimum of 450 square feet of usable area (the "Patio"), as depicted on "Exhibit A," for an outdoor eating area so long as such use complies with local zoning codes and ordinances and the requirements contained in the Charter or any other matter of record. Tenant is to keep this area in a neat and clean fashion at all times at Tenant's expense. Tenant shall not be obligated to pay additional rent for use of the Patio. Tenant shall indemnify and hold Landlord harmless from and against any and all liabilities, claims, costs and expenses, including, without limitation, reasonable attorney's fees, incurred by Landlord and relating in any way to such patio area, except to the extent arising from the negligence or willful misconduct of Landlord, its agents, employees, representatives or any of them. Tenant's use of the Patio shall be subject to the following rules and regulations:

(i) Tenant shall keep the Patio clean and neat at all times and shall not allow trash or debris to accumulate or be stored on the Patio at any time. Tenant shall clean and wash the patio flooring daily when the Patio is in use.

(ii) Tenant shall keep the Patio lighted during all hours of operation of the restaurant, at such levels as Tenant shall reasonably determine to be advisable for the safety and comfort of its patrons. Such lighting shall be attractively designed and installed with no visible or protruding wires or mechanical systems, and shall be shielded in such a manner as to avoid unreasonable or excessive glare. All Patio lighting proposed or installed by Tenant shall be subject to Landlord's prior written approval, not to be unreasonably withheld.

(iii) Tenant shall not permit drunken or disorderly conduct within the Patio.

(iv) Tenant shall not permit noise which would tend to unreasonably disturb other tenants without the prior consent of the Landlord, such consent not to be unreasonably withheld.

(v) No signage shall be permitted on the Patio except with the prior written approval of Landlord, which approval Landlord shall not unreasonably withhold.

**2. Permitted Use.** Tenant shall use the Premises for a Fuzzy's Taco Shop location, similar to other Fuzzy's Taco Shop restaurants in the Atlanta, Georgia Metropolitan Area, as a limited service Mexican food restaurant with take-out service, serving beer and wine, and for no other purpose. Tenant reserves the right to offer delivery service in the future. If Tenant shall cease to operate its business in the Premises for more than one hundred twenty (120) consecutive days for reasons other than condemnation, casualty, or remodeling (but not to exceed the time period(s) set forth in this grammatical paragraph for remodeling), Landlord shall have the right, at any time thereafter, for as long as Tenant's cessation to operate is still in effect, to terminate this Lease by giving Tenant thirty (30) days' written notice of such election, and this Lease shall so terminate thirty (30) days after Landlord's delivery of such notice unless Tenant has reopened the Premises for continuous business during such thirty (30) day period (provided, however, Tenant shall be deemed not to have "reopened the Premises for continuous business" if such reopening is on a temporary basis (i.e., for a subsequent period of thirty (30) consecutive days or less, or intended solely to negate Landlord's termination right as set forth in the foregoing provision). For the purpose of this paragraph, Tenant shall not be deemed to have ceased operating its business in the Premises if Tenant is temporarily closed due to (i) the periodic taking of inventory in a commercially reasonable manner (not to exceed three (3) business days per calendar year), or (ii) the periodic remodeling of the Premises (not to exceed thirty (30) days more frequently than once every two (2) years).

**3. Common Areas.** The term "Common Areas" means the parking areas, roadways, pedestrian sidewalks, delivery areas, trash removal areas, landscaped areas, and all other areas or improvements outside of the Property that may be provided by the owner of the Town Center for the common use of tenants or occupants of the Town Center, including, without limitation, those Common Areas located in the Shopping Center. Tenant acknowledges that (a) pursuant to the terms, conditions, and restrictions contained in the Charter and the Parcel 3 Declaration, the Common Areas shall be subject to the exclusive control and management of the owner of the Town Center and its designated successors and assigns, and to such reasonable rules and regulations as such owner or its designated successors/assigns may from time to time adopt, and (b) Landlord has no control over the Common Areas or the management of the same. Tenant

and its employees, agents, invitees and licensees are granted the non-exclusive right, in common with others and subject to the exclusive control and management thereof at all times by the owner of the Town Center, to the non-exclusive use of such of the areas as are from time to time designated as Common Areas. Landlord will use commercially reasonable efforts to cause the Developer to operate and maintain (i) the Common Areas in the Town Center outside of the Shopping Center in the manner provided in the Charter and (ii) the Common Areas in the Shopping Center in the manner provided in the Parcel 3 Declaration.

**4. Landlord's Work and Tenant's Work.** Landlord, at its cost, shall construct upon and provide to the Premises for use and occupancy by Tenant such items of work, material and fixtures as may be specifically identified as "Landlord's Work" on Exhibit "B" which is attached hereto and incorporated herein by reference, and Tenant, at its cost, shall provide such items of work, material and fixtures as may be identified as "Tenant's Work" on said Exhibit "B". Prior to applying for any building permits, Tenant shall submit to Landlord the plans and specifications for Tenant's Work for Landlord's review and approval, such approval not to be unreasonably withheld, conditioned or delayed. Landlord shall deliver the Premises to Tenant in a modified raw shell in accordance with Landlord's Work on Exhibit "B", including, without limitation, utility lines for Tenant's use as specified in said Exhibit "B." If Landlord should be delayed in the completion of Landlord's Work as a result of any delay caused, in whole or in part, by Tenant or any of its agents, employees or contractors (each, a "Tenant Delay"), then the Rent Commencement Date, as defined herein, shall be accelerated by the number of days of such delay. Landlord shall use commercially-reasonable efforts to deliver possession of the Premises to Tenant with Landlord's Work substantially complete as soon as practicable following the date this Lease is fully-executed by both Landlord and Tenant.

Landlord shall pay to Tenant a construction allowance of up to One Hundred Eighty-Two Thousand Seven Hundred Fifty and 00/100 Dollars (\$182,750.00) for the purpose of reimbursing Tenant for the direct costs of constructing and completing Tenant's Work in the Premises (the "Tenant Allowance"); provided, however, if the actual cost of Tenant's Work is less than \$182,750.00, then Landlord shall only reimburse Tenant for the actual cost of such Tenant's Work, which Tenant Allowance shall be paid as follows.

(a) Upon completion of approximately fifty percent (50%) of Tenant's Work, provided that Tenant is not then in default under this Lease beyond any applicable notice and cure period, Landlord shall pay Tenant fifty percent (50%) of the Tenant Allowance after the following events have taken place:

1. Receipt by Landlord from Tenant of a partial release of lien in form and substance reasonably satisfactory to Landlord holding Landlord harmless from any and all obligations whatsoever which may have been incurred by Tenant and Tenant's general contractor, and any subcontractor, materialmen or others providing labor and/or materials in connection with Tenant's Work of greater value than \$5,000.00.
2. Receipt by Landlord from Tenant of copies of paid invoices establishing the actual costs paid by Tenant for the construction and/or completion of such portion of Tenant's Work.

(b) Upon completion of the remainder of Tenant's Work, provided that Tenant is not then in default under this Lease beyond any applicable notice and cure period, Landlord shall pay Tenant the remainder of the Tenant Allowance after the following events have taken place:

1. Receipt by Landlord from Tenant of a final Certificate of Occupancy issued by the City, County or other municipal or governmental agency authorized to issue such Certificate for the Premises.
2. Receipt by Landlord from Tenant of a release of lien in form and substance reasonably satisfactory to Landlord holding Landlord harmless from any and all obligations whatsoever which may have been incurred by Tenant and Tenant's general contractor, and any subcontractor, materialmen or others providing labor and/or materials in connection with Tenant's Work of greater value than \$5,000.00.
3. Tenant must be open for business and operating in the Premises.
4. Receipt by Landlord from Tenant of copies of paid invoices establishing the actual costs paid by Tenant for the construction and/or completion of Tenant's Work.
5. Receipt by Landlord of Tenant's first monthly installment of Minimum Annual Rent and Additional Rent.

If the total actual cost of Tenant's Work exceeds the Tenant Allowance, Tenant shall be solely responsible for such amounts in excess of the allowance.

**5. Lease Term, Commencement Dates, Delivery Date, Lease Year.** The term of this Lease ("Lease Term") shall commence on the date of this Lease ("Lease Commencement Date") and shall expire, unless sooner terminated pursuant to the terms hereof, at midnight on the last day of the one hundred twentieth (120) full calendar month after the Rent Commencement Date ("Expiration Date"). The "Rent Commencement Date" is the earlier of: 1) one hundred and fifty (150) days after delivery of the Premises; or 2) the date Tenant opens for business to the public. Landlord estimates that Landlord shall deliver the Premises, subject to Force Majeure and Tenant Delay, to Tenant on or before the Estimated Delivery Date. The date on which Landlord delivers the possession of the Premises to Tenant with Landlord's Work substantially completed shall be referred to herein as the "Delivery Date." Landlord warrants that, as of the Delivery Date, the Premises shall be in compliance with all applicable insurance requirements, federal, state and local laws, codes, rules, ordinances and regulations, and free of any materials containing asbestos. If possession of the Premises is not delivered by the date that is one hundred eighty (180) days following the Closing Date for reasons other than the Force Majeure or Tenant Delay, then Tenant will receive a rent credit of one (1) day of Base Rent for each day of delay. If the Premises is not delivered to Tenant by the date that is two hundred ten (210) days following the Closing Date for reasons other than Force Majeure or Tenant Delay, then Tenant may terminate the Lease without penalty or elect to continue to receive said rent credit until possession is received, of which election Tenant shall notify Landlord in writing no later than the date that is

two hundred twenty (220) days following the Closing Date, and in any event prior to Landlord's delivery of the Premises to Tenant.

The term, "Lease Year," as used herein shall be a calendar year, and each Lease Year shall begin on January 1. The first Lease Year of the term of this Lease shall begin on the first day of January next following the Lease Commencement Date and each succeeding Lease Year shall begin on the first day of each succeeding January during the term of this Lease. Any portion of the term of this Lease which is prior to January 1 of the first Lease Year or after December 31 of the final Lease Year shall be deemed a "Partial Lease Year".

Provided Tenant is not then in default in the performance of any term or condition of this Lease beyond any applicable cure period and is open and operating in the Premises for the Permitted Use, Tenant shall be granted two (2) consecutive, five (5) year options each to be exercised with six (6) months' prior written notice to Landlord ("Renewal Options"). All terms and provisions in this Lease shall be fully applicable during the Renewal Option(s) to the same extent as if such Renewal Options(s) had been included originally in this Lease as part of the Term. Accordingly, following Tenant's exercise of its right to extend the Lease Term for the Renewal Option(s), all references in this Lease to the "Lease Term" shall thereafter be construed to include and encompass the Renewal Options(s). Notwithstanding the foregoing to the contrary, the Base Rent shall increase during the Renewal Option(s) as set forth in the Fundamental Lease Provisions, and Landlord shall not be required to pay any Tenant Allowance in connection with the Renewal Option(s).

**6. Ownership of Premises and Right to Terminate Lease.** The Landlord does not currently own the Property, but intends to close on the purchase of the Property on or before September 14, 2017 (the "Closing Date"), pursuant to that certain Land Purchase Agreement dated April 18, 2017 (the "Purchase Agreement") between Landlord and Developer. If the Landlord does not own fee simple title to the Property by September 14, 2017, then, until the date on which Landlord acquires fee simple title to the Property, Landlord may terminate this Lease by delivering written notice to Tenant without any penalty or further obligation whatsoever, and any monies paid to Landlord shall be promptly returned.

**7. Intentionally Deleted.**

**8. Intentionally Deleted.**

**9. Rent; When Paid.** From and after the Rent Commencement Date, Tenant shall pay to Landlord the Base Rent which is shown on the schedule in the Fundamental Lease Provisions, without setoff or deduction. During the Renewal Option periods, the Base Rent shall increase as set forth on the Fundamental Lease Provisions. Except as provided herein, the Base Rent and Additional Rent, as defined below, shall be paid in equal monthly installments in advance on or before the first day of the month for which said amounts are due (or in any lump sum if so provided under this Lease); however, if the Rent Commencement Date shall fall on a day other than the first day of the calendar month, the Rent for the portions of a month at the beginning of the Lease Term shall be prorated and paid in advance on or before the Rent Commencement Date.

If Tenant shall fail to pay any installment of Base Rent or Additional Rent (as defined herein) within ten (10) days after such payment is past due, Tenant shall be subject to a late charge of four percent (4%) of such past due amount.

**10. Additional Rent.** In addition to the Base Rent, Tenant shall pay to Landlord in equal monthly installments, its Proportionate Share of the Taxes, Insurance Costs and Utilities ("Additional Rent"). During the first Lease Year, Tenant's Additional Rent is estimated to be those amounts recited in the Fundamental Lease Provisions. After the first Lease Year, any increase in Tenant's Proportionate Share of any of the foregoing charges (excluding property taxes, insurance, snow and ice removal, security, utility charges, and other non-controllable expenses) shall not increase by more than five percent (5%), non-cumulative, per annum.

(a) **Taxes.** Tenant shall pay to Landlord, as Additional Rent, an amount equal to Tenant's Proportionate Share of the Taxes. The Taxes for the first Lease Year or for any partial Lease Year which precedes the first Lease Year shall be an amount estimated by Landlord and provided to Tenant on or before the date Additional Rent begins. During the first Lease Year, Tenant's Proportionate Share of the Taxes is estimated to be \$3.00 per square foot of the Premises. The Taxes for each Lease Year or partial Lease Year shall be reasonably estimated by Landlord at the beginning of each such year and the amount payable in such Lease Year or partial Lease Year shall be determined by multiplying such estimated Taxes by Tenant's Proportionate Share.

If the actual Taxes in any Lease Year or partial Lease Year exceed the estimates for the applicable year, Tenant shall, within thirty (30) days after receipt of a statement from Landlord certifying the actual Taxes for the certified year and Tenant's Proportionate Share thereof, pay to Landlord a lump sum in an amount which will effect the necessary adjustment. Landlord shall determine such amount within a reasonable period of time of receipt of all the bills for Taxes for each Lease Year or partial Lease Year. If the Taxes paid by Tenant in any Lease Year or partial Lease Year exceed Tenant's Proportionate Share of Taxes for that year, within thirty (30) days of the end of the year in question, Landlord shall credit any excess payments made by Tenant against the next months' installments of Taxes payable by Tenant hereunder or during the last Lease Year, Landlord will refund such excess to Tenant within a reasonable period of time following the expiration of the term of this Lease, provided Tenant is not then in default of any of its obligations under this Lease.

The term "Taxes" shall mean all governmental impositions, levies, fees, taxes, assessments or charges of every kind and nature whatsoever which are levied, assessed or imposed against the Shopping Center or any portion thereof or by reason of its ownership and operation of the Shopping Center and its receipt of rent therefrom including, without limitation, ad valorem taxes, real estate taxes, any other tax on rents or real estate, water or sewer and all other governmental exactions from time to time directly or indirectly assessed or imposed upon the Shopping Center including any interest on the same that may be incurred and/or the portion of the land upon which it is situated, including all costs and fees paid or incurred by Landlord in contesting, or in negotiating with the public authorities as to the amount of such assessments, charges or taxes or the basis upon which the same shall be assessed.

During the entire term of this Lease, Tenant shall pay promptly when due all taxes imposed upon Tenant's business and upon all personal property of Tenant used in connection therewith.

(b) Insurance. Tenant shall pay to Landlord, as Additional Rent, an amount equal to Tenant's Proportionate Share of Insurance Costs (as hereinafter defined). The Insurance Costs for the first Lease Year or for any partial Lease Year which precedes the first Lease Year shall be an amount estimated by Landlord and provided to Tenant on or before the date Additional Rent begins. During the first Lease Year, Tenant's Proportionate Share of Insurance Costs is estimated to be \$0.30 per square foot of the Premises. The Insurance Costs for each succeeding Lease Year or partial Lease Year shall be reasonably estimated by Landlord at the beginning of each such year and the amount payable in such Lease Year or partial Lease Year shall be determined by multiplying such estimated Insurance Costs by Tenant's Proportionate Share.

If the actual Insurance Costs in any Lease Year or partial Lease Year exceed the estimates for the applicable year, Tenant shall, within thirty (30) days after receipt of a statement from Landlord certifying the actual Insurance Costs for the certified year and Tenant's Proportionate Share of such Insurance Costs, pay to Landlord a lump sum in an amount which will effect the necessary adjustment. Landlord shall determine such amount within a reasonable period of time after the end of each Lease Year or partial Lease Year. If the Insurance Costs paid by Tenant in any Lease Year or partial Lease Year exceed Tenant's Proportionate Share of Insurance Costs for that year, within thirty (30) days of the end of the year in question, Landlord shall credit any excess payments made by Tenant against the next months' installments of Insurance Costs payable by Tenant hereunder or during the last Lease Year, Landlord will refund such excess to Tenant within a reasonable period of time following the expiration of the term of this Lease, provided Tenant is not then in default of any of its obligations under this Lease.

The term "Insurance Costs" shall mean and include the cost to Landlord of insurance obtained by Landlord in connection with the Shopping Center, including, without limitation, any liability insurance or extended coverage; personal injury; death and property damage insurance; fire; theft or other casualty insurance; Workmen's Compensation Insurance; fidelity bonds for personnel and insurance against liability for defamation and false arrest occurring in or about the Common Area.

Tenant will not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will violate Landlord's policies of hazard or liability insurance or otherwise violate any other insurance policy(ies) carried by Landlord on the Premises or on the Shopping Center or which will prevent Landlord from procuring such policies in companies acceptable to Landlord. Tenant further agrees to pay on demand from Landlord any increase in premiums on insurance carried by Landlord to the extent that such increase is connected to Tenant's use of the Premises and/or the Shopping Center.

(c) Utilities and Services. Tenant shall pay for all electricity, gas, heating, lighting, ventilating, air conditioning, water, sewer, garbage disposal, custodial services and other utilities and services supplied to the Premises. If any such utilities or charges are not separately metered or assessed or are only partially separately metered or assessed and are used in common with other tenants in the Shopping Center, Tenant will pay to Landlord Tenant's Proportionate Share

of such utility charges as Additional Rent. Landlord shall be entitled to install meters or sub-meters for Tenant's water and sewer usage, in which case, Tenant shall pay to Landlord the costs and expenses related to such usage. Landlord shall not be liable for any interruption or failure whatsoever in utility services, nor shall any such failure or interruption constitute an actual or constructive eviction of Tenant from the Premises or result in or give rise to any abatement in any Rent reserved hereunder.

(d) Trash. Tenant shall have access on a non-exclusive basis, together with the other tenants and occupants of the Shopping Center to the trash dumpsters located in the Shopping Center pursuant to the Parcel 3 Declaration, and the cost of such shall be payable by Tenant as part of Tenant's obligation hereunder to pay Special Assessments levied against the Property. Tenant shall be responsible for removing all trash from the Premises on a regular basis and placing same within such trash dumpsters.

(e) Charter Assessments and Special Assessments. Additionally, beginning on the Rent Commencement Date and in addition to the Base Rent, Tenant shall be responsible for paying to Landlord, within fifteen (15) days after the same are assessed by Developer, any Charter Assessments and any Special Assessments levied against the Property. Tenant acknowledges that Landlord has no control over the Charter Assessments or the Special Assessments, including, without limitation, those attributable to the Shopping Center and the Property.

**11. Tenant's Exclusive. [Intentionally Deleted]**

**12. Address of Landlord and Tenant; Notices.** All Rent and other sums to be paid by Tenant to Landlord hereunder and all written communications by Tenant to Landlord shall be delivered to Landlord at the address of Landlord shown on the Fundamental Lease Provisions or to such other person, firm or corporation and/or at such other place as shall be designated by Landlord by written notice to Tenant. All communications by Landlord to Tenant shall be delivered to Tenant at the address of Tenant shown on the Fundamental Lease Provisions, with a copy to Tenant's attorney as shown. All notices required under this Lease shall be in writing, and transmitted by personal delivery or by a national overnight courier, prepaid for delivery the next business day, and shall be deemed given upon delivery or attempted delivery.

**13. Repairs.** Landlord shall maintain, at its sole cost and expense, the exterior and structural components of the Premises including but not limited to the roof, exterior walls, foundation, sprinkler system, gutters and water spouts and utility services extending to the service connections within the Premises, as well as provide termite (or similar wood-destroying insects) eradication. Landlord shall be responsible for repairs upon the roof and exterior walls of the Premises, within a reasonable period following receipt of written notice from Tenant of the need for any such repair.

Tenant shall be responsible for the costs and expenses of any maintenance, repair and replacement of any glass and doorways, and any roofing and exterior walls if the necessity therefore should be the result of Tenant's negligence or willful misconduct or the negligence or willful misconduct of any agent, employee, customer, invitee or licensee of Tenant. Tenant shall keep the interior of the Premises in good repair, maintaining and replacing, when necessary,

electrical, plumbing, heating, ventilating, air conditioning ("HVAC") and other non-structural improvements, including but not limited to, mechanical installations, all doors (exterior and interior) and all plate glass and window glass, and the interior of the building generally, excluding any latent defects of which Tenant notifies Landlord in writing within a period of one (1) year following the Delivery Date. Tenant shall make all such repairs and replacements at its own expense and employing materials and labor of a kind and quality equal to the original installations. If Tenant fails to replace or repair equipment or other installations in or about the Premises as above provided, then immediately after advising Tenant in writing as to the necessity therefor, Landlord may accomplish the required work and add the cost thereof to the next due rental installment(s), but Tenant shall not be liable to the Landlord for any failure to fulfill the obligations of this Paragraph 13 until such time as the Tenant shall be notified, as aforesaid, in writing of the requirements therefor, at least fifteen (15) days prior to Landlord accomplishing the work, except if such failure shall result in an emergency posing an immediate threat of harm to persons or damage to property, in which event such prior notice shall not be required.

Tenant, at its sole cost and expense, agrees to keep in force a standard maintenance agreement on all HVAC equipment and to provide a copy of such maintenance agreement to Landlord. The agreement shall require a semiannual inspection of such equipment and shall contain provisions that are required by the manufacturer of the HVAC system and related equipment to keep the warranties of such manufacturer in full force and effect, and Tenant will furnish Landlord with semiannual certifications by the inspection company that such equipment is in good repair. Any repairs or replacement required to be made to such HVAC equipment shall be done or made only by such persons or corporations as have been approved in advance by Landlord.

Tenant, at its sole cost and expense, shall be responsible for the cleaning and maintenance of any grease traps, air filtration systems, exhaust filters, or other similar equipment serving the Premises and shall keep such grease traps, air filtration systems, exhaust filters, and other equipment in good working order to the reasonable satisfaction of Landlord. Additionally, Tenant, at its sole cost and expense, shall clean and maintain all areas where such equipment is located and all other areas that are affected by such equipment or the exhaust or other output thereof to the reasonable satisfaction of Landlord, which may include regular pressure washing of such areas to maintain same in a clean and sanitary condition. Tenant shall maintain maintenance contracts for grease traps, air filtration systems, exhaust filters and shall provide Landlord with copy of these maintenance contracts.

**14. Alterations.** Tenant shall effect no alteration to the exterior or the roof of the Premises, nor shall Tenant effect any alteration in or about the Premises that would affect any systems serving the Premises or the Property or which can be seen from the exterior of the Premises, without in each such instance obtaining the prior written consent of Landlord, which consent Landlord shall not unreasonably withhold. Except as provided in the immediately preceding sentence, Tenant shall effect no alteration to the interior of the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld or conditioned, relative to both the plans and specifications of such alterations and the contractor performing such alterations; provided, however, interior cosmetic alterations (e.g., painting, carpeting, etc.) which do not impact building systems (e.g., electrical, plumbing HVAC, etc.) and

which do not exceed \$20,000 in the aggregate for all such alterations during any Lease Year shall not require Landlord's prior consent, but Tenant shall in any event provide Landlord with notice of such alterations not less than five (5) business days prior to commencement of same. Any alteration or improvement made within the Premises which results in any damage to the Premises shall be repaired by Tenant at the request of Landlord and in any event at the termination of the Lease. Except as otherwise provided, all alterations, improvements and additions to the Premises shall remain thereon at the termination of the Lease and shall become the property of Landlord, unless Landlord shall notify Tenant to remove same, in which event Tenant shall remove same at the expiration or earlier termination of the Lease Term and shall restore the Premises to the same condition in which they were found prior to the commencement of work resulting in the alterations, improvements and additions.

**15. Furniture and Fixtures.** Tenant may install furniture and fixtures within the Premises at Tenant's sole expense and the same shall remain Tenant's property if Tenant removes such furniture and fixtures prior to the expiration of the Lease. If the removal or installation of such furniture and fixtures results in any damage to the Premises, Tenant shall repair same to the end that the Premises shall be restored to the condition in which they were found immediately prior to the installation, normal wear and tear excepted.

**16. Parking.** Pursuant to the terms, conditions and restrictions contained in the Parcel 3 Declaration, Tenant shall be entitled to the non-exclusive use, in common with all other tenants and occupants of the Shopping Center and at no charge to Tenant, of all parking spaces located from time to time on the Shopping Center.

**17. Covenants.** Tenant covenants with and for the benefit of Landlord:

(a) To comply with all requirements of any State or Federal statute or local ordinance or regulation applicable to Tenant or its use of the Premises including, but not limited to, those which require the making of any structural, unforeseen or extraordinary changes and to save Landlord harmless from penalties, fines, costs, expenses or damages resulting from failure to do so;

(b) To give to Landlord prompt written notice of any accident, fire or damage occurring on or to the Premises and the Common Area;

(c) To pay promptly to Landlord all Base Rent and Additional Rent and all other charges due to Landlord pursuant to the terms of this Lease before the same shall become delinquent;

(d) To keep the Premises, including the store front, in good condition and repair and to deliver the Premises to Landlord at the end of the term of this Lease in as good condition as they were when received by Tenant, excepting only normal wear and tear and repairs required to be made by Landlord;

(e) To operate a business in the Premises only for the Permitted Use shown on the Fundamental Lease Provisions;

- (f) To keep the Premises sufficiently heated to prevent freezing of water in pipes and fixtures;
- (g) Not to burn, place or permit any rubbish, obstructions or merchandise in areas outside of the Premises;
- (h) To keep the Premises clean, orderly, sanitary and free from objectionable odors and from insects, vermin and other pests and to contract for pest extermination services for the Premises which shall be rendered no less frequently than semi-annually and to deliver to Landlord a certificate evidencing such services; and
- (i) To refrain from doing each and every one of the following:
  - (i) Placing any machines, equipment or materials of any kind outside of the confines of the Premises without the prior written consent of Landlord, which may be granted, withheld or conditioned in Landlord's sole discretion;
  - (ii) Conducting any auction, fire, bankruptcy, sidewalk, selling out or going out of business sale on or about the Premises;
  - (iii) Soliciting business for itself, or permitting its licensees, concessionaires or subtenants to solicit business in the parking or other Common Areas and distributing handbills or other advertising matter in or on automobiles parked in a parking area or in other Common Areas;
  - (iv) Committing or suffering to be committed by any person any waste upon the Premises or any nuisance; or
  - (v) Vacating or abandoning the Premises or allowing the same to appear to be vacated or abandoned, except during periods of remodeling.

**18. Hazardous Substance.** Tenant further covenants and agrees that it will not use, keep or suffer to be kept, or generate or store any hazardous substances, pollutants or contaminants (collectively, "Hazardous Substance") in, upon or about the Premises or the Property. Tenant shall promptly remove and clean up any Hazardous Substance brought on to or about the Premises or the Property in violation of this provision. Tenant agrees to give Landlord prompt written notice of any discovery, discharge, release or threatened discharge or threatened release of any Hazardous Materials on or about the Premises or the Property. Tenant agrees to promptly clean up any Hazardous Materials which are placed in the Premises or the Property by Tenant or its servants, agents, employees, contractors, subcontractors, licensees, assignees or subtenants and to remediate and remove any such contamination relating to the Premises or the Property, as appropriate, at Tenant's cost and expense, in compliance with all applicable laws, ordinances, rules and regulations then in effect and to Landlord's satisfaction, at no cost or expense to Landlord. Tenant shall indemnify, hold harmless and defend Landlord from any and all claims, liabilities, penalties, fines, damages, costs and expenses, incurred by Landlord, including reasonable attorneys' fees, to correct any violation of this covenant, or to remove, neutralize or render harmless any Hazardous Substance, or to comply with the requirements of any regulatory body having jurisdiction over hazardous substances, or to contest the actions of

any such regulatory body with respect to the property. Tenant's agreement to indemnify Landlord just given shall survive the Expiration Date. In the event of a breach of this covenant, then in addition to any other remedies available to Landlord, Landlord at its sole option may declare Tenant to be immediately in default hereof and in forfeiture of its right to occupy the Premises under this Lease, and may cause the Tenant to be immediately removed from the Premises, which events shall not release Tenant from its covenant to pay Rent or otherwise relieve Tenant from any monetary obligation under this Lease. Landlord hereby represents and warrants to Tenant, to Landlord's knowledge and without independent investigation, that neither the Premises nor the Property contain any Hazardous Substances at actionable levels. Notwithstanding any provision of this Lease to the contrary, Tenant shall have no obligation to make any repairs, alterations or improvements to the Premises or incur any costs or expenses whatsoever as a result of Hazardous Substances in or about the Premises or the Property, other than as placed in the Premises or the Property by Tenant or its servants, agents, employees, contractors, subcontractors, licensee, assignees or subtenants.

**19. Tenant's Signs.** Tenant shall be allowed to utilize such signage as is required by Fuzzy's Taco Opportunities, LLC in operating a Fuzzy's Taco Shop restaurant throughout the interior of the Premises (whether visible or not from the exterior) and as allowed by the governing municipality and the Charter, without any requirement of approval from Landlord, an example of such signage as shown on Exhibit C attached hereto and incorporated herein by reference. Tenant's signs will be of professional quality and presented in a first class manner, consistent with the majority of other Fuzzy's Taco Shop restaurants. Tenant shall have the right to place Fuzzy's Taco Shop prototypical building identification signage on the front, back, and side of the Premises, provided that such signage is in accordance with all local ordinances, codes, and Tenant obtains Landlord's prior written approval and the approval of any party required under any applicable instruments of record, including, without limitation, the Charter. Tenant acknowledges and agrees that as of the date of this Lease no pylon or monument signage is available to the tenants of the Property. In the event pylon or monument signage is made available to the tenants of the Property and Landlord is granted legal access thereto, Tenant shall also have the right to panel on both sides of such pylon or monument sign, at no additional charge or rent to Tenant, except that Tenant shall pay for its panel on said sign and the maintenance of the same. Landlord shall have the exclusive right to use the roof and Tenant shall not affix any sign, aerial or satellite dish to the roof of the Premises.

**20. Landlord's Privileges.** In addition to the other rights and privileges of Landlord herein or by law granted, Landlord shall have the following rights and privileges:

(a) To go upon and inspect the Premises at any reasonable time upon reasonable notice, other than the hours of 11 a.m. to 2 p.m. (except in the event of an emergency posing an immediate threat of harm to persons or damage to property) to Tenant to make repairs, alterations and additions thereto or to other portions of the Property, which right, in the event of an emergency, shall include the right of Landlord to forcibly enter said Premises without rendering Landlord or Landlord's agents or employees liable therefor;

(b) If Tenant elects not to renew the Lease, to go upon the Premises at any reasonable time upon reasonable notice, other than the hours of 11 a.m. to 2 p.m. to Tenant to show the Premises to prospective tenants;

(c) To install, maintain, use and repair pipes, ducts, conduits, vents and wires leading in, through, over or under the Premises; and

(d) To make alterations on or additions to the building in which the Premises are located, to build additional stories thereon, and to build adjacent to or adjoining the Premises. Landlord reserves the right to construct and improve other buildings and add to any existing building or improvement in the Shopping Center, and to permit others to do so. Said alterations or additions may temporarily restrict or diminish the free flow of traffic in the Shopping Center or temporarily create noise or other annoyances which, absent this provision, could be construed to interfere with Tenant's enjoyment of the Premises and to the enjoyment of an access to the Premises by Tenant's subtenants, employees and invitees. The exercise by Landlord of any of its rights, whether herein enumerated or otherwise, shall never be deemed to be an eviction of Tenant (or of Tenant's subtenant) nor a disturbance of the use and possession of said Premises by Tenant, Tenant's subtenants, employees and customers.

**21. Damages to Premises.** If the Premises are damaged or destroyed by fire, storm, Act of God, war, riot, unavoidable accident, public enemy or other casualty to an extent greater than twenty five percent (25%) of the replacement cost thereof, Landlord reserves the right of either terminating this Lease or restoring the Premises to the condition in which they were prior to such damage or destruction. If Landlord should elect to reconstruct the Premises, Tenant is to be advised in writing by Landlord within a period of forty five (45) days after said damage or destruction that Landlord will speedily and as soon as practicable repair and restore the Premises to the condition above set forth. During the time required for repairing and restoring the Premises as aforesaid, to the extent that the same are rendered untenantable, the Base Rent shall abate on a per diem basis in proportion to that portion of the Premises rendered untenantable. If the Premises, or any part thereof, should be damaged by fire, storm, war, riot, Act of God, unavoidable accident, public enemy or other casualty to an extent that is less than twenty five percent (25%) of the replacement cost Landlord shall, to the extent of available insurance proceeds, repair such damage and the Rent shall not be abated. If by reason of any such event, the Premises shall be rendered untenantable in part, Landlord shall speedily and as soon as practicable after such destruction repair and restore the Premises to the condition in which they were prior to such damage or destruction, during the time required for repairing or restoring. Notwithstanding the above, if the Premises are damaged or destroyed by a casualty not covered by Landlord's insurance, or if such damage to the Premises is suffered during the last year of the then current term of this Lease and the damage is sufficiently extensive to result in the entire suspension of Tenant's business, however temporary, or if the proceeds of any insurance are not made available by the Lender to the Landlord, then Landlord at its option may elect not to repair the Premises and upon so notifying Tenant in writing this Lease shall terminate as of the date on which the damage occurred.

**22. Eminent Domain.** If more than twenty five percent (25%) of the floor area of the Premises is taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, then either party

hereto shall have the right to terminate this Lease effective on the date physical possession is taken by the condemning authority. If less than twenty five percent (25%) of the floor area of the Premises is taken for any public or quasi-public use in said manner, this Lease shall not terminate. However, in the event any portion of the Premises is taken and the Lease not terminated, the Base Rent specified herein shall be reduced during the unexpired term of this Lease in proportion to the area of the Premises so taken. Any such reduction shall be effective on the date physical possession is taken by the condemning authority.

If any portion of the Common Areas of the Property is taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by private purchase in lieu thereof, this Lease shall continue in full force and effect, without reduction in Rent or other changes in the terms of this Lease unless the area so taken shall exceed twenty-five percent (25%) of the total number of square feet in the Common Areas of the Property, in which event either party may terminate this Lease.

Any election to terminate this Lease following condemnation shall be evidenced by written notice of termination delivered to the other party not later than fifteen (15) days after the date on which physical possession is taken by the condemning authority and shall be deemed effective as of the date of said taking. If, however, the Lease is not terminated following a partial condemnation, Landlord shall promptly make all necessary repairs or alterations to the Property which are required by the taking.

All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) whether for the whole or a part of the Premises, shall be the property of the Landlord, whether such award is compensation for damages to Landlord's or Tenant's interest in the Premises, and Tenant hereby assigns all of its interest in any such award to Landlord; provided, Landlord shall have no interest in any separate award made to Tenant for loss of business or for the taking of Tenant's fixtures and other property within the Premises. Under no circumstances shall Tenant's claim for such award reduce or diminish Landlord's award nor shall Tenant have a claim for loss of its leasehold estate.

### **23. Default.**

(a) If one or more of the following events (herein called "Events of Default") shall occur and shall be continuing at the time any notice required to be given is given as hereinafter provided, that is to say: (i) if Tenant shall fail to pay any Rent when due in accordance with the terms of this Lease and such default shall continue for a period of ten (10) days after written notice to Tenant of such default (provided, however, Landlord shall not be required to deliver more than two (2) such notices during any twelve (12) month period, the third (3<sup>rd</sup>) and each subsequent failure to pay any Rent when due during such 12-month period being an immediate Event of Default); or (ii) if Tenant shall fail to keep or perform or abide by any other term or condition of this Lease and such default shall continue for a period of thirty (30) days after written notice to Tenant of such default, however, in the event that such default cannot reasonably cure such default within thirty (30) days, but Tenant commences such cure within the thirty (30) day period and diligently pursues such cure, then Tenant shall have a reasonable additional time to cure; or (iii) if Tenant shall file a petition in bankruptcy or take or consent to any other action seeking any such judicial decree or shall file any debtor proceeding or a petition

for an assignment for the benefit of its creditors or if any court of competent jurisdiction shall enter a decree or order adjudicating it bankrupt or insolvent or if any trustee or receiver for Tenant or for any substantial part of its property be appointed; or (iv) if Tenant's interest in this Lease or the Premises shall be subjected to any attachment, levy or sale pursuant to any order or decree entered against Tenant in any legal proceeding and such order or decree shall not be vacated within fifteen (15) days of entry thereof; (v) if Tenant shall vacate or abandon the Premises; then and in any such event Landlord, without declaring a termination of this Lease, may at its election exercise any one or more or all of the following remedies in addition to any other remedies available to Landlord at law, in equity or pursuant to the terms of this Lease.

(b) Upon the occurrence of an event of default and the failure to cure same as hereinabove provided, the Landlord shall have all rights and remedies allowed at law, in equity, by statute, including, but not limited to the right of summary ejectment and otherwise, and in addition, without notice or demand, Landlord may:

(i) Terminate the Lease;

(ii) With or without terminating the Lease, terminate Tenant's right to possession of the Premises, and re-enter and relet the Premises; and

(iii) Recover from Tenant such damages as are caused by Tenant's default, including all costs of recovering and reletting the Premises, and Tenant shall remain liable to Landlord for the total amount of Rent and all other charges (which may, at Landlord's election, be accelerated to be due and payable in full as of the default by Tenant and recoverable as damages in a lump sum) as would have been payable by Tenant hereunder for the remainder of the term. Termination of Tenant's right to possession shall not relieve Tenant of its liability hereunder and the obligations created hereby shall survive any such termination. Landlord shall use commercially reasonable efforts to mitigate Tenant's damages.

(c) Tenant shall be liable to Landlord for all costs Landlord shall incur in repossessing or reletting the Premises or collecting sums due to Landlord, including court costs, reasonable attorneys' fees, and the amount of any unamortized construction allowance and leasing commissions.

**24. Landlord's Performance For Account of Tenant.** In addition to the rights and remedies set forth in Section 23, if an Event of Default occurs or if Tenant fails to perform any obligation hereunder and such failure, in Landlord's reasonable opinion, creates an emergency situation or affects the value or integrity of the Premises or any other portion of the Property, then Landlord may perform any such obligations on behalf of Tenant. Any amount paid or expense or liability incurred by Landlord in the performance of any such matter for the account of Tenant shall be deemed to be additional Rent and the same together with interest thereon at the rate of twelve percent (12%) per annum (the "Default Rate") from the date upon which any such expense shall have been incurred may be added, at the option of Landlord, to any Rent then due or thereafter falling due hereunder. Nothing contained herein shall be construed to obligate Landlord to perform any such obligations or to prevent Landlord from immediately collecting from Tenant by suit or otherwise, any such sums with interest.

**25. Insurance-Indemnity.** During the term of this Lease, Tenant, its assignees and sublessees shall protect, defend, indemnify and save Landlord harmless from any and all claims, penalties, or demands, including court costs and attorneys' fees, whatsoever arising, directly or indirectly, out of or from (a) Tenant's use or occupancy of the Premises or the Property; (b) any breach or default in the performance of any obligation of Tenant; and (c) any act, omission or negligence of Tenant, its agents, contractors, licensees, invitees or employees. Tenant shall keep in force, during the full term of this Lease or any renewal or extension thereof, workmen's compensation insurance, public liability insurance and property damage insurance with minimum public liability limits not less than the greater of (i) \$1,000,000.00 for each occurrence, not less than \$100,000.00 for property damage, and liability insurance of not less than \$2,000,000.00 for each occurrence, and (ii) the coverages required under the Charter. The insurance policy or other evidence of coverage satisfactory to Landlord shall be deposited with Landlord upon occupancy of the Premises by Tenant. Tenant shall procure and maintain at all times during the Term of this Lease at its sole cost and expense, "Special Form" property insurance coverage, with standard exceptions, covering its fixtures, equipment and personal property located on the Premises, together with insurance against vandalism and malicious mischief. All required insurance shall be placed with reputable and solvent insurance companies licensed in the State of North Carolina.

Landlord and Tenant hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any other perils insured in policies of insurance covering such property, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible. All of Tenant's policies of insurance shall contain waiver of subrogation endorsements in favor of Landlord and copies of same shall be delivered to Landlord upon request.

**26. Personal Property.** Tenant agrees that all personal property in said Premises shall be and remain at Tenant's sole risk, and Landlord shall not be liable for any damage to, or loss of such personal property arising from any acts of negligence of any persons other than Landlord's employees or from fire, or from the leaking of the roof, or from the bursting, leaking, or overflowing of water, sewer, or steam pipes, or from malfunctions of the heating, plumbing, or electrical systems, or from any other cause whatsoever.

**27. Assignment or Subletting.** Tenant shall have the right to sublet the Premises (or any portion thereof) or assign its interest in the Lease (each being an "Occupancy Transaction"), with Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Provided, however, it shall not be deemed unreasonable if Landlord withholds its consent to any Occupancy Transaction for any of the following reasons: (i) the proposed assignee, subtenant, occupant or party involved in the proposed Occupancy Transaction (each being a "Proposed Transaction Party") does not assume all Tenant's obligations under this Lease (including, without limitation, the obligations related to the Permitted Use) in form and content reasonably satisfactory to Landlord, (ii) the Proposed Transaction Party or any affiliate thereof has filed for bankruptcy or filed any petition or answers seeking any reorganization, arrangement, liquidation, dissolution or similar relief within three years prior to the date of the proposed Occupancy Transaction, (iii) the Proposed Transaction Party or any affiliate thereof has previously defaulted on a lease agreement or purchase

agreement with Landlord or an affiliate or subsidiary of Landlord, (iv) the Proposed Transaction Party does not have experience relating to the Permitted Use that is substantially similar to the experience of Tenant as of the Effective Date, or (v) the Proposed Transaction Party does not have a tangible net worth equal to or greater than the tangible net worth of Tenant at the time of the Occupancy Transaction and in any event has a tangible net worth at the time of the Occupancy Transaction of less than Ten Million and 00/100 Dollars (\$10,000,000.00). Such action by Landlord shall not constitute a waiver of this provision or a release of Tenant from any obligation under this Lease. The consent of Landlord to an Occupancy Transaction shall not be construed to relieve Tenant from obtaining the written consent of Landlord to any further Occupancy Transaction and shall not relieve Tenant from liability hereunder. Notwithstanding anything contained herein to the contrary, Landlord's consent shall not be required for any assignment of this Lease (i) in conjunction with any consolidation, reorganization, merger, acquisition, or private placement involving Tenant; (ii) to Fuzzy's Taco Opportunities, LLC; or (iii) to an existing Fuzzy's Taco Opportunities, LLC franchisee (A) with at least three (3) years of experience of operating Fuzzy's Taco Shop locations, (B) operating at least ten (10) Fuzzy's Taco Shop locations, and (C) having a tangible net worth at the time of assignment equal to or greater than Ten Million and 00/100 Dollars (\$10,000,000.00), provided that the obligations of Tenant shall survive any such assignment.

In the event of a proposed Occupancy Transaction, Tenant shall submit to Landlord, in writing, such information as Landlord may reasonably require, including, but not limited to (i) the name of the Proposed Transaction Party, (ii) current financial statements, if any, available to Tenant disclosing the financial condition of the Proposed Transaction Party, (iii) the nature of the business of the Proposed Transaction Party, and its proposed use of the Premises (any assignment or subletting being subject to restrictions on use contained in this Lease), and (iv) the proposed commencement date of the Occupancy Transaction, together with a copy of the proposed documentation relating thereto.

If Tenant requests Landlord's consent to an Occupancy Transaction, Tenant shall pay to Landlord, as Additional Rent, a review fee (the "Review Fee") in the amount of \$1,000.00, which shall cover Landlord's review and overhead, which includes attorneys' fees incurred by Landlord in connection with such Occupancy Transaction, which shall be paid as follows: (a) Tenant shall pay \$250.00 concurrently with submitting its written request for Landlord's consent to an Occupancy Transaction, and (b) Tenant shall pay \$750.00 to Landlord, together with the aforementioned attorneys' fees, upon Landlord's consent to an Occupancy Transaction, if granted. Within thirty (30) days after its receipt of such notice, Landlord shall either approve or disapprove such proposed Occupancy Transaction in writing. Tenant shall be responsible for all brokerage commissions and fees and similar charges relating to any Occupancy Transaction and shall indemnify and hold Landlord harmless from and against any and all claims, costs, expenses, and liabilities incurred by Landlord relating to same.

**28. Mechanic's Liens.** Tenant hereby agrees to indemnify Landlord from and against, and shall keep the Premises and the Property free from, any liens for any work performed, material furnished, or obligations incurred by, or at the direction of, Tenant. Tenant shall have no right to encumber or subject the interest of Landlord in the Premises to any mechanics', materialman's, or other liens of any nature whatsoever, and upon the filing of any such lien, the failure of Tenant to have the same discharged by bond or otherwise within ten (10)

days after filing shall constitute a default and entitle Landlord at its option to take any action provided for elsewhere in this Lease. Additionally, if Tenant shall fail to cause such lien or notice of lien to be discharged and released of record within the period aforesaid, then, in addition to any other right or remedy, Landlord may discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit or by bonding procedures. Any amount so paid by Landlord and all costs and expenses, including attorneys' fees and court costs, incurred by Landlord in connection therewith, and including interest at the Default Rate, shall constitute Additional Rent and shall be paid by Tenant to Landlord on demand.

**29. Surrender.** At the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord in "broom clean" condition and in the same condition as when tendered by Landlord, reasonable wear and tear and insured casualty alone excepted. Tenant shall promptly repair any damage to the Premises caused by the removal of any furniture, trade fixtures or other personal property placed in the Premises. Tenant acknowledges that any property (personal or otherwise) remaining in the Premises at the expiration or earlier termination of this Lease shall be deemed the have been abandoned, and Landlord may dispose of any such property in its sole discretion without notifying Tenant or any other party. Tenant shall reimburse Landlord, within fifteen (15) days after Landlord delivers an invoice therefor, for any and all costs and expenses incurred by Landlord in disposing of such property, repairing any damage to the Premises caused by Tenant, its agents, employees, contractors and any other party acting by, through or under Tenant, or returning the Premises to the condition set forth herein. The obligation in the immediately preceding sentence shall survive the expiration or earlier termination of this Lease.

**30. Estoppel Certificates.** At any time and from time to time upon request from Landlord, Tenant agrees to execute, acknowledge and deliver to Landlord within twenty (20) days written notice by Landlord, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the Base Rent other charges has been paid, and any other factual data relating to this Lease or the leased Premises which Landlord or Landlord's Lender or Lenders may request. If Tenant fails to execute and deliver the estoppel certificate within such twenty (20) day period and such failure continues for a period of three (3) business days following written notice of such failure from Landlord, then Tenant shall pay Landlord the sum of \$100.00 for each day beyond such three (3) business day period that Tenant fails to execute and deliver to Landlord the estoppel certificate as liquidated damages and not as a penalty, Landlord's actual damages resulting from Tenant's failure being difficult if not impossible to ascertain and the parties having made a *bona fide* effort to estimate Landlord's damages.

**31. Brokerage.** Tenant acknowledges that it is exclusively represented by The Providence Group of the Carolinas, LLC ("Broker") in connection with the Premises and that any brokers' or other commissions that are due to Broker shall be payable by the Landlord in connection with a separate agreement.

**32. Force Majeure.** Notwithstanding anything in this Lease to the contrary, Landlord shall not be deemed in default with respect to the performance of any of the terms,

covenants, and conditions of this Lease to be performed by it if any failure of its performance shall be due to any strike, lockout, civil commotion, war, warlike operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material or service, Act of God, or any other cause whatever (including failure of Tenant to supply necessary data or instructions) beyond the reasonable control of Landlord, or inability of Landlord to obtain financing satisfactory to Landlord, or delay by Developer in the performance of its obligations under the Purchase Agreement ("Force Majeure"), and the time for performance by Landlord shall be extended by the period of delay resulting from or due to any of said causes.

**33. Release From Liability.** Tenant agrees not to hold Landlord responsible or liable in damages by abatement of Rent or otherwise for any damage sustained by Tenant or any other person due to the state of repair of the building or any part thereof or appurtenance thereto, the happening of any accident (unless resulting from affirmative acts of negligence on Landlord's part), damage caused by water, snow, windstorm, tornado, gas, steam, electric wiring, plumbing, or heating apparatus, any acts or omissions of co-tenants or other occupants of the building or losses by theft.

Notwithstanding any other provision in this Lease, Tenant hereby releases Landlord from any claim with respect to water or other damage sustained by Tenant from the sprinkler system, except that Tenant does not hereby waive any claim for such damage resulting from (a) faulty installation or maintenance of said sprinkler system, or (b) the negligence of Landlord or any of Landlord's servants, agents or employees.

**34. Security.** Landlord may, from time to time and to the extent it deems appropriate, determine whether to arrange for security services in the Common Areas or manned traffic control for special events at the Shopping Center. Notwithstanding any other provision of this Lease, Landlord shall not be liable for any loss or damages suffered by Tenant or anyone else for failure to supply such services or manned traffic control. It is agreed that Landlord's supplying such security services shall not relieve Tenant of its duty to maintain security within the Premises.

**35. Trade Name.** Unless otherwise approved by Landlord, Tenant shall conduct business in the Premises only in Tenant's Trade Name.

**36. Holding Over.** Tenant shall not acquire any right or interest in the Premises by remaining in possession after the Expiration Date or earlier termination of this Lease. If Tenant continues to occupy the Premises after the Expiration Date or earlier termination of this Lease, or after the last day of any renewal or extension of the term hereof, and Landlord elects to accept Rent thereafter, a monthly tenancy terminable at will by either party upon not less than thirty (30) days written notice shall be created, and such monthly tenancy shall be on the same terms and conditions as those herein specified, except that the monthly amount of Base Rent shall be equal to one hundred fifty percent (150%) of the Base Rent for the final full month of the Lease Term.

**37. Waiver.** It is understood and agreed that waiver by Landlord of any default or breach of any covenant, condition or agreement herein shall not be construed to be a waiver of

that covenant, condition or agreement or of any subsequent breach thereof. The acceptance of Rent by Landlord with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No delay or omission of Landlord to exercise any right or power arising from any default on part of Tenant shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence thereto.

**38. Landlord's and Tenant's Warranty.** Landlord covenants, represents and warrants that it has the full right and authority to lease the Premises upon the terms and conditions herein set forth and that Tenant shall peacefully and quietly hold and enjoy the Premises for the full term hereof so long as it does not default in the performance of any of its agreements hereunder. Tenant covenants, represents and warrants that it is a validly formed and duly existing Limited Liability Company under the laws of the State of Delaware that it has the power to enter into this Lease and perform Tenant's obligations hereunder and that the officers of Tenant executing this Lease on Tenant's behalf have the right and lawful authority to do so.

**39. Transfer of Landlord's Interest.** The term "Landlord" as used in this Lease means only the owner or the mortgagee in possession for the time being of the land and building or the owner of the lease of the building or of the land and building of which the Premises are a part so that in the event of any sale or sales of said land and building or of said lease, or in the event of a lease of said building, or of the land and building, said Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the purchaser at any such sale or the lessee of the building or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder. Any security given by Tenant to Landlord to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to the successor in interest to Landlord; and, upon acknowledgement by such successor of receipt of such security and its express assumption of the obligation to account to Tenant for such security in accordance with the terms of this Lease, Landlord shall thereby be discharged of any further obligation relating thereto.

Landlord's assignment, sale or transfer of the Lease or of any or all of its rights herein shall in no manner affect Tenant's obligations hereunder. Tenant shall thereafter attorn and look to such assignee, as Landlord, provided Tenant has first received written notice of such assignment of Landlord's interest.

**40. Landlord Not Partner.** It is expressly understood and agreed that the Landlord is not a partner, joint venturer or associate of Tenant in the conduct of Tenant's business, that the provisions of this Lease with respect to the payment by Tenant of Rent is not the sharing of any profits and that the relationship between the parties hereby is and shall remain at all times that of Landlord and Tenant.

No provision of this Lease shall be construed to impose upon the parties hereto any obligation or restriction not expressly set forth herein.

**41. Franchisor's Required Lease Inclusions.** Landlord acknowledges that Tenant shall operate the Premises as a Fuzzy's Taco Opportunities franchise pursuant to a franchise

agreement executed between Fuzzy's Taco Opportunities, LLC ("Franchisor") and Tenant ("Franchise Agreement"). Pursuant to the Franchise Agreement, Franchisor has certain required language in its franchisee's leases, which are included in the following attached exhibit, which is incorporated by reference herein: Exhibit E – Lease Rider. Landlord agrees to execute the attached Exhibit where indicated.

**42. Additional Instruments.** The parties agree to execute and deliver any instruments in writing, including a Memorandum of Lease suitable for recording, necessary to carry out any agreement, term, condition, or assurance in this Lease whenever occasion shall arise and request for such instrument shall be made.

**43. Pronouns.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person(s), firm(s) or corporation(s) may require.

**44. Counterparts.** This Lease may be executed in counterparts all of which taken together shall be deemed one original when executed by both parties.

**45. Amendment and Modification.** This Lease embodies the full agreement of the parties and supersedes any and all prior understandings or commitments concerning the subject matter of this Lease. Any modification or amendment must be in writing and signed by both parties.

**46. Binding Effect.** This Lease shall be binding upon and inure to the benefit of the parties hereto, their assigns, administrators, successors, estates, heirs and legatees respectively, except as herein provided to the contrary.

**47. Controlling Law.** This Lease and the rights of the Landlord and Tenant hereunder shall be construed and enforced in accordance with the law of the State of North Carolina.

**48. Partial Invalidity.** In the event that any part or provision of this Lease shall be determined to be invalid or unenforceable, the remaining parts and provisions of said Lease which can be separated from the invalid, unenforceable provision shall continue in full force and effect.

**49. Captions.** The index, paragraph and marginal titles, numbers and captions contained in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, modify, or describe the scope or intent of this Lease nor any provision herein.

**50. Subordination.** This Lease is subject and subordinate to any first mortgage or first deed of trust now or hereafter placed on the property of which the Premises is a part; provided, however, that at the option of the first mortgagee the Lease or portions of the Lease can be made superior to the first mortgage or deed of trust; provided further that unless the entire Lease is made superior to such first mortgage or deed of trust, the holder of said mortgage or the trustee of such deed of trust shall agree that this Lease shall not be divested or in any way

affected by a foreclosure or other default proceedings under said mortgage, deed of trust or obligations secured thereby, so long as Tenant shall not be in default under the terms of this Lease; and Tenant agrees that this Lease shall remain in full force and effect notwithstanding any default proceeding under said mortgage, deed of trust or obligation secured thereby, including foreclosure. Tenant further agrees that it will attorn to the mortgagee, trustee or beneficiary of such mortgage or deed of trust, and their successors or assigns and to the purchaser or assignee at any such foreclosure. Tenant will, upon request by Landlord, execute and deliver to Landlord, or to any other person designated by Landlord, any instrument or instruments required to give effect to the provisions of this paragraph.

**51. Limitation of Landlord's Liability.** If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed within thirty (30) days after written notice from Tenant (unless such condition is incapable of being cured within said thirty (30) day period, in which event it shall not be deemed a default so long as Landlord is diligently pursuing the completion of same), and, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied solely out of the proceeds of sale received upon execution of such judgment levied thereon against the right, title and interest of Landlord in the Shopping Center as the same may then be encumbered; and neither Landlord nor, if Landlord be a partnership, any of the partners comprising Landlord shall have any personal liability for any deficiency. It is understood and agreed that in no event shall Tenant or any person claiming by or through Tenant have the right to levy execution against any property of Landlord other than its interest in the Shopping Center as hereinbefore expressly provided.

**52. Exhibits.** All of the exhibits referenced herein are incorporated by reference herein. The exhibits are: Exhibit A- Conceptual Site Plan, Exhibit A-1- Building Plan, Exhibit B- Work Letter, Exhibit C- Tenant Signage, Exhibit D- Guaranty, Exhibit E- Lease Rider.

**53. Jurisdiction; Venue; Waiver of Jury Trial.** Landlord and Tenant agree that for the adjudication of any controversy, dispute, or claim arising from this Lease, jurisdiction and venue are proper in, and such matter shall exclusively be resolved in, state court in Mecklenburg County, North Carolina. **THE PARTIES TO THIS LEASE HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS THEY MAY HAVE TO TRIAL BY JURY TO RESOLVE ANY CONTROVERSY, DISPUTE OR CLAIM ARISING OUT OF THE LEASE OR BREACH OR ALLEGED BREACH OF THE LEASE.**

**54. Application of Payments Received from Tenant.** Landlord, acting in its sole discretion, shall have the right to apply any payments made by Tenant to the satisfaction of any debt or obligations of Tenant to Landlord regardless of the instructions of Tenant as to application of any sum whether such instructions be endorsed upon Tenant's check or otherwise, unless otherwise agreed upon by both parties in writing. The acceptance by Landlord of a check or checks drawn by others than Tenant shall in no way affect Tenant's liability hereunder nor shall it be deemed an approval of any assignment of this Lease by Tenant.

**55. Financial Information of Tenant and Guarantor.** Tenant shall at any time and from time to time during the Lease Term, within fifteen (15) days of written request by Landlord (but not more frequently than twice during any twelve (12) month period, deliver to Landlord

Tenant's and Guarantor's annual financial statement for the previous fiscal year and a year-to-date financial statement, both prepared in accordance with generally accepted accounting practices.

**56 Time of Essence.** TIME IS OF THE ESSENCE WITH RESPECT TO THE TERMS, CONDITIONS AND PROVISIONS OF THIS LEASE.

**57. Bankruptcy.** If Landlord shall not be permitted to terminate this Lease as hereinabove provided because of any applicable provisions of the United States Code relating to Bankruptcy, as amended (the "Bankruptcy Code") or such other laws or regulations as may then be applicable, then Tenant as a debtor in possession or any trustee for Tenant agrees promptly, within no more than fifteen (15) days following request by Landlord to the Bankruptcy Court, to assume or reject this Lease and Tenant on behalf of itself, and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this Lease by Landlord with such Bankruptcy Court. In such event, Tenant or any trustee for Tenant may only assume this Lease if it (a) cures or provides adequate assurance that the trustee will promptly cure any default hereunder; (b) compensates or provides adequate assurance that Tenant will promptly compensate Landlord for any actual pecuniary loss to Landlord resulting from Tenant's defaults; (c) provides adequate assurance of future performance during the fully stated term hereof of all of the terms, covenants, and provisions of this Lease to be performed by Tenant, and (d) otherwise fully complies with the Bankruptcy Code. In no event after the assumption of this Lease shall any then-existing default remain uncured for a period in excess of the earlier of ten (10) days or the time period set forth herein. In the event of a filing of a petition under the Bankruptcy Code, Landlord shall have no obligation to provide Tenant with any services or utilities as herein required unless Tenant shall have paid and be current in all payments of Common Area Maintenance Charge, utilities or other charges therefor.

**58. Guaranty.** As a condition precedent to the effectiveness of this Lease, Tenant shall deliver to Landlord a Guaranty of Lease in the form attached hereto as Exhibit D, which is incorporated herein by reference, which has been duly executed by Guarantor.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have set their hands and seals on the day and year first above mentioned.

LANDLORD:

FTS BEREWICK, LLC  
a North Carolina Limited Liability company

By: Aston Properties, Inc., its Manager

By: George S. Dewey, IV  
Name: George S. Dewey, IV  
Title: President & CEO

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, the undersigned Notary Public for said County and State, do hereby certify that George S. Dewey, IV personally appeared before me this day as President & CEO of Aston Properties, Inc., the Manager of FTS Berewick, LLC and acknowledged that he duly executed the foregoing instrument for and on behalf of and as the act of said corporation as the manager of said limited liability company.

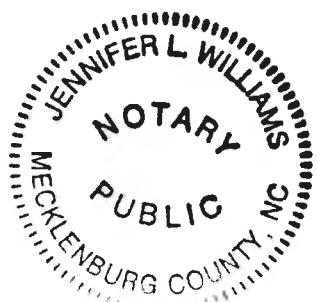
WITNESS my hand and notarial seal, this 21<sup>st</sup> day of July, 2017.

Jennifer L. Williams  
Notary Public

My Commission Expires:

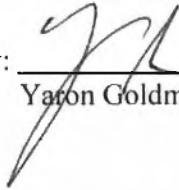
Feb 26, 2022

(Notary Seal)



TENANT:

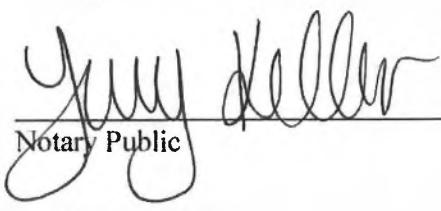
RTHT INVESTMENTS, LLC,  
a Delaware Limited Liability Company

By:   
Yaron Goldman, Manager

STATE OF COLORADO  
COUNTY OF LARIMER

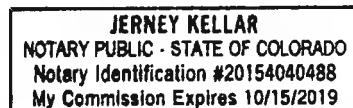
I, the undersigned Notary Public for said County and State, do hereby certify that Yaron Goldman personally appeared before me this day as Manager of RTHT Investments, LLC and acknowledged that he duly executed the foregoing instrument for and on behalf of and as the act of said limited liability company.

WITNESS my hand and notarial seal, this 15<sup>th</sup> day of June, 2017.

  
Notary Public

My Commission Expires:

10/15/2019



(Notary Seal)

**EXHIBIT "A"**

**CONCEPTUAL SITE PLAN**

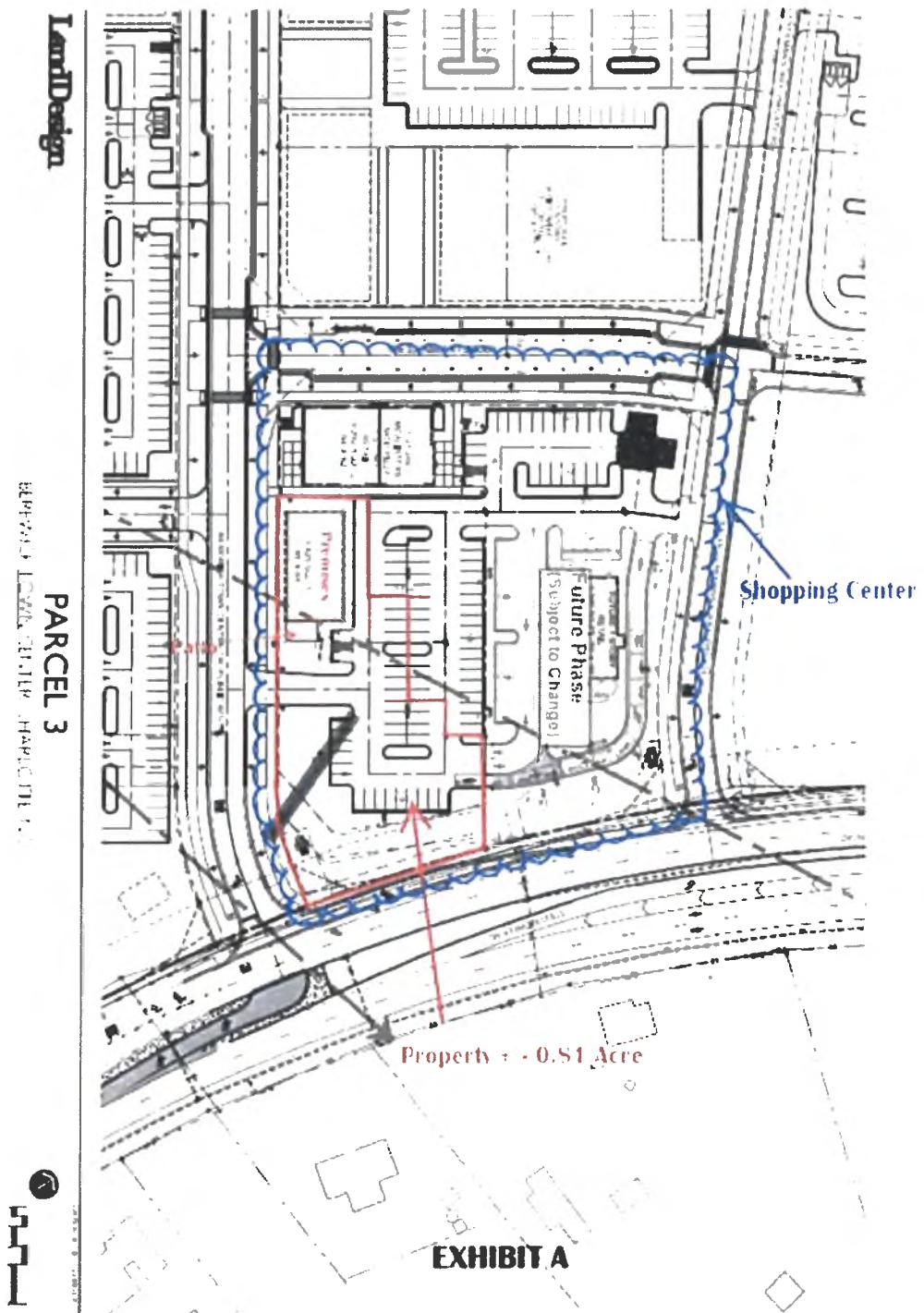
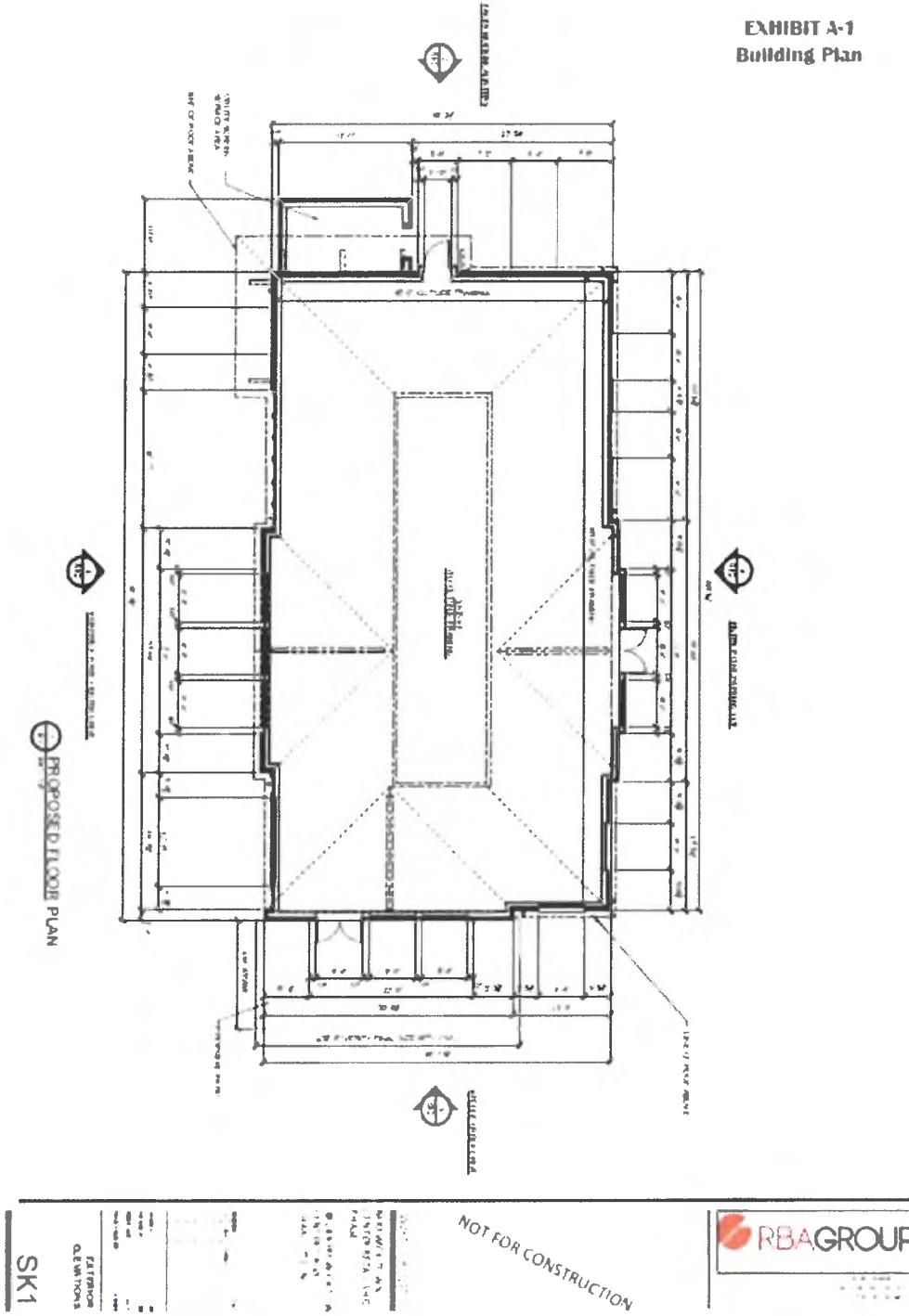


EXHIBIT "A-1"

BUILDING PLAN

EXHIBIT A-1  
Building Plan



**EXHIBIT B**

**DESCRIPTION OF LANDLORD'S WORK AND TENANT'S WORK**

**COLD DARK SHELL**

**Landlord's Work**

Landlord is solely responsible for the items, expenses and work indicated in this Section of Exhibit D titled 'Landlord's Work'. Landlord shall perform (or cause to be performed) the following work using such methods and materials and in such a manner as determined by Landlord in Landlord's business judgment and with such minor deviations as Landlord shall reasonably determine. Landlord shall deliver the Leased Premises to Tenant in a "cold dark shell" condition.

**A. Structure**

1. The structural frame, columns, beams and roof shall be constructed with quality materials and good workmanship, and floor and roof structures shall be designed to carry live loads in accordance with applicable building codes and shall have sufficient height to allow for a 12' drop ceiling throughout. Roof will be insulated metal roof deck construction.

**B. Store Front**

1. Store fronts will be designed by Landlord's architect and will consist of dark bronze anodized aluminum. Doors and windows will have a narrow stile framing system with applied mullions on the windows. Glass to be clear, 1" insulated Low-E glass, if required by code. Special store front designs may be used by Tenant if approved by Landlord, and at Tenant's expense.

**C. Doors**

1. Landlord will provide:
  - i) Two 3'0" x 7'0" storefront entrance doors.
  - ii) Two 3'0" x 7'0" storefront doors opening onto the patio.
  - iii) One 4'0" x 7'0" hollow metal, rear exit door, painted to match exterior.

**D. Interior Finish**

1. Floors: None. Landlord to provide continuous foundation wall and 4" stone base throughout (slab by Tenant).
2. Exterior Walls: Exterior walls and storefronts only (no sheetrock or insulation).

**E. Parking Areas and Walks**

1. Surface: Parking areas will be asphalt over aggregate base material. Walks will be surfaced with concrete, stone, tile, brick or other suitable material, as specified by Landlord's architect.
2. Lighting: Parking areas and walks will be lighted.

**F. Electrical Work**

1. Exterior lighting, similar in style and quantity to that shown on the final plans, will be provided and brought on the Tenant's panel location. Tenant to connect wire to their panel.
2. Two (2) junction boxes will be provided for Tenant's signage and wired to the house panel. One will be provided above the front entrance and one shall be provided on the back of the building.

3. Two 4" conduits for electrical service shall be brought to the premises. Conduits shall be capable of carrying 400 amp service.

G. Heating and Air Conditioning

1. None

H. Utilities

1. Install a 100 GPM – 275 gallon capacity polyethylene grease interceptor (Model Number GB-250) installed underground in a mutually approved location on the property (non-traffic rated) with a 4" grease waste line stubbed into the space.
2. One 4" sanitary waste line shall be brought to the premises.
3. One 2" water line shall be brought to the premises.
4. One 2" telephone conduit with pull string shall be brought to the premises.
5. One gas line shall be brought to the premises. Meter shall be by Tenant upon application.

I. Fire Protection

1. None

J. Other

1. Dumpster Area will be provided by Landlord.
2. Patio ( $\pm 14'$ w x 35'd) will be provided by Landlord.

**Tenant's Work**

Landlord's work is limited to the work hereinabove described and excludes work described as Tenant's work. All work not classified as Landlord's is Tenant's work.

The work to be done by Tenant shall include, but not be limited to, the purchase and/or installation and/or performance of the following, and all the following shall be at Tenant's expense. The plans, specifications, details and design shall be subject to the written approval of Landlord.

1. All interior walls and curtain walls within the Leased Premises, including demising walls, if any.
2. Distribution and connection of all services and utilities to include water, sewer, electric, gas, telephone, internet, and cable.
3. Fire protection and detection devices, if required.
4. Floors: Concrete slab by Tenant. HVAC equipment and associated distribution and connection
5. Tenant's specific fixtures and equipment
6. Tenant's signage

The following submittals, reviews and approvals shall be required prior to commencement of construction:

**Complete Design Plans ("Plans") and Permit(s):**

Tenant shall submit Plans electronically (in both AutoCAD and PDF format) to the Landlord at the address shown below simultaneous to submitting for permit(s). Landlord will review and return comments to Tenant within ten (10) days.

Tenant will revise Plans to incorporate both Landlord and review agency comments, clouding all changes, and resubmit as in prior paragraph. Subsequent comment revisions shall be handled in the same manner.

Once Permit approval is received, Tenant will provide a signed, stamped copy of the Plans to Landlord along with a copy of the Permit(s).

**Tenant Signage (“Sign”):**

Tenant shall submit scaled drawings of the proposed Sign(s) electronically to the Landlord at the address shown below. Sign(s) shall be designed to conform with the regulations as outlined in the the Berwick Town Center Signage Criteria. Tenant shall provide the Landlord with a copy of the Sign permit prior to installation of the sign. In the event Tenant elects to have a sign company act on its behalf, Tenant must notify Landlord in advance.

Electronic submittals shall be made to:

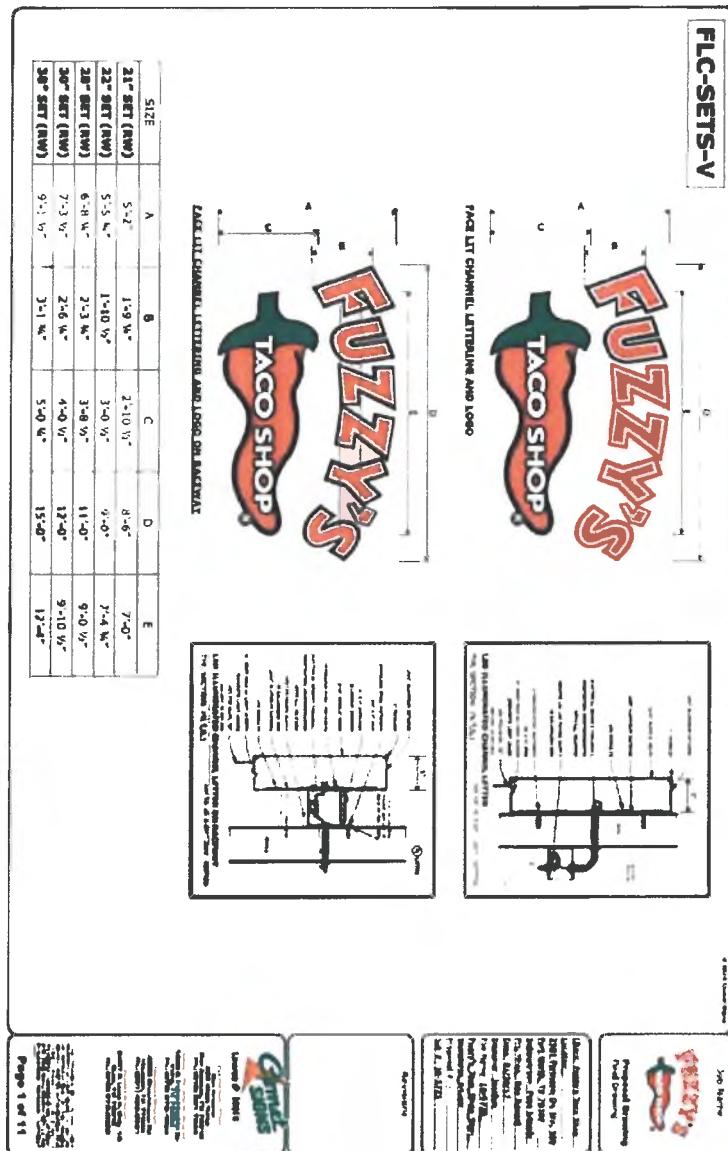
L. Karen Partee      email address: [lkpartee@astonprop.com](mailto:lkpartee@astonprop.com)      phone: 704-319-4922

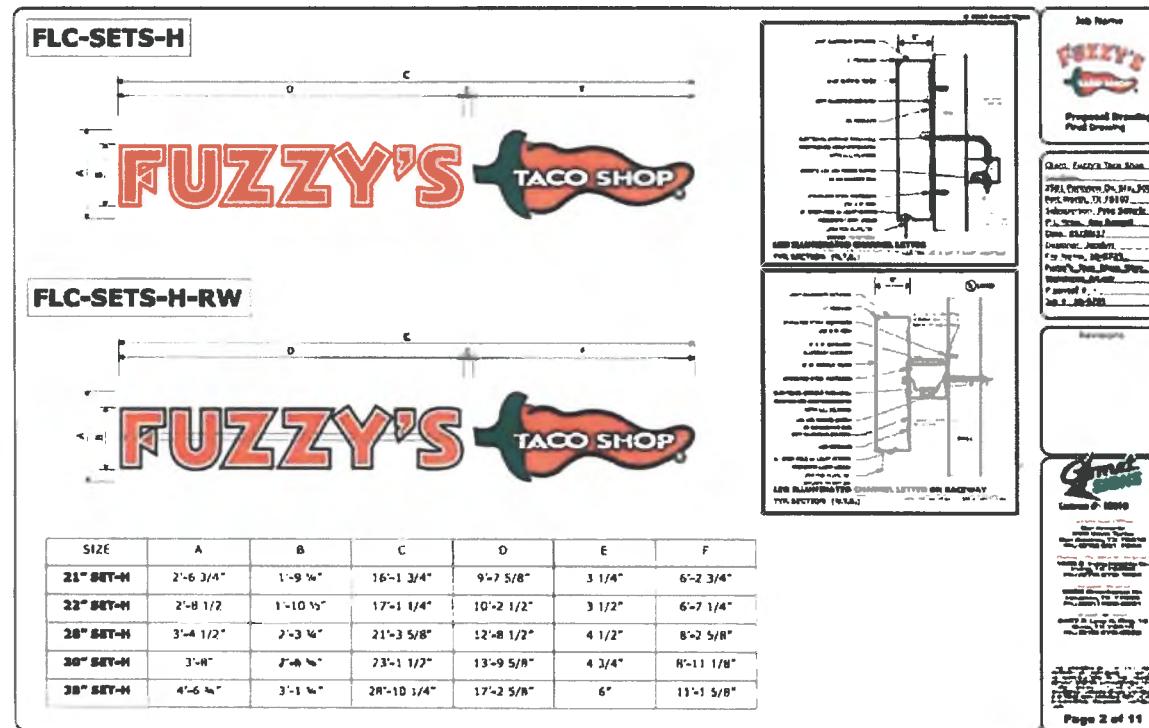
**Quality of Workmanship:**

All work undertaken by Tenant shall be at Tenant's expense and shall not damage the building or any part thereof; design and details shall conform with the standards of the project and shall be approved by Landlord and/or Landlord's architect. All such work performed by Tenant shall be subject to the approval of Landlord and/or Landlord's architect.

## EXHIBIT C

## TENANT SIGNAGE





**FLC-SETS-V-BP** \*BACKPLATE TO BE USED ONLY IF REQUIRED BY CRITERIA OR FOR CONTRAST PURPOSES.



FACE SIZE CHANNEL LETTERING AND LOGO ON BACKPLATE

**FLC-SETS-V-BP-RW**



FACE SIZE CHANNEL LETTERING AND LOGO ON BACKPLATE AND BACKWAY

1/8" FLUOR. CHANNEL LETTER w/ CLEAR BACKPLATE  
THE SECTION (A-L)

1/8" FLUOR. CHANNEL LETTER w/ CLEAR BACKPLATE  
THE SECTION (A-L)

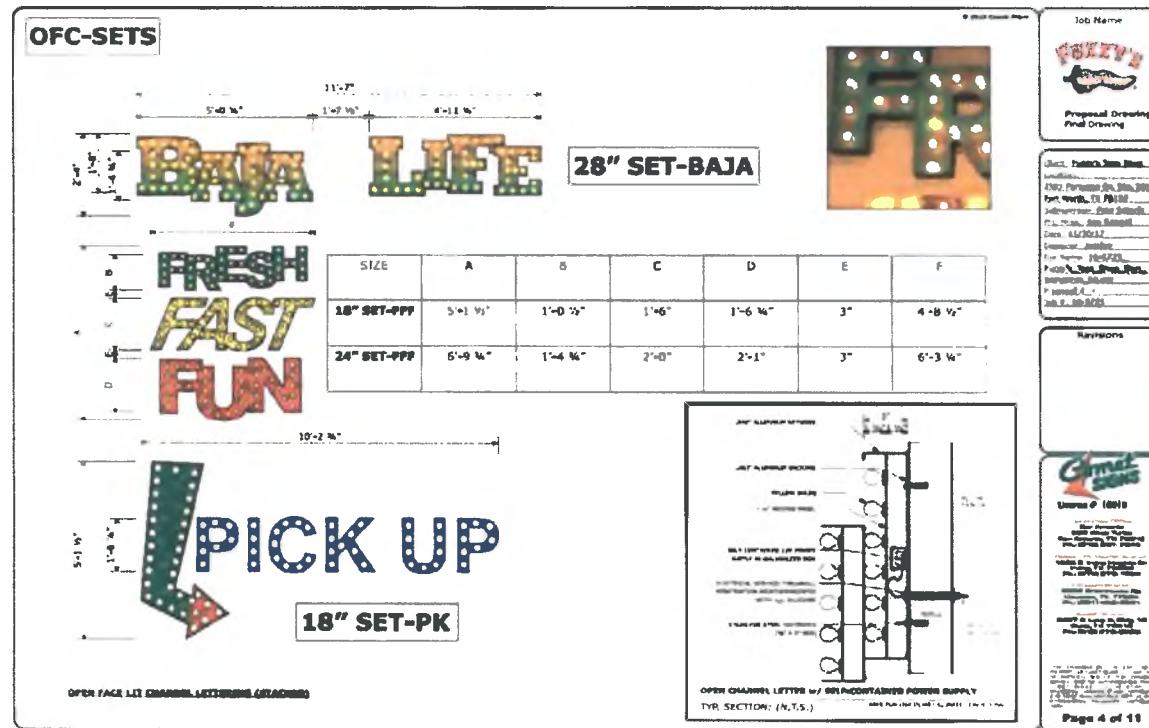
Job Name: **FUZZY'S**  
Proposal Drawing  
Final Drawing

Order: Fuzzy's Taco Shop  
Address:  
2161 Pennington Dr., Suite 300  
Port Huron, MI 48060  
Designer: Mike Smith  
P.L. No.: 00000000  
Date: 01/01/2020  
Phone: 1-800-555-1234  
Fax: 1-800-555-1234  
Email: info@fuzzys.com  
Printed: 1  
Date: 01/01/2020

Kensons

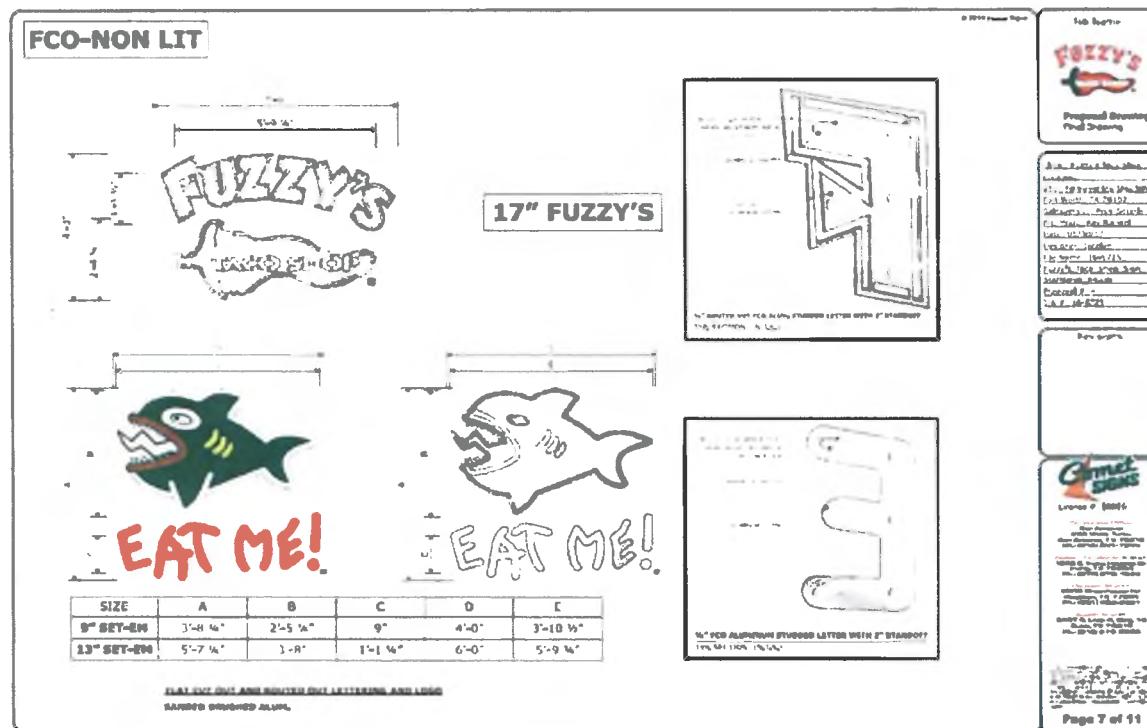
**Gimme More**  
Lunch & More  
Order # 10010  
Address: 123 Main Street  
City: Port Huron  
State: MI  
Zip: 48060  
Phone: 1-800-555-1234  
Fax: 1-800-555-1234  
Email: info@gimmemore.com  
Printed: 1  
Date: 01/01/2020

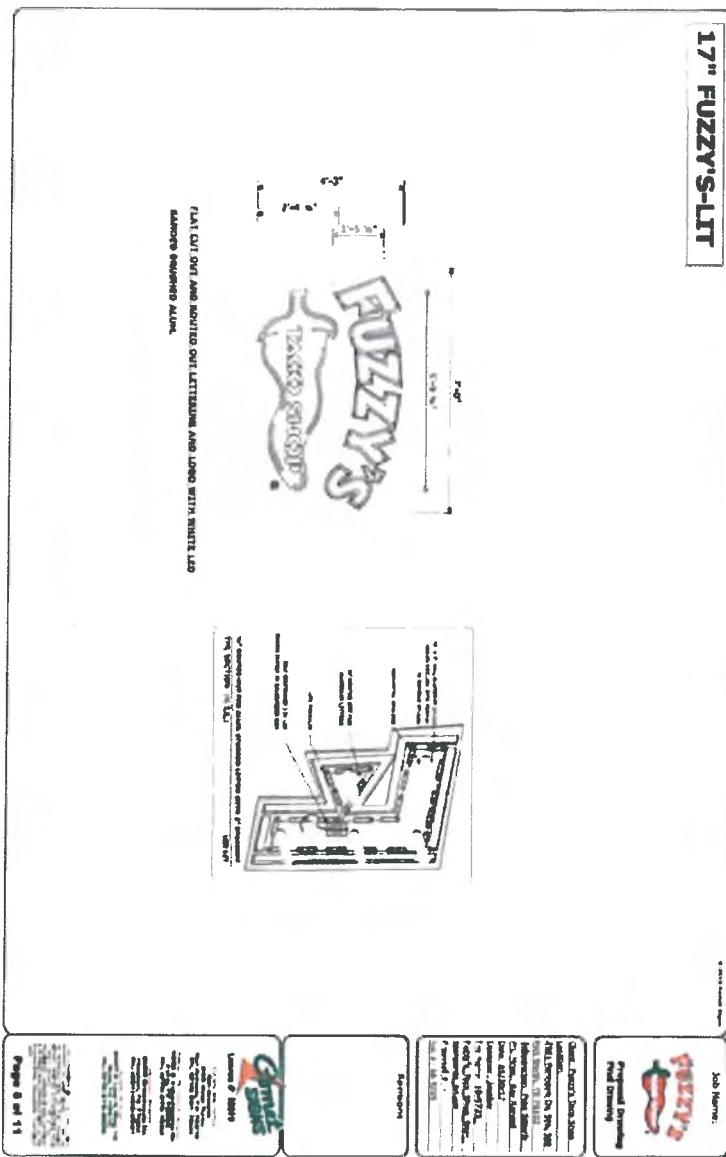
Page 3 of 11



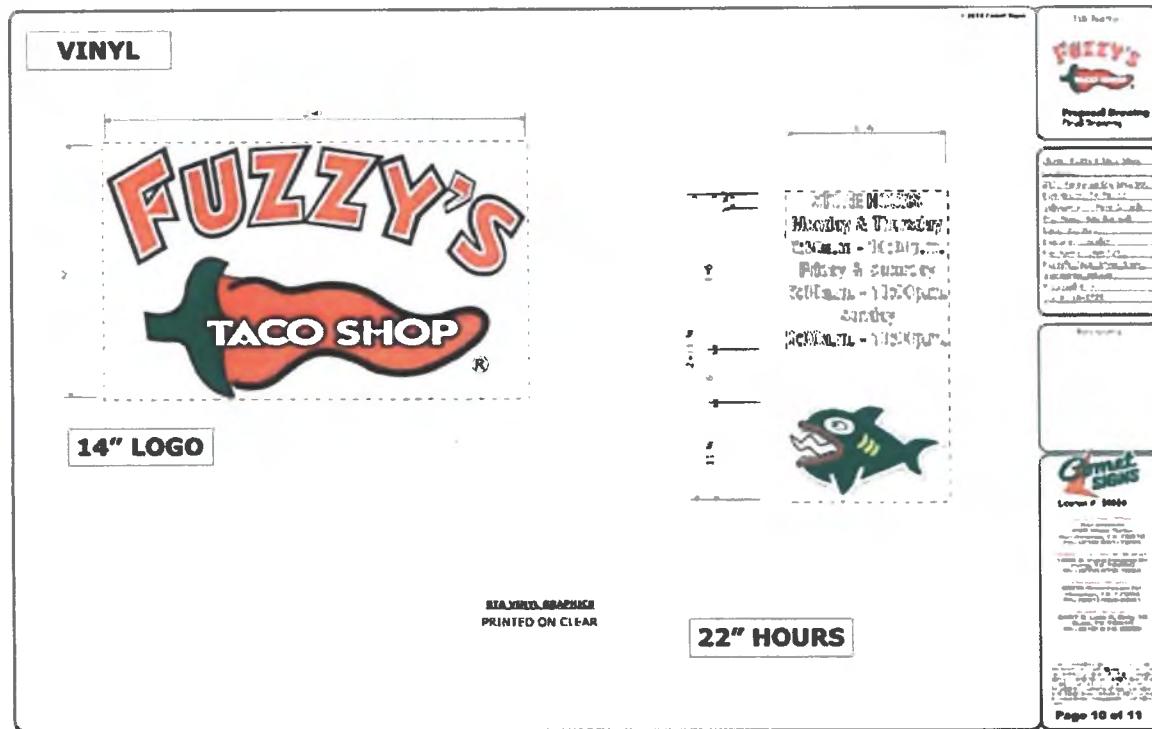


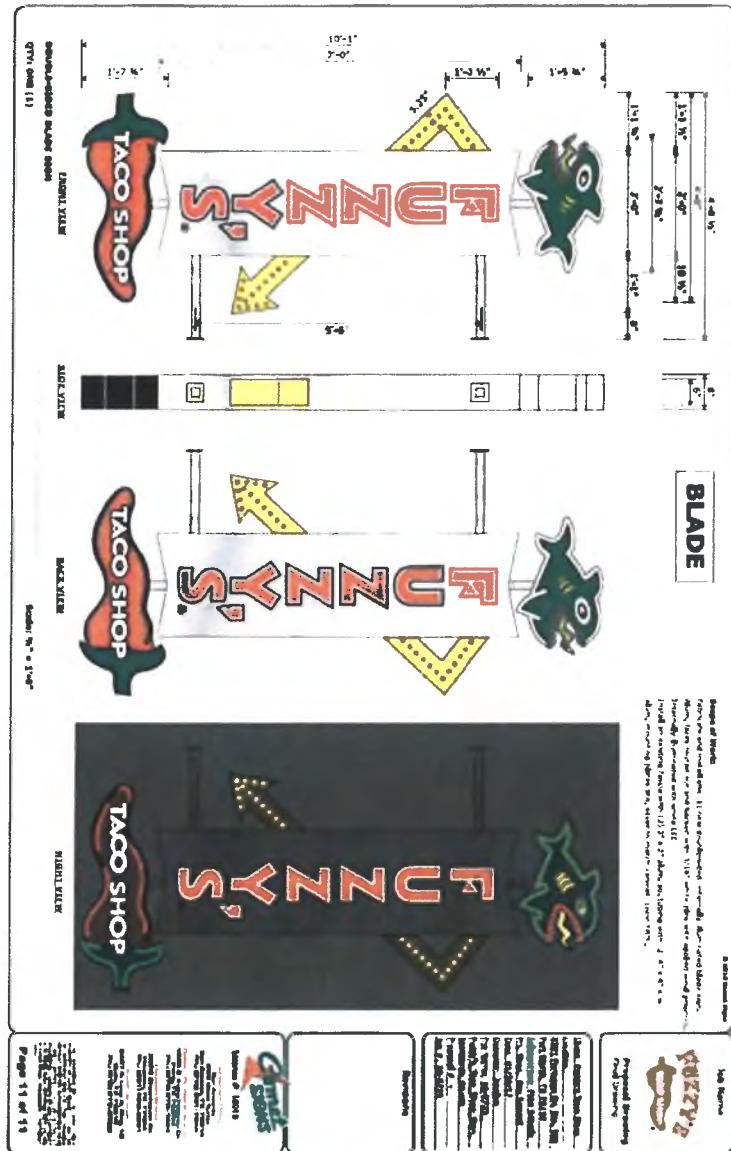












**EXHIBIT D**

**GUARANTY**

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

**LEASE GUARANTY**

IN CONSIDERATION OF the sum of \$10.00 paid by Landlord to the undersigned, and as an inducement to the execution of the Lease by Landlord, the undersigned (together, jointly and severally, "Guarantor"), intending to be legally bound hereby (and hereby acknowledging that it has a material economic or other interest in Tenant and/or the operations of Tenant and shall therefore derive substantial benefit from Landlord's and Tenant's entry into the Lease), absolutely and unconditionally, jointly and severally, guarantees the prompt, complete, and full and punctual payment, observance, and performance of all the terms, covenants, and conditions provided to be paid, kept, and performed by the tenant under that certain Lease Agreement (such lease, as amended, being herein referred to as the "Lease"), dated June \_\_\_, 2017, between FTS Berewick, LLC, as Landlord ("Landlord"), and RTHT Investments, LLC, as Tenant ("Tenant"), covering certain premises located in Berewick Town Center, Mecklenburg County, North Carolina, and all renewals, amendments, expansions, and modifications of the Lease. Except as otherwise expressly provided herein, this Guaranty shall include any liability of Tenant which shall accrue under the Lease for any period preceding as well as any period following the term of the Lease.

Guarantor agrees that this Guaranty shall be binding upon Guarantor without any further notice of acceptance hereof, and that same shall be deemed to have been accepted by the execution of the Lease; and that immediately upon each and every default by Tenant under the Lease, Guarantor shall pay to Landlord the sum or sums in default and shall comply with and perform all the terms, covenants and conditions of the Lease that are binding upon Tenant pursuant to the Lease.

The obligation of the Guarantor is primary and independent of Tenant's obligations under the Lease and may be enforced directly against the Guarantor independently of and without proceeding against the Tenant or exhausting or pursuing any remedy against Tenant or any other person or entity. Without limiting the generality of the foregoing, Guarantor has been advised of Guarantor's rights under Section 26 7, et seq., of the North Carolina General Statutes to require Landlord to proceed against the primary obligor under the Lease (i.e., Tenant) to realize upon Landlord's security and to take (or refrain from taking) other actions in pursuing Landlord's rights and remedies, and Guarantor specifically waives all of Guarantor's rights under said provisions of the North Carolina General Statutes and under all other applicable statutory provisions which are or may be in conflict with the rights, remedies and privileges granted or otherwise afforded to Landlord pursuant to this Guaranty (whether or not this Guaranty is governed by and construed in accordance with the laws of the State of North Carolina).

This instrument may not be changed, modified, discharged, or terminated orally or in any manner other than by an agreement in writing signed by Guarantor and the Landlord.

The obligations of Guarantor under this Guaranty shall not be released or otherwise affected by reason of any sublease, assignment, or other transfer of the Tenant's interest under the Lease, whether or not Landlord consents to such sublease, assignment, or other transfer.

Any act of Landlord, or the successors or assigns of Landlord, consisting of a waiver of any of the terms or conditions of said Lease, or the giving of any consent to any matter or thing relating to said Lease, or the granting of any indulgences or extensions of time to Tenant, may be done without notice to Guarantor and without releasing or modifying the obligations of Guarantor hereunder.

The obligations of Guarantor hereunder shall not be released by Landlord's receipt, application, or release of security given for the performance and observance of covenants and conditions in said Lease contained on Tenant's part to be performed or observed, nor by any modification of such Lease; but in case of any such modification the liability of Guarantor, to the extent applicable, shall be deemed modified in accordance with the terms of any such modification of the Lease.

Guarantor waives any defense or right arising by reason of any disability or lack of authority or power of Tenant and shall remain liable hereunder if Tenant or any other party shall not be liable under the Lease for any of such reasons.

Until all the covenants and conditions in said Lease on Tenant's part to be performed and observed are fully performed and observed, Guarantor (i) shall have no right of subrogation against Tenant by reason of any payments or acts of performance by the Guarantor in satisfaction of the obligations of the Guarantor hereunder; (ii) waives any right to enforce any remedy which Guarantor now or hereafter shall have against Tenant by reason of any one or more payments or acts of performance in satisfaction of the obligations of Guarantor hereunder; and (iii) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to the Landlord under said Lease.

The liability of Guarantor hereunder shall not be diminished, released or otherwise affected or impaired in any respect by (i) any insolvency, bankruptcy, reorganization, receivership, or other debtor relief proceeding involving Tenant (collectively "proceeding for relief"); (ii) the impairment, limitation, or modification of the liability of Tenant or the estate of the Tenant in any proceeding for relief, or the impairment, limitation, or modification of any remedy for the enforcement of Tenant's liability under the Lease, resulting from the operation of any law relating to bankruptcy, insolvency, or similar proceedings or other laws (including without limitation 11 U.S.C. § 502(b)(6)), or from the decision in any court; (iii) the rejection or disaffirmance of the Lease in any proceeding for relief; or (iv) the cessation or limitation from any cause whatsoever of any liability of Tenant.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment by Tenant to Landlord under the Lease is avoided, rescinded or must

otherwise be returned by Landlord upon the insolvency, bankruptcy, reorganization, receivership, or other proceeding for relief involving Tenant, all as though such payment had not been made.

This Guaranty is executed and delivered for the benefit of Landlord and its successors and assigns, and is and shall be binding upon Guarantor and its successors and assigns, but Guarantor may not assign its obligations hereunder.

**GUARANTOR AND LANDLORD WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND GUARANTOR ARISING OUT OF THIS GUARANTY OR ANY OTHER DOCUMENT OR INSTRUMENT EXECUTED IN CONNECTION HEREWITH OR ANY TRANSACTION RELATED TO THIS GUARANTY.**

Guarantor agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in successfully enforcing the terms of this Guaranty.

This Guaranty shall be governed by and construed in accordance with the internal laws of the State which governs the Lease, excluding any principles of conflicts of laws. For the purpose solely of litigating any dispute under this Guaranty, the undersigned submits to the jurisdiction of the courts of said state.

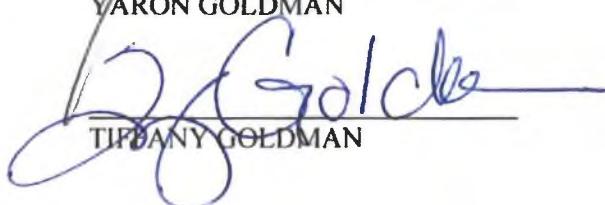
If the Guarantor is more than one person or entity, the liability of each such Guarantor shall be joint and several.

Notwithstanding anything contained herein, at such time as Tenant demonstrates to Landlord, as evidenced by financial statements prepared in accordance with generally accepted accounting principles, together with any supporting documentation reasonably requested by Landlord, that Tenant has a tangible net worth equal to or greater than Fifteen Million and 00/100 Dollars (\$15,000,000.00) and controls at least twenty (20) restaurant locations, then Guarantor thereafter shall be automatically and conditionally released as Guarantor under this Guaranty without any action on the part of Landlord or Guarantor hereunder; provided, however, if at any time after the date of such release Landlord shall request financial statements from Tenant pursuant to Section 55 of the Lease, and Landlord determines that Tenant has a tangible net worth of less than Fifteen Million and 00/100 Dollars (\$15,000,000.00) and/or controls less than twenty (20) restaurant locations, then Guarantor thereafter shall automatically become liable as Guarantor under this Guaranty without any action on the part of Landlord or Guarantor hereunder until such time as they may be again conditionally released from liability hereunder pursuant to this paragraph.

[Remainder of page intentionally left blank]

WITNESS THE EXECUTION hereof this 15<sup>th</sup> day of June, 2017.

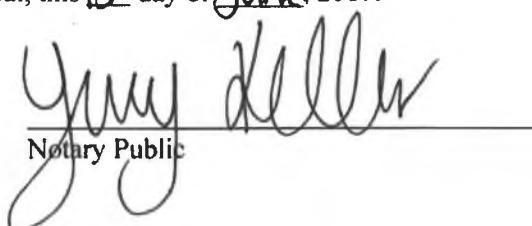
GUARANTOR:

  
YARON GOLDMAN  
  
Tiffany Goldman

STATE OF COLORADO  
COUNTY OF LARIMER

I, the undersigned Notary Public for said County and State, do hereby certify that Yaron Goldman and spouse, Tiffany Goldman, personally appeared before me this day acknowledged that they duly executed the foregoing instrument.

WITNESS my hand and notarial seal, this 15<sup>th</sup> day of June, 2017.

  
Notary Public

My Commission Expires:

10/15/2019

Guarantor's address for notices:

Yaron Goldman  
Tiffany Goldman  
131 East Lincoln Avenue, Suite C  
Ft. Collins, Colorado 80524

**EXHIBIT E**

**FUZZY'S TACO SHOP®  
FRANCHISE AGREEMENT**

**LEASE RIDER**

**THIS RIDER** (this "Rider") is incorporated into the body of the lease to which this rider is attached, dated June \_\_\_, 2017 (the "Lease") between FTS BEREWICK, LLC, having its principal offices at c/o Aston Properties, Inc., 610 E. Morehead Street, Suite 100, Charlotte, North Carolina 28202 ("Landlord"), and RTHT Investments, LLC, having its principal offices at 131 East Lincoln Avenue, Suite C, Ft. Collins, Colorado 80524 ("Tenant"), for that certain real property premises located at Berewick Town Center, Charlotte, North Carolina (the "Premises"). The provisions hereof shall be cumulative of those set forth in the Lease, but to the extent of any conflict between any provisions of this Rider and the provisions of the Lease, this Rider shall govern and control.

1. Acknowledgement of Franchise Relationship. Landlord acknowledges that Tenant intends to operate as a FUZZY'S TACO SHOP® franchise restaurant at the Premises (the "Franchised Business"), and consents to such use for the term of the Lease, including any extensions. Landlord further acknowledges and agrees that that Tenant's rights to operate the Franchised Business is solely pursuant to a franchise agreement ("Franchise Agreement") between Tenant and Fuzzy's Taco Opportunities, LLC ("Franchisor"). Tenant's operations at the Premises are independently owned and operated. Landlord acknowledges that Tenant alone is responsible for all obligations under the Lease unless and until Franchisor or another franchisee expressly, and in writing, assumes such obligations and takes actual possession of the Premises. Landlord agrees not to take an action that would prohibit Tenant from operating the Franchised Business, as contemplated by the Franchise Agreement, at the Premises.

2. Collateral Assignment of Lease. Landlord hereby consents, without payment of a fee and without the need for further Landlord consent, to (i) the collateral assignment of Tenant's interest in the Lease to Franchisor to secure Tenant's obligations to Franchisor under the Franchise Agreement, (ii) Franchisor's succeeding to Tenant's interest in the Lease as a result of Franchisor's exercise of rights or remedies under such collateral assignment or as a result of Franchisor's termination of, or exercise of rights or remedies granted in or under, any other agreement between Franchisor and Tenant, and/or (iii) the assignment of the Lease by Franchisor, Tenant or any other franchisee to another franchisee of Franchisor with whom Franchisor has executed its then-standard franchise agreement. As an express condition to Landlord's consent hereunder, Franchisor agrees that prior to taking possession of the Premises, Franchisor shall first cure any outstanding default on Tenant's part under the Lease that is susceptible to cure by a third party. Landlord agrees that to the extent Franchisor becomes Tenant, for howsoever brief a period, upon assumption of lease pursuant to this provision, that simultaneously with any subsequent assignment to another party, Franchisor shall be released from all liability under the Lease or otherwise accruing after the date of such assignment; provided, that neither Tenant nor any other franchisee shall be afforded such release in the event Tenant/such franchisee is the assignor, unless otherwise agreed by Landlord.

3. Tenant Signage. Landlord agrees to allow Tenant to use Franchisor's standard interior and exterior signage and designs to the maximum extent permitted by local governmental authorities

and subject in all respects to the approval of all parties required under any documents of record that affect the Premises. The parties acknowledge and understand that as of the date of the Lease no pylon or monument signage is made available to the Premises. In the event pylon or monument signage is made available to the Premises and Landlord is granted legal access thereto, Tenant shall be provided, at Tenant's sole cost and expense, with a panel on any pylon/monument/directory sign for the development in which the Premises is located, and shall be permitted to install a standard sign thereon approved by Franchisor, including without limitation Franchisor's logo the extent permitted by local governmental authorities and subject in all respects to the approval of all parties required under any documents of record that affect the Premises.

4. Franchisor Not a Guarantor. Landlord acknowledges and agrees that notwithstanding any terms or conditions contained in this Rider or any other agreement, Franchisor shall in no way be construed as a guarantor or surety of Tenant's obligations under the Lease.

5. Notice and Cure Rights to Franchisor. Prior to exercising any remedies hereunder (except in the event of imminent danger to the Premises), Landlord shall give Franchisor written notice of any default by Tenant at the same time that Landlord delivers Tenant such written notice, and Franchisor shall have the same cure period as is given to Tenant under the Lease for such default plus an additional five (5) days to cure such defaults. Landlord agrees to accept cure tendered by Franchisor as if the same was tendered by Tenant, but Franchisor has no obligation to cure such default.

6. Non-disturbance from Mortgage Lenders. It shall be a condition of the Lease being subordinated to any mortgage, deed of trust, deed to secure debt or similar encumbrance on the Premises that the holder of such encumbrance agree not to disturb Tenant's rights under the Lease or Tenant's possession of the Premises, so long as Tenant is not in default of its obligations hereunder beyond an applicable grace or cure period provided therein or herein.

7. Franchisor Right to Enter. Landlord acknowledges and agrees that Franchisor or its designee may enter the Premises for all purposes permitted under the terms of the Franchise Agreement, including to inspect the Premises and the Franchised Business' operations, to manage the Tenant's business on Tenant's behalf under certain circumstances (to-wit: Tenant's failure to timely cure its default of the Franchise Agreement, and while Franchisor evaluates its right to purchase the location), or to remove any trade fixtures or signage upon termination or expiration of the Franchise Agreement. If Franchisor enters the Premises for any such purposes, it will do so without assuming any liability under the Lease. Franchisor shall repair, at Franchisor's expense, any damage to the Premises resulting from such entry. Additionally, Franchisor shall and does hereby agree to indemnify Landlord and hold Landlord harmless from any and all liability, loss or damage that Landlord may incur as a result of Franchisor's exercise of its rights hereunder.

8. Amendments. Tenant agrees that neither the Lease nor this Rider may be amended by the parties thereto without the prior written consent of Franchisor.

9. Third Party Beneficiary. Franchisor is a third party beneficiary of the terms of this Rider, or any other terms of the Lease applicable to Franchisor's rights under the Lease, and as a result thereof, shall have all rights (but not the obligation) to enforce the same. Failure of Franchisor to enforce or exercise any of its rights hereunder shall not constitute a waiver of the rights hereunder or a waiver of any subsequent enforcement or exercise of its rights hereunder.

10. Severability. If any provision of this Rider or any part thereof is declared invalid by any court of competent jurisdiction, such act shall not affect the validity of this Rider and the remainder of this Rider shall remain in full force and effect according to the terms of the remaining provisions.

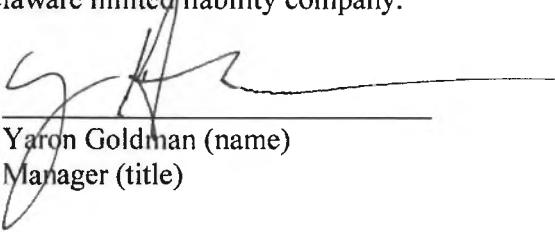
11. Remedies. The rights and remedies created herein shall be deemed cumulative and no one such right or remedy shall be exclusive at law or in equity of the rights and remedies which Franchisor may have under this or any other agreement to which Franchisor and Tenant are parties.

12. Execution. This Rider may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement with the Lease. This Rider and all other documents related to this Rider may be executed by manual or electronic signature. Either party may rely on the receipt of a document executed or delivered electronically.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Lease Rider to be effective as of the effective time of the Lease.

RTHT INVESTMENTS, LLC (“Tenant”)  
a Delaware limited liability company.

By:   
Yaron Goldman (name)  
Manager (title)

FTS BEREWICK, LLC (“Landlord”)  
a North Carolina limited liability company

By: Aston Properties, Inc., its Manager

By: \_\_\_\_\_ (name)  
\_\_\_\_\_  
\_\_\_\_\_  
(title)

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

**AMENDMENT TO  
LEASE AGREEMENT  
(BEREWICK TOWN CENTER)**

**THIS AMENDMENT TO LEASE AGREEMENT** (this “Amendment”) is made and entered into as of the 24 day of August, 2017, by and between **FTS BEREWICK, LLC**, a North Carolina limited liability company (“Landlord”), and **RTHT INVESTMENTS, LLC**, a Delaware limited liability company (“Tenant”).

**W I T N E S S E T H:**

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement, dated July 7, 2017 (the “Lease”), whereby Landlord leases to Tenant, and Tenant leases from Landlord, an approximately 3,825-square-foot building (defined in the Lease as the “Premises”) situated on an approximately 0.81-acre parcel in the development known as Berewick Town Center, Charlotte, North Carolina, as the same are more particularly described in the Lease; and

WHEREAS, Landlord and Tenant desire to amend the Lease to modify the square footage of the Premises and other provisions related thereto; and

WHEREAS, Landlord and Tenant desire to enter into this Amendment for the purpose of so amending the Lease; and

WHEREAS, all defined terms used herein, as indicated by the initial capitalization thereof, shall, unless otherwise expressly defined herein, have the same meaning herein as is ascribed thereto in the Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. **Recitals.** The foregoing recital paragraphs are hereby incorporated herein by reference.

2. **Premises Square Footage.** Notwithstanding anything to the contrary contained in the Lease, the rentable square footage of the Premises is hereby modified from 3,825 square feet to 3,874 square feet. Accordingly, Base Rent and all other charges under the Lease which are based upon the rentable square footage of the Premises shall be calculated based upon 3,874 square feet.

3. **Base Rent.** In connection with the modification of the rentable square footage of the Premises as described in Paragraph 2 herein, the section of the Fundamental Lease Provisions of the Lease entitled “Base Rent” is hereby deleted, and the following is hereby substituted therefor:

<b>“Base Rent:</b>	<u>Years</u>	<u>PSF</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>
	1-5	\$37.00	\$11,944.83	\$143,338.00
	6-10	\$40.70	\$13,139.32	\$157,671.80

Option Periods

	<u>Years</u>	<u>PSF</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>
	11-15	\$44.77	\$14,453.25	\$173,438.98
	16-20	\$49.25	\$15,899.54	\$190,794.50”

4. Tenant Allowance. In connection with the modification of the rentable square footage of the Premises as described in Paragraph 2 herein, the Tenant Allowance, as described in Section 4 of the Lease, is hereby increased to One Hundred Eighty-Five Thousand Two Hundred and 00/100 Dollars (\$185,200.00).

5. Building Plan. The Building Plan attached as Exhibit “A-1” to the Lease is hereby deleted, and the Building Plan attached hereto as Exhibit “A-1” is hereby substituted therefor.

6. Ratification. As specifically amended by this Amendment, the Lease is hereby ratified and remains in full force and effect.

7. Counterpart Signatures. This Amendment may be executed in multiple counterparts, each counterpart being executed by less than all of the parties hereto, and shall be equally effective as if a single original had been signed by all parties; but all such counterparts shall be deemed to constitute a single agreement, and this Amendment shall not be or become effective unless and until each of the signatory parties below has signed at least one such counterpart and caused the counterpart so executed to be delivered to the other party.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be duly executed as of the day and year first above written.

LANDLORD:

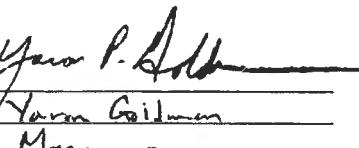
FTS BEREWICK, LLC

By: Aston Properties, Inc., its Manager

By:   
Name: **Steven J. Townley**  
Title: **Senior Vice President**

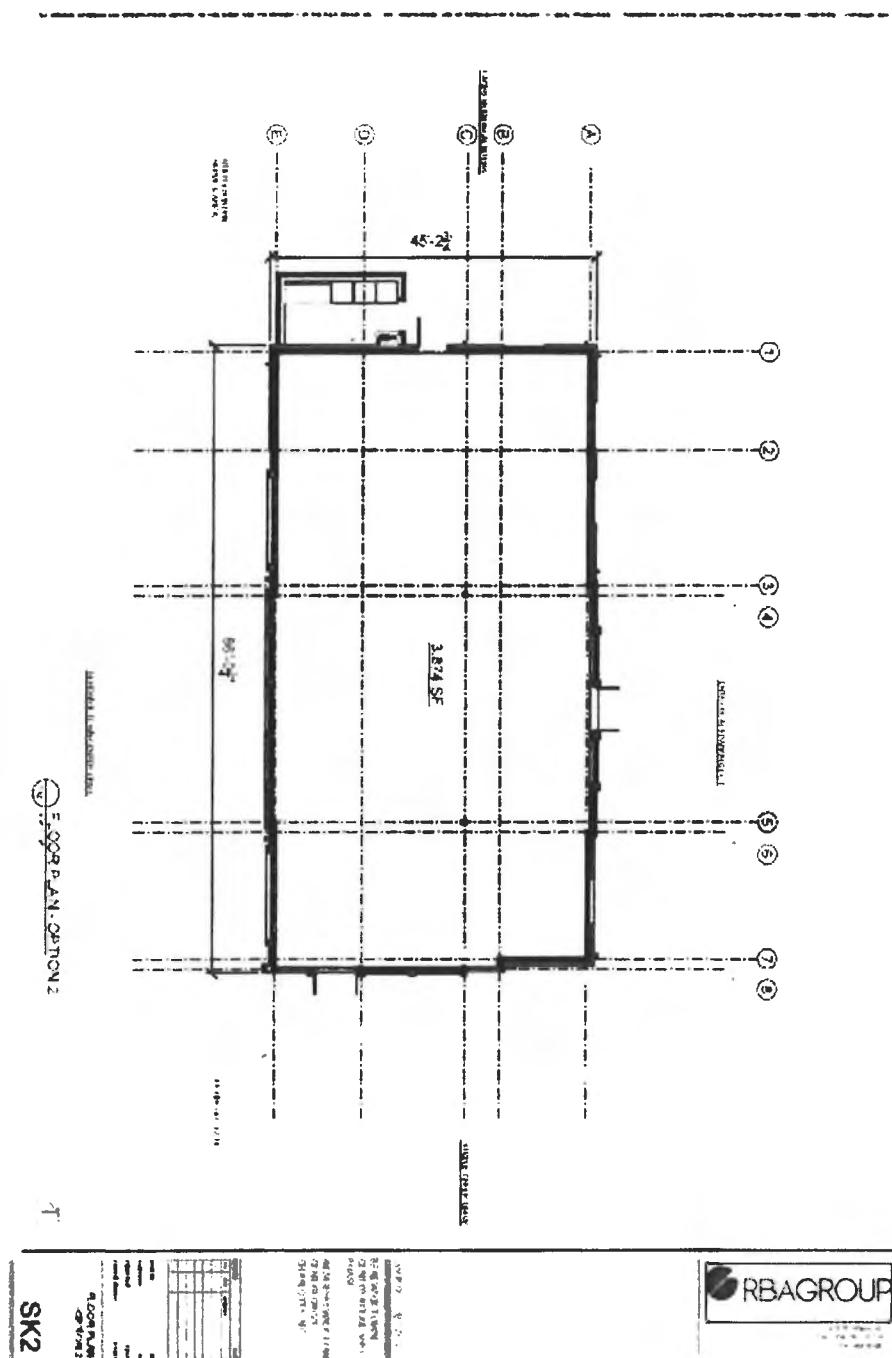
TENANT:

RTHT INVESTMENTS, LLC

By:   
Name: **Yaron Goldstein**  
Title: **Manager**

**EXHIBIT "A-1"**

## **BUILDING PLAN**



**Exhibit B-1**

The Matthews Lease

**SHOPPING CENTER  
LEASE AGREEMENT  
FOR  
RTHT INVESTMENTS, LLC,  
a Delaware limited liability company  
TENANT**

**SYCAMORE COMMONS  
SHOPPING CENTER**

**SHOPPING CENTER LEASE AGREEMENT**

**TABLE OF CONTENTS**

ARTICLE I - ABSTRACT OF LEASE

ARTICLE II - SHOPPING CENTER AND PREMISES

ARTICLE III - LEASE TERM AND POSSESSION OF PREMISES

ARTICLE IV - RENT AND OTHER TENANT CONTRIBUTIONS

ARTICLE V - SECURITY

ARTICLE VI - CONSTRUCTION, ALTERATIONS, MAINTENANCE AND REPAIRS

ARTICLE VII - USE OF PREMISES

ARTICLE VIII - LIABILITY INSURANCE AND INDEMNIFICATION

ARTICLE IX - LOSS, DESTRUCTION OR TAKING OF PREMISES

ARTICLE X - ASSIGNMENT, SUBLetting, MORTGAGING AND SUBORDINATION

ARTICLE XI - DEFAULT AND REMEDIES FOR DEFAULT

ARTICLE XII - GENERAL PROVISIONS

**EXHIBITS**

EXHIBIT A - Site Plan of Shopping Center and Depiction of Location of Premises

EXHIBIT B - Minimum Rent

EXHIBIT C-1 - Landlord's Work

EXHIBIT C-2 - Tenant's Work

EXHIBIT D - General Sign Criteria for Shopping Center

EXHIBIT E - Guaranty

EXHIBIT F-1 - Prohibited Uses

EXHIBIT F-2 - Shopping Center Exclusives and Restrictions

EXHIBIT G - Rules and Regulations

EXHIBIT H - Sample Certificate of Insurance

RIDER

**SHOPPING CENTER LEASE AGREEMENT**

**ARTICLE I - ABSTRACT OF LEASE**

Date of Lease: This Shopping Center Lease Agreement (the "Lease") is entered into by the undersigned parties on this \_\_\_\_ of \_\_\_\_\_, 2017.

**1.1 PARTIES.**

<b>A. LANDLORD:</b>	IA Matthews Sycamore, L.L.C., a Delaware limited liability company
<b>FOR NOTICES:</b>	IA Matthews Sycamore, L.L.C. c/o InvenTrust Property Management, LLC. 3025 Highland Parkway, Suite 350 Downers Grove, Illinois 60515 Attn: Property Manager (Building # 4468701)
<b>WITH COPY TO:</b>	IA Matthews Sycamore, L.L.C. c/o InvenTrust Property Management, LLC. 3025 Highland Parkway, Suite 350 Downers Grove, Illinois 60515 Attn: Legal – Leasing & Property Mgmt. (Building # 4468701)
Phone:	(630) 570-0700
<b>FOR RENT:</b>	IA Matthews Sycamore, L.L.C. 16158 Collection Center Drive Chicago, Illinois 60693
<b>B. TENANT (AND STATUS):</b>	RTHT INVESTMENTS, LLC, a Delaware limited liability company
Address:	1207-B Crews Road Matthews, North Carolina 28105
Phone:	(704) 281-9881
Store Name (Trade Name):	Fuzzy's Taco Shop
<b>C. GUARANTOR:</b>	SD-Missouri, LLC, a Delaware limited liability company
Address:	1207-B Crews Road Matthews, North Carolina 28105
Phone:	(704) 281-9881

**1.2 PROPERTY AND MANAGING AGENT.**

<b>A. SHOPPING CENTER:</b>		
Name:	Sycamore Commons	Description: Site Plan showing the layout of
Location	10530 Northeast Parkway	Shopping Center (and approximate location
	Matthews, NC 28105	of Premises) is attached as Exhibit A.
(include county)	Mecklenburg	

**B. PREMISES:**  
Unit Address:  
2225 Matthews Township Pkwy.  
Ste. C (Unit 19)  
Matthews, NC 28105

Description: Approximately 5,770 square feet of gross floor as outlined on the Site Plan attached as Exhibit A.

**C. LANDLORD'S PROPERTY MANAGER:**

InvenTrust Property Management, LLC  
2809 Butterfield Road  
Oak Brook Illinois 60523  
Attn: Building # 4468701

**1.3 TERM OF LEASE.**

A. The term (the "Term") of this Lease shall be for a period commencing on the date of Landlord's delivery of possession of the Premises to Tenant with Landlord's Work "substantially completed" (as defined and described in Section 6.2 below)(the "Commencement Date"), and ending and expiring on the last day of the month which is ten (10) years and zero (0) months after the Rent Commencement Date (as defined herein) if the Rent Commencement Date is the first day of a month or, if the Rent Commencement Date is other than the first day of a month, on the first full month following the Rent Commencement Date (the "Termination Date"), unless sooner terminated or extended as provided in this Lease. Unless otherwise set forth in this Lease, the Rent Commencement Date shall be the earlier of: (i) the date Tenant opens its business to the public; or (ii) one hundred twenty (120) days after the later of the Commencement Date or the date Tenant receives all permits, variances and governmental approvals necessary to commence construction of Tenant improvements within the Premises, but in no event shall the Rent Commencement Date be more than 270 days following the Commencement Date (the "Rent Commencement Date").

B. Extended Term: two (2) options of five (5) years each, as provided in Section 3.1 below.

**1.4 RENT AND OTHER TENANT CONTRIBUTIONS.**

A. Minimum Rent shall be: See Exhibit B

B. Additional Rent as more specifically defined in Section 4.3A shall include Tenant's Proportionate Share of Operating Expenses, Real Estate Taxes and Insurance (as such terms are defined and described in Section 4.3 below), with an annual adjustment as provided in Section 4.3C. Tenant's initial estimated share of Operating Expenses is \$3.55 per square foot annually for a total of \$20,483.50 (\$1,706.96 monthly) with an annual adjustment (as provided in Section 4.3C) and Tenant's initial estimated share of Real Estate Taxes as defined in Section 4.3B(3) is \$1.79 per square foot annually for a total of \$10,328.30 (\$860.69 monthly) with an annual adjustment (Section 4.3C). These estimates are based on the best available information at the time this Lease was prepared and do not include any anticipated annual adjustments. Subject to the Cap on Cam, if it is determined by Landlord, in Landlord's reasonable judgment, that its estimates are incorrect, it may adjust Tenant's estimated payments at any time during the Term.

C. Intentionally Deleted.

D. The term "Rent" shall include Minimum Rent, Additional Rent and all other amounts payable by Tenant pursuant to the terms of this Lease.

E. Intentionally Deleted.

**1.5 Intentionally Deleted.**

**1.6 CONSTRUCTION, ALTERATIONS, MAINTENANCE, AND REPAIRS.**

- A. Initial Construction by Landlord (Sections 6.1 and 6.2):  
 None. \_\_\_\_\_ (See Exhibit C-1.)
- B. Construction by Tenant (Sections 6.4 and 6.7):  
\_\_\_\_\_ None.  (See Exhibit C-2.)
- C. Sign criteria (Section 6.5) are attached as Exhibit D.

**1.7 USE OF PREMISES.** Tenant shall use the Premises for only the operation of a fast-casual tex-mex restaurant with alcohol sales (limited to beer and wine and other alcoholic beverages permitted by Tenant's liquor license and shall be limited to forty-five percent (45%) of Tenant's gross sales) for on premises consumption and for no other purposes whatsoever. Tenant shall operate the Premises throughout the Term under Tenant's trade name, Fuzzy's Taco Shop ("Tenant's Trade Name"), and no other trade name without Landlord's prior written consent. Tenant's use shall be subject to the Prohibited Uses as set forth in Exhibit F-1 and the Shopping Center Exclusives and Restrictions as set forth in Exhibit F-2. Landlord covenants that Exhibit F-1 contains all of the Prohibited Uses, Exclusives or Restrictions for the Shopping Center.

**1.8 Intentionally Omitted.**

**1.9 ANTICIPATED TENANT OPENING DATE:** 120 days following Tenant's receipt of Permits ("Opening Date")

**1.10 ABSTRACT OF VARIABLE PROVISIONS AND STANDARD PROVISIONS.** The previous provisions of this Article I will be referred to as the "Abstract of Lease" and the provisions of the remaining Articles of this Lease will be referred to as the "Standard Provisions." Wherever in the Standard Provisions or elsewhere the parties, effective date, premises, rent, charges or other variable terms are defined or referred to, they shall be those identified in the Abstract of Lease above and the exhibits to this Lease. In the event of any conflict between the terms of the Abstract of Lease and the Standard Provisions, the terms of the Abstract of Lease shall supersede and prevail. The Standard Provisions may, however, add detail or clarification to the summary provisions described in the Abstract of Lease.

**ARTICLE II - SHOPPING CENTER AND PREMISES**

**2.1 SHOPPING CENTER.** The Premises are part of a shopping center which is depicted substantially in accordance with a site plan ("Site Plan") as outlined in the attached Exhibit A. The purpose of the Site Plan attached is to show the general configuration of the Shopping Center and the approximate location of the Premises. Landlord reserves the right to change the size, layout and location of any buildings or common areas, parking and other facilities shown on Exhibit A as well as reduce or expand the size of the Shopping Center; provided, however, that Landlord covenants that no such changes shall materially and adversely impact access to, parking for or the visibility of the Premises. The term "Shopping Center" herein shall be deemed to mean the entire development owned by Landlord from time to time, including any and all existing and proposed structures (whether reflected in Exhibit A or hereafter incorporated in the Shopping Center during the Term or any extension thereof), parking facilities, common facilities, and the like to be built on the property shown on said Exhibit A as the same may from time to time be increased by the addition of other land, together with structures and the like thereon which may from time to time be included by Landlord in the development.

**2.2 PREMISES.**

A. **DESCRIPTION.** Landlord hereby leases to Tenant and Tenant leases and accepts subject to the terms and conditions of this Lease, the Premises. The square footage of the Premises shall be the square footage set forth in Section 1.2.B. above. If the floor area of the Premises, or the Shopping Center shall be more or less than the estimated square footage set forth in Section 1.2 of the Abstract of Lease, neither the Minimum Rent nor calculation

of Tenant's Proportionate Share hereunder shall be affected. Under no circumstances shall Landlord or Tenant be entitled to any rent credits or other credits past, present and future for an error in the square footage calculation.

**B. EXCEPTION AND RESERVATION.** Landlord reserves and excepts from the Premises the roof and exterior walls of the building or buildings of which the Premises are a part, and further reserves the right to construct additional floors on the building of which the Premises are a part and the right in, over and upon the Premises as may be reasonably necessary or advisable for the servicing of the Premises or of other portions of the Shopping Center; provided, that Landlord shall take commercially reasonable efforts to avoid materially and adversely disturbing Tenant's operations in the Premises..

**C. SUBSTITUTE PREMISES.** After the Fifth Lease Year and following at least sixty (60) days prior written notice to Tenant, Landlord may substitute for the Premises other space (hereinafter called "Substitute Premises") in the Shopping Center in the Relocation Area identified on Exhibit A. Insofar as reasonably possible, the Substitute Premises shall have a comparable square foot area and a configuration substantially similar to the Premises. Tenant agrees that all of the obligations of this Lease, including the payment of Minimum Rent at the rate set forth on Exhibit B without any increase for increased square footage of the Substitute Premises, will continue despite Tenant's relocation to the Substitute Premises. Landlord, at Landlord's sole cost and expense, shall prepare the Substitute Premises in a manner substantially similar to the finished condition of the Premises at the time of relocation; including, without limitation, all improvements and alterations made to the original Premises by Tenant. Landlord shall complete such work promptly after providing Tenant written notification of the relocation and Tenant shall continue to occupy the original Premises during such period. Upon substantial completion of the Substitute Premises, this Lease will apply to the Substitute Premises as if it had been the space originally described in this Lease. Landlord shall use commercially reasonable efforts to minimize any period when the Premises shall be closed to the public as a result of relocation. All Rent shall abate from the date the Premises are closed until the date the Substitute Premises are open for business. From and after delivery of the Substitute Premises in the condition required hereunder, Tenant agrees to use all reasonable efforts to open for business in the Substitute Premises as quickly as is reasonably possible under the circumstances. Landlord hereby agrees to pay the reasonable cost of relocation; including, without limitation, such as equipment moving and installation costs. Provided that Landlord satisfies its obligations under this Section 2.2., Landlord shall not, however, be liable or responsible in any way for damages, loss of business, income or profits or injuries suffered by Tenant pursuant to a relocation in accordance with this provision including, but limited to, loss of goodwill, business, or profits.

**2.3 COMMON AREA.** Tenant along with its Lease of the Premises receives the non-exclusive right to use, in common with others, the Common Areas of the Shopping Center. The term "Common Areas" herein shall include all service roads, loading facilities, sidewalks, automobile parking areas, driveways, footways and other facilities designed for common use, as may be installed by Landlord as hereinafter provided, and of such other and further facilities as may be provided or designated from time to time by Landlord for common use, subject, however, to the terms and conditions of this Lease and to reasonable rules and regulations for the use thereof, as prescribed from time to time by Landlord.

### ARTICLE III - LEASE TERM AND POSSESSION OF PREMISES

#### **3.1 TERM.**

**A. INITIAL TERM.** The Term of this Lease shall be as set forth in Section 1.3 above. Notwithstanding the foregoing, this Lease and all of the obligations of Landlord and Tenant set forth herein are binding and shall be in full force and effect from and after the date of their mutual execution of this Lease until the expiration or earlier termination hereof, and this Lease shall not be deemed a contract to make a lease. Landlord and Tenant agree that if the Term shall not have commenced on or before the first (1<sup>st</sup>) anniversary of the date of this Lease, then Landlord and Tenant each shall have the right to terminate this Lease by delivering notice thereof to the other party prior to such commencement. Tenant shall be responsible for the payment of any and all utilities servicing the Premises from and after the date that Landlord delivers the Premises to Tenant and Landlord covenants that the same are separately metered or sub-metered to the Premises.

If this Lease is executed before any portion of the Premises becomes vacant or otherwise available and ready for occupancy, or if any present tenant or occupant of any portion of the Premises holds over and Landlord is unsuccessful in acquiring possession of such portion of the Premises prior to the Commencement Date, Landlord shall not be deemed to be in default hereunder; provided, however, that the foregoing right to terminate under 3.1.A shall apply under such scenario. Upon delivery of the Premises in the condition attached hereunder, Landlord and Tenant shall confirm the Commencement Date, the Termination Date and the Rent Commencement Date in writing and such dates shall be binding on Landlord and Tenant for all purposes under this Lease.

**B. EXTENDED TERM.** Provided that Tenant has been continuously open and operating (excluding periods during which Tenant is permitted to close hereunder), is not in default hereunder, both at the time of exercise of the option as well as at the time of commencement of any Extended Term hereinafter defined, and provided, further, that this Lease has not been terminated during the initial Term or a prior Extended Term, Tenant shall have the number of options to extend the Term for the number of years each as set forth in Section 1.3.B. above, immediately following the then current Term and subject to all of the terms, conditions, covenants and provisions of this Lease ("Extended Term"). Tenant shall exercise its extension rights hereunder in each instance by delivery to Landlord of written notice no later than one hundred and eighty (180) days prior to the expiration of the then current Term. Except to the extent expressly otherwise set forth herein, nothing contained in this Lease shall be construed as granting any rights to extend the Term beyond the Termination Date. In the event Tenant is in default either at the time it exercises its rights to extend or at the intended commencement date of such Extended Term, then all of Tenant's extension rights described in this Section shall terminate automatically. For the purposes of this Lease, the "Term" shall include any "Extended Term."

**3.2 QUIET ENJOYMENT.** Landlord agrees that, if the Rent and any other additional charges are being paid in the manner and at the time prescribed and the covenants and obligations of Tenant are being all and singularly kept, fulfilled and performed, Tenant shall lawfully and peaceably have, hold, possess, use and occupy and enjoy the Premises so long as this Lease remains in force without hindrance, disturbance or molestation from Landlord, subject to the specific provisions of this Lease.

**3.3 SURRENDER OF PREMISES.**

**A. OBLIGATIONS UPON SURRENDER.** Upon any termination of this Lease or termination of Tenant's right to possession of the Premises, whether by lapse of time, cancellation or termination, forfeiture, or otherwise as permitted hereunder, Tenant shall immediately surrender possession of the Premises and all buildings and improvements (excluding Tenant's Property (defined below)) on the same to Landlord in "broom clean" condition and good and tenantable repair, reasonable wear and damage from fire or other casualty or peril and Landlord's obligations hereunder excepted (the "Surrender Condition"), and shall surrender all keys and security codes for the Premises to Landlord at the place then fixed for the payment of Minimum Rent and shall inform Landlord of all security codes, combinations of locks, safes and vaults, if any, in the Premises.

**B. RIGHT TO REMOVE.** At any time prior to the Termination Date of this Lease, Tenant shall have the right to remove, at Tenant's sole cost and expense, and at the end of the Term or termination of Tenant's right to possession of the Premises, if directed to do so by Landlord, shall remove, at Tenant's sole cost and expense, from the Premises all furniture, furnishings, signs, personal property, trade dress and equipment then installed or in place in, on or about the Premises by Tenant (collectively, "Tenant's Property") provided, however, Tenant shall make all repairs, at Tenant's sole cost and expense, to the Premises required because of such removal and to restore the Premises to the Surrender Condition. If any of such property shall remain on the Premises after the end of the Term, at the option of Landlord, such property shall be and become the property of Landlord without any claim therein of Tenant. Landlord may direct Tenant to remove and repair such property, in which case Tenant agrees to do so, at Tenant's sole cost and expense, and to reimburse Landlord as Additional Rent for any reasonable expense of removal in the event Tenant shall fail to remove such property if and when directed. Tenant hereby grants Landlord the absolute right to dispose of any property remaining on the Premises following Tenant's failure to remove same in any manner as Landlord determines in its sole discretion without liability therefor to Tenant and at Tenant's sole cost and expense.

**3.4 HOLDING OVER.** Any holding over after the expiration of the Term of this Lease or Tenant's right to possession of the Premises, without the consent of Landlord, shall be construed to be a tenancy from month to

month, cancelable by either Landlord or Tenant upon thirty (30) days' written notice, and at Minimum Rent equal to one hundred twenty-five percent (125%) of the total Minimum Rent as existed during the last year of the Term hereof for each month or partial month of holding over, and further upon all of the terms and conditions (including, without limitation, the obligation to pay Additional Rent) as existed other than payment of Minimum Rent during the last year of the Term hereof. Such holding over by Tenant, and Landlord's collection of any Rent therefor, shall not serve as permission for Tenant's continued occupancy of the Premises nor serve to extend the Term. Tenant shall also indemnify, defend and hold Landlord harmless from and against all claims and damages, consequential as well as direct, sustained by reason of Tenant's holding over. The provisions of this Section 3.4 shall not be deemed to be a waiver of Landlord's right of reentry or right to regain possession by actions at law or in equity or any other rights under this Lease, and any receipt of payment of holdover Rent by Landlord shall not be deemed a consent by Landlord to Tenant's remaining in possession or be construed as creating or renewing any lease term or right of tenancy except as elected by Landlord as set forth above.

#### ARTICLE IV - RENT AND OTHER TENANT CONTRIBUTIONS

**4.1     MINIMUM RENT.** Commencing on and as of the Rent Commencement Date, Tenant shall pay to Landlord the minimum annual rent (hereinafter referred to as "Minimum Rent") set forth in the Abstract of Lease, payable in advance in equal monthly installments on or before the first day of each calendar month, without prior demand therefor and without offset. The first payment date for Minimum Rent shall, if the Rent Commencement Date is other than the first day of a month, include Minimum Rent for the fractional month on a per diem basis (calculated on the actual number of days in each month); and thereafter the Minimum Rent shall be paid in equal monthly installments in advance on or before the first day of each calendar month during the Term of this Lease.

**4.2     SALES REPORTS.**

A.     SALES TAX REPORTS. Upon the request of Landlord, Tenant shall provide copies to Landlord of all State and local sales and use tax reports filed by Tenant at the time these reports are filed with the appropriate agencies.

B.     ANNUAL STATEMENT. Within sixty (60) days after each calendar year end, Tenant shall submit to Landlord a statement certified as correct by Tenant, a principal officer of Tenant, or by a certified public accountant, which shall set forth by calendar month the total receipts of Tenant and of each subtenant, licensee and concessionaire with respect to the Premises for the preceding calendar year.

**4.3     TENANT'S SHARE OF COMMON AREA AND SHOPPING CENTER EXPENSES.**

A.     MONTHLY PAYMENT OF ESTIMATED CHARGE. For each year of the Term hereof, Tenant shall pay to Landlord, as additional rent ("Additional Rent"), Tenant's proportionate share ("Proportionate Share") of: (i) all costs of operation and maintenance of the Common Areas ("Operating Expenses"); (ii) all real estate taxes levied and assessed against the Shopping Center including the Common Areas ("Real Estate Taxes"); (iii) all insurance coverage upon the Shopping Center and its operations ("Insurance"); and (iv) Landlord's administrative fees ("Administrative Fee"). As and for Tenant's Proportionate Share, as hereinafter defined, set forth in the Abstract of Lease, such amount shall be payable as Additional Rent in equal monthly installments at the same times as Minimum Rent is payable hereunder, without demand and without any deduction or setoff whatsoever. Landlord may, at its sole option, adjust Tenant's monthly payments of estimated charges if Landlord, in its reasonable judgment, determines the estimated charges are incorrect.

B.     DEFINITIONS. For the purpose of this Section:

(1)     "Tenant's Proportionate Share" shall be a percentage equal to the rentable square footage of the Premises divided by the total square footage of all rentable floor space in the Shopping Center ("Shopping Center Square Footage") from time to time.

Notwithstanding the foregoing, Landlord (i) may exclude from the Shopping Center Square Footage, at Landlord's option, any portions of the Shopping Center not occupied and open for business during all or any portion of the subject year and (ii) shall exclude from the Shopping Center Square Footage, area leased to or used by other parties as major tenants (tenants occupying greater than ten percent (10%) of the Shopping Center), theaters, restaurants, storage areas, or premises in separate buildings, where such parties are not required to pay a full pro rata share of Operating Expenses or Real Estate Taxes, as the case may be, pursuant to a lease or other agreement with Landlord and the corresponding Operating Expenses or Real Estate Taxes, as applicable, shall be excluded from the overall Operating Expenses. Further, Landlord shall exclude, with respect to Real Estate Taxes, areas of the Shopping Center for which separate real estate tax bills are received and which are the sole responsibility of separate parties pursuant to a lease or other agreement with Landlord.

If the Shopping Center shall be a part of or shall include a group of buildings or structures collectively owned or managed by Landlord or its affiliates, or shall include any space used for office, medical, dental or other non-retail purposes, Landlord may determine separately and allocate Real Estate Taxes or Operating Expenses between such buildings and structures and the parcels on which they are located, and between the retail and non-retail areas of the Shopping Center, in accordance with sound accounting and commercially reasonable management principles, in which event Tenant's Proportionate Share shall be based on the ratio for which Landlord separately determines such Real Estate Taxes or Operating Expenses, subject to the adjustments set forth above.

(2) Operating Expenses shall include all expenditures incurred by or on behalf of Landlord in operating, maintaining, repairing or replacing the Shopping Center and Common Areas, including, without limitation, exterior walls and other structural elements of the Shopping Center, the cost of all of Landlord's gardening and landscaping, assessments, repairs, preventive maintenance, any association fees, repainting including restriping or repaving of parking lot and access ways, repairing or replacing any streets, curbs or parking lots, roof repairs and replacement, updating and maintenance and replacement of directory signs, rental of signs and equipment, lighting, sanitary control, cleaning, sweeping, removal of ice, snow, trash, rubbish, garbage and other refuse, repair or replacement of awnings, depreciation over a period not exceeding sixty (60) months of machinery, equipment and other assets used in the operation and maintenance of the Shopping Center, repair or replacement of on-site water lines, sanitary sewer lines, storm water lines, gas lines and electrical lines and equipment serving the Shopping Center, all costs, charges and expenses incurred by Landlord in connection with any change of any company providing utility services including without limitation repair, installation and service costs associated therewith, the cost of police, fire protection, security and traffic control services, all Landlord's insurance relating to the common facilities or the Shopping Center as a whole or the operations thereon including, but not limited to, casualty insurance, flood insurance, rent loss insurance, fire insurance and extended coverage as well as general liability insurance, umbrella liability insurance, bodily injury, public liability, property damage liability, automobile insurance, sign insurance, and any other insurance carried by Landlord in limits selected by Landlord, reasonable reserves for anticipated expenditures, costs incurred by Landlord under any operating and easement agreements or other similar agreement of record, the cost of all personnel required to supervise, implement and accomplish all of the foregoing and an administrative fee equal to fifteen percent (15%) of such operating Costs.

Notwithstanding the foregoing, the following shall not constitute Operating Expenses: (a) Real Estate Taxes; (b) interest, points and fees on debt or amortization on or for any mortgage or similar security instrument (a "Security Instrument") encumbering the Shopping Center, and all principal, escrow deposits and other sums paid on or in respect to any indebtedness (whether or not secured by a Security Instrument), and all costs incurred in connection with any financing, refinancing or syndication of the Shopping Center; (c) costs of capital improvements and any other expenditures that, under generally accepted accounting principles ("GAAP"), should be capitalized, except that Operating Expenses shall include the cost during the Term, as reasonably amortized by Landlord in accordance with GAAP, of any capital improvement; (d) costs of improvements to, or alterations of, space leased to or available for lease to any tenant; (e) costs of repairing or restoring any portion of the Shopping Center damaged by a fire or other casualty, except to the extent that such costs constitute expenses (as opposed to capital expenditures) under GAAP and do not exceed the amount of the deductible under the policy of casualty insurance maintained (or required to be

maintained) by Landlord, or are not covered or paid for by insurance proceeds (provided that Landlord is carrying commercially reasonable insurance coverage); (f) costs of repairs, alterations or replacements required as the result of the exercise of any right of eminent domain or conveyance in lieu thereof, except to the extent that such costs constitute expenses (as opposed to capital expenditures) under GAAP and are not part of the condemnation award payable to Landlord with respect thereto; (g) costs and expenses incurred in connection with leasing space in or procuring tenants for the Shopping Center, including, without limitation, leasing commissions and advertising expenses, and legal and other professional fees; (h) costs and fees (including, without limitation court costs and legal fees) incurred to enforce the obligations of tenants under leases of portions of the Shopping Center, or resulting from the violation by Landlord of the terms and conditions of any lease; (i) costs of correcting defects in the initial construction of the Shopping Center, provided that this shall not exclude the cost of normal repair and maintenance expected with respect to the construction materials and equipment installed in the Shopping Center; (j) wages, salaries, compensation and benefits of any employees above the level of property manager; (k) any management or administrative fee other than the Administrative Fee; (l) expenses incurred for a specific tenant or tenants of the Shopping Center; and (l) fines, interest, charges, penalties, damages and other costs incurred by Landlord by reason of any default (or claim of default) or late payment by it under any lease or other contract or instrument (regardless of whether or not the payment itself is allowed to be included in Operating Expenses), including, without limitation, any legal and other professional fees paid or incurred in connection therewith;

(3) Real Estate Taxes shall include all taxes, assessments and other governmental charges, general and special, ordinary and extraordinary, of any kind and nature whatsoever, including, but not limited to, assessments for public improvements or benefits, which shall during the Term hereof be paid, assessed, levied, imposed upon or become due and payable and Landlord's reasonable expense in obtaining any refund or reduction of Real Estate Taxes, subject only to the following:

(a) Franchise, estate, inheritance, succession, capital levy, transfer, federal and state income and excess profit taxes imposed upon Landlord shall be excluded; and

(b) If at any time during the Term of this Lease and notwithstanding clause (3)(a) above, a tax or excise on rents or other tax, however described, is levied or assessed against Landlord on account of the rent expressly reserved hereunder, as a substitute in whole or in part for taxes assessed or imposed on land and buildings or on land or buildings, such tax or excise on rents or other tax shall be included within the definition of real estate taxes, but only to the extent of the amount thereof which is lawfully assessed or imposed as a direct result of Landlord's ownership of this Lease or of the Rent accruing under this Lease;

C. ANNUAL STATEMENT AND ADJUSTMENT. Within One Hundred Eighty (180) days after the end of each calendar year, and following receipt of billings for Real Estate Taxes and Insurance, Landlord shall supply Tenant with a summary of all costs and expenditures as enumerated above and a determination of Tenant's Proportionate Share thereof. In the event the amount billed to Tenant shall be less than its Proportionate Share, the same shall be paid as Additional Rent within thirty (30) days after notice of such determination. In the event the amount billed to Tenant exceeds its Proportionate Share, then such excess shall be applied to the next Minimum Rent coming due, until fully exhausted (provided, that if such excess is determined after the Termination Date, then, provided and subject to the condition that Tenant shall not be in default of this Lease, such excess shall be refunded to Tenant within thirty (30) days after such determination). Said summary shall also contain a determination by Landlord of the monthly sum to be paid by Tenant during the succeeding months of the lease year, if an adjustment is required, which determination shall be based in part on the expenses for the preceding year modified by any known increases in the cost of said services. Failure of Landlord to provide notice of under or overpayment shall not constitute a default by Landlord under this Lease and will not waive any of Landlord's rights to collect such payments or Tenant's obligations hereunder including, but not limited to, Tenant's obligations to pay its Proportionate Share of all costs and expenditures, but will extend each party's rights until the date notice is given; provided, however, that if Landlord does not provide such notice to Tenant within twelve (12) months after the end of the applicable calendar year, Tenant shall have no obligation to pay any deficit owed by Tenant under this paragraph.

**D. BOOKS AND RECORDS.** Landlord shall maintain complete and accurate books and records of all Operating Expenses paid or incurred by Landlord and all payments of Operating Expenses received from Tenant. Such books and records shall be kept at a location in the continental United States known to Tenant, and Tenant or auditors selected by Tenant shall have the right, within ninety (90) days of the initial billing or the later receipt of notice under the foregoing subparagraph (C), with a minimum of ten (10) days' prior notice, to inspect and audit such books and records at any time during normal business hours, at Tenant's sole cost and expense. Unless Tenant objects to Landlord's billing, within ninety (90) days of the initial billing or the later receipt of notice under the foregoing subparagraph (C), Landlord's calculation of Operating Expenses shall be final and binding on Tenant. If Tenant objects to Landlord's billing, Landlord and Tenant shall, in good faith, attempt to resolve any such objections.

**4.4 RENT PAYMENT PROCEDURES.**

**A. PAYMENT LOCATION.** Tenant shall, without prior notice or demand and without any setoff or deduction whatsoever, pay all Minimum Rent, Additional Rent and other charges and render all statements herein prescribed at Landlord's address or other office specifically provided in the Abstract of Lease or to such other person or corporation, and at such other place as may be designated by Landlord in writing from time to time.

**B. TAXES ON RENT.** In the event of a change in laws whereby a tax on rents received by Landlord under the Lease is imposed ("Rent Tax"), Tenant shall further pay to Landlord as part of Additional Rent such Rent Tax whether or not it comprises a portion of any Real Estate Taxes or real property tax bills. Rent Tax shall specifically exclude any income, excise, profits, estate, gift, transfer, franchise or capital stock tax.

**C. INTEREST AND LATE CHARGES.** Tenant covenants and agrees that all sums to be paid under this Lease, if not paid when due, shall bear interest on the unpaid portion thereof at the per annum rate equal to the lesser of twelve percent (12%) or the maximum rate permitted by law from the date when due but not in excess of the highest legal rates. Tenant further agrees that for each calendar month that the Rent is not paid to Landlord within ten (10) days of the due date as provided herein above, Tenant shall promptly pay to Landlord a late fee equal to \$100.00. If Landlord shall pay any monies, or incur any expenses in correction of any violation of any covenant of Tenant herein set forth, the amounts so paid or incurred shall, at Landlord's option and on notice to Tenant, be considered Additional Rent payable by Tenant with the first installment of Minimum Rent thereafter to become due and payable, and may be collected or enforced as by law provided with respect to Rent. Tenant shall pay to Landlord Fifty and 00/100 Dollars (\$50.00) for each of Tenant's checks returned to Landlord unpaid by Tenant's bank.

**4.5 TAXES AND ASSESSMENTS ON TENANT'S PROPERTY.** Tenant shall be responsible for and shall pay before delinquency all taxes assessed against Tenant's leasehold interest or personal property of any kind owned or placed in, upon or about the Premises by Tenant. Tenant hereby agrees to protect and hold harmless Landlord and the Premises from all liability for Tenant's share of any and all such taxes, assessments and charges together with any interest, penalties or other charges thereby imposed, and from any sale or other proceedings to enforce payment thereof, and to pay all such taxes, assessments and charges before same become a lien on the Premises. If any tax lien is threatened by any governmental entity, agency or authority, or in the event of the filing of a notice of any such lien with respect to Tenant's obligations under this Section 4.5, Tenant will promptly pay same and take steps immediately to have same removed. If the lien is not removed within twenty (20) days from the date of written notice from Landlord, Landlord shall have the right, at Landlord's option, to cause the same to be discharged by record of payment, deposit, bond or order of a court of competent jurisdiction or otherwise, or to pay any portion thereof and of the amounts so paid, including attorneys' fees and expenses connected therewith, together with interest on all of the foregoing at the per annum rate equal to the lesser of twelve percent (12%) or the maximum rate permitted by law, shall be Additional Rent due from Tenant to Landlord and shall be paid to Landlord immediately upon rendition to Tenant of a bill.

**4.6 UTILITIES CONSUMED ON THE PREMISES.** In addition to all payments of Minimum Rent and Additional Rent herein specified, Tenant shall be responsible for and shall pay for all utilities used, or consumed in or upon the Premises, and all sewer charges, as and when the charges therefor shall become due and payable. Commencing on the date Landlord notifies Tenant that the Premises are ready for occupancy, Tenant shall make all

appropriate applications to the local utility companies and pay all required deposits for meters and service for all utilities commencing with the delivery of possession of the Premises as provided in Section 6.2. Landlord covenants that all utilities are separately metered or sub-metered to the Premises.

Landlord shall in no way be liable or responsible for any loss, damage (direct, indirect or consequential), or expense that Tenant may sustain or incur by reason of any change, failure, interference, disruption, or defect in the supply or character of the electric energy furnished to the Premises, unless resulting from the gross negligence or intentional misconduct of Landlord.

**4.7 Intentionally Deleted.**

**4.8 INDEPENDENT COVENANTS.** Tenant's covenants to make payments pursuant to this Lease including, but not limited to, Minimum Rent and Additional Rent are independent covenants and, except as expressly set forth in this Lease, are not subject to setoff, deduction, reduction, abatement or suspension of any kind during the Term including any extension thereof.

**ARTICLE V - SECURITY**

**5.1 Intentionally Deleted.**

**5.2 Intentionally Deleted.**

**5.3 Intentionally Deleted.**

**ARTICLE VI - CONSTRUCTION,  
ALTERATIONS, MAINTENANCE AND REPAIRS**

**6.1 CONDITION OF THE PREMISES.** Upon delivery to Tenant, (a) the Premises shall be free and clear of any possessory right of any other party, including, without limitation, the current tenant and (b) all utilities shall be in good and working order. Otherwise and subject to the terms hereof, Tenant hereby accepts the Premises "as is" without any representation, warranty or expectation as to the condition of the Premises. Except as set forth herein, Landlord makes no other representation or warranty of any kind, express or implied, with respect to the Premises, Shopping Center or this Lease (without limitation, Landlord makes no representation or warranty as to the habitability, fitness or suitability of the Premises or the Shopping Center for a particular purpose, or relating to the requirements, timelines or costs of permits, licenses or governmental approvals needed for Tenant's operations, which shall be Tenant's sole responsibility, or relating to the cost or availability of insurance required to be obtained by Tenant under this Lease; all of which Tenant has had an opportunity to investigate prior to the execution of this Lease).

**6.2 AS IS DELIVERY.** On or before October 1, 2017, Landlord shall deliver the Premises to Tenant in the condition set forth in Section 6.1. Except as set forth in Exhibit C-1 attached hereto and made a part hereof, and except as expressly set forth herein, Landlord is under no responsibility to make any changes to the Premises or the Shopping Center, make any representations, perform any act or service, or provide Tenant with any permits, certificates, drawings, or other materials or information as a requirement of delivery.

Tenant, its agents, servants and contractors, prior to the delivery of possession of the Premises, shall have the right to enter upon the Premises, for the purpose of taking measurements or making Tenant's improvements therein, but for no other purposes; provided, however, that Tenant has first delivered evidence of liability insurance in amounts as are required by the terms of this Lease.

**6.3 LANDLORD'S DUTY TO REPAIR.** Landlord shall maintain in good repair the exterior walls, roof, structure, foundation, slab, sidewalks and Common Areas located on the Shopping Center and the same shall be included within Operating Expenses, subject to the terms of Article IV hereof. Further, Landlord shall make any other repairs occasioned by Landlord's negligence or willful misconduct, at Landlord's sole cost and expense. Tenant agrees that it will not permit or authorize any person to go onto the roof of the building of which the Premises are a part without the prior written consent of Landlord. Landlord shall have a reasonable period of time

after receipt of notice or otherwise obtaining knowledge of the need for such repairs to commence and complete said repairs. Landlord may at its sole discretion arrange for a maintenance contract of all roof structures, the cost of which shall be included with Operating Expenses.

**6.4 TENANT'S ALTERATIONS AND IMPROVEMENTS TO PREMISES.** Tenant shall complete Tenant's Work in accordance with the terms hereof. After the completion of Tenant's Work, Tenant shall have the right to make changes to the interior of the Premises, the cost of which does not exceed, in the aggregate for any one Lease Year, the sum of Twenty Thousand Dollars (\$20,000.00) and further provided that such changes (i) do not require a building permit, (ii) affect the structure of the Premises or the building systems in the Premises, and (iii) are not visible from the exterior of the Premises, without Landlord's approval. Otherwise, Tenant shall not make or cause to be made any alterations, additions or improvements to the building, or install or cause to be installed any interior signs, floor covering, exterior lighting, plumbing fixtures, shades or awnings, radio or television antennae, loud speakers, sound amplifiers or similar devices, or make any changes to the storefront or exterior of the building without first obtaining Landlord's written approval and consent, which shall not be unreasonably withheld, conditioned or delayed. Tenant shall present to Landlord plans and specifications for such work at the time approval is sought. Such approval shall not be deemed Landlord's requirement that such work be done or that Landlord is a party to any contract for such work. No additions, alterations, changes or improvements shall be made which will weaken the structural strength, lessen the value of, or change the architectural appearance of any building or other construction. All building materials and fixtures installed by Tenant shall be new or completely reconditioned. At Landlord's sole option, Tenant, at its sole cost and expense, shall, in connection with completion of its work, deliver copy of invoices lien waivers from the general contractors. Prior to commencement of any work, Tenant shall provide certificates of insurance for worker's compensation and liability insurance relating to such work in all amounts as are required by Landlord and naming Landlord, Landlord's mortgagee and such other parties as are reasonably designated by Landlord, as additional insured parties. All alterations, improvements, additions and permanent fixtures made or installed by Tenant as aforesaid (which shall expressly exclude Tenant's Property) shall remain upon the Premises at the expiration or earlier termination of this Lease and shall become the property of Landlord.

**6.5 SIGNS.** Tenant shall not place, alter, exhibit, inscribe, point, or affix any sign, awning, canopy, advertisement, notice or other lettering on any part of the outside of the Premises or of the building of which the Premises is a part, or inside the Premises if visible from the outside, without first obtaining Landlord's written approval thereof; and Tenant further agrees to maintain such sign, awning, canopy, decoration, advertising matter, lettering, etc., as may be approved in good condition and repair at all times, and repair all damage to the Premises that is caused by the installation, maintenance or removal of such signs, lettering, etc. All signs shall comply with the sign criteria provided by Landlord in Exhibit D, and Tenant shall be obligated to install at least one sign in conformance with, as well as any additional signs required by, such sign criteria. All tenant signs shall, at Tenant's cost, comply with applicable laws, codes, ordinances, rules and regulations. If directed by Landlord, Tenant, at its sole cost, shall remove all signs upon the termination of this Lease and will repair all damage caused by such removal.

**6.6 FURNITURE, TRADE FIXTURES AND EQUIPMENT.** Except as set forth in Tenant's Work, Tenant shall not cut or drill into, or secure any trade fixture, apparatus or equipment of any kind to any structural part of the Premises without first obtaining the written consent of Landlord. All furnishings, trade fixtures, equipment, and machines installed by Tenant in the Premises shall be new or completely reconditioned and remain the property of Tenant and shall be removable by Tenant at the expiration or earlier termination of this Lease or any renewal or extension thereof, provided that in the event of such removal Tenant shall promptly restore the Premises to their original order and condition. Any such equipment not removed at or prior to such termination shall, at Landlord's option, be and become the property of Landlord. If any personal property is leased or otherwise owned by a third party, Tenant shall provide Landlord with the identity of the owner in sufficient detail for Landlord to be able to communicate with such owner.

**6.7 INITIAL INSTALLATION AND IMPROVEMENTS BY TENANT.** To the extent that Landlord's approval is required under Section 6.4 hereof and to the extent not in conflict with Exhibit C-2 regarding Tenant's Work, Tenant, prior to commencing any work in, at or upon the Premises, at or upon the Premises, shall submit to Landlord for Landlord's prior written approval: (i) complete architectural, electrical and mechanical plans and

specifications covering all work which Tenant proposes to do in the Premises, including the installation of any fixtures therein, whether such work is to be done by Tenant or by others, (ii) sworn statements from Tenant and its general contractor, including the names, addresses and copies of contracts for all contractors and materials suppliers; (iii) all necessary permits evidencing compliance with all applicable governmental rules, regulations and requirements and payment of all impact, usage or other fees; (iv) certificates of insurance in form and amounts reasonably required by Landlord, naming Landlord, Landlord's mortgagee and such other parties, as designated by Landlord, as additional insureds; and (v) all other documents and information as Landlord may reasonably request in connection with such work. All plans and specifications shall be prepared in such detail as is required by the applicable governmental jurisdiction in which the Shopping Center is located and, if such applicable governmental jurisdiction does not require submittal of such plans and specifications, then in such detail as Landlord reasonably requires and Tenant agrees not to commence work upon any portion of the Premises until Landlord has approved such plans and specifications in writing. Landlord agrees to act with reasonable promptness with respect to the approval or non-approval of such plans and specifications. Any changes in said plans or specifications must be similarly approved, in writing, by Landlord.

Upon receiving possession of the Premises from Landlord, Tenant, at its sole expense, shall with due diligence proceed to commence Tenant's Work in accordance with Exhibit C-2 and to install such furnishings, trade fixtures and equipment and to perform such other work as shall be necessary or appropriate in order to prepare the Premises for the opening of Tenant's business.

All of Tenant's work and installations shall be done in a first-class, workmanlike manner using qualified labor and good quality material and in compliance with all laws, rules, regulations and orders of all governmental authorities having jurisdiction thereof and free of liens and claims for liens. Tenant's work shall be conducted so as not to interfere with other work in progress in the Premises or the Shopping Center or with other tenants' business and, in the performance of Tenant's work, Tenant shall engage and employ only such labor as will not cause any conflict or controversy with any labor organization representing trades performing work for Landlord or others in the Shopping Center, or any part thereof, including the Premises. At Landlord's sole option, Tenant at its sole cost and expense, shall, in connection with the completion of its work, deliver a general contractor's affidavit, copies of invoices and lien waivers from the general contractor and subcontractors and suppliers with work costing in excess of \$10,000.00.

Tenant shall, at Tenant's own expense, promptly remove from the Premises and the Shopping Center area all trash and debris which may accumulate in connection with Tenant's work in the Premises. Tenant, prior to delivery of possession, shall with the prior consent of Landlord be permitted to install fixtures and equipment. Any work done by Tenant prior to delivery of possession of the Premises shall be done in a manner as will not interfere with the progress of the work by Landlord of completing construction and Landlord shall have no liability or responsibility for loss of, or any damage to fixtures, equipment or other property of Tenant so installed or placed on the Premises.

Tenant will obtain, at its sole cost, a certificate of occupancy or similar approval and deliver a copy thereof to Landlord upon completion of Tenant's work.

**6.8 MECHANIC'S LIENS.** If Tenant makes any alterations or improvements in the Premises, Tenant must pay for same when made. Nothing in this Lease shall be construed to authorize Tenant or anyone dealing with or under Tenant, to charge the rents of the Premises, or the property of which the Premises form a part, or the interest of Landlord in the estate of the Premises, or any person under and through whom Landlord has acquired its interest in the estate of the Premises, with a mechanic's lien or encumbrance of any kind, and under no circumstances shall Tenant be construed to be the agent, employee or representative of Landlord in the making of any such alterations or improvements to the Premises. If a mechanic's or materialmen's lien is threatened by any contractor or supplier, or in the event of the filing of a notice of any such lien, Tenant will promptly pay same and take steps immediately to have same removed. If the lien is not removed or bonded within thirty (30) days from the date of written notice from Landlord, Landlord shall have the right at Landlord's option to cause the same to be discharged by record of payment, deposit, bond or order of a court of competent jurisdiction or otherwise, or to pay any portion thereof and of the amounts so paid, including attorneys' fees and expenses connected therewith, together with interest on all of the foregoing at the per annum rate equal to the lesser of twelve percent (12%) or the maximum rate permitted by law, shall be Additional Rent due from Tenant to Landlord and shall be paid to Landlord immediately upon

rendition to Tenant of bill. Tenant will indemnify, defend and hold harmless Landlord from and against all actual loss, claims, damages, costs or expenses suffered by Landlord by reason of any repairs, installations or improvements made by Tenant. Tenant will provide insurance certificates from all contractors performing Tenant's work in form and substance as is required by Tenant under this Lease.

No mechanics' or materialmen's liens or mortgages, deeds of trust, or other liens of any character whatsoever created or suffered by Tenant shall in any way, or to any extent, affect the interest or rights of Landlord in any buildings or other improvements on the Premises, or attach to or affect Landlord's title to or rights in the Premises including, but not limited to, Landlord's reversionary interest or other estate or interest of Landlord in the Premises.

**6.9 TENANT'S DUTY TO REPAIR AND MAINTAIN PREMISES.** Tenant, at its sole cost and expense, shall keep and maintain in good order, condition and repair (including any such replacement, periodic painting, and restoration as is required for that purpose) the Premises and every part thereof and any and all appurtenances hereto located (excluding those items that are Landlord's responsibility hereunder), including, but without limitation, the exterior and interior portion of all doors, door checks, windows, plate glass, store front, all plumbing and sewage facilities within and exclusively serving the Premises including fixtures, heating and air conditioning and electrical systems within and exclusively serving the Premise, sprinkler systems, walls, floors and ceilings (including (i) any damage to the walls, floors, ceilings or the other areas of the Premises that is otherwise Tenant's responsibility hereunder or (ii) any mold or mildew condition on the walls, floors, ceilings or the other areas of the Premises, caused by or resulting from moisture on or about the Premises from and after the commencement of Tenant's operations therein), motors exclusively serving the Premises, and all alterations, improvements and installations made by Tenant under the terms of this Lease and any exhibits thereto, as herein provided; any repairs required to be made in the Premises due to burglary of the Premises or other illegal acts on the Premises or any damage to the Premises caused by a strike involving Tenant or its employees.

Tenant shall maintain and bear the expense of the light fixtures and bulbs, any sprinkler system, air-conditioning units and filters, janitorial services, interior pest control, and the like provided to the Premises and not included in Operating Costs. In the event that any governmental regulations or insurance company insuring the Shopping Center or the Premises, from time to time, shall require modifications including, but not limited to, emergency lighting to be installed in the Premises, the installation and the maintenance of the same, including providing of battery power, shall be the responsibility of Tenant. Tenant will not cause or permit accumulation of any debris or extraneous matter on the roof of the Premises and will be responsible for any damage caused to the roof by any acts of Tenant, its agents, servants, employees or contractors of any type or nature.

Subject to the provisions of Section 6.4 through 6.7, Tenant shall be responsible for any modifications to the Shopping Center required by applicable law or codes because of Tenant's installations, improvements or permitted use. At all times during the Term, Tenant, at its sole cost and expense, shall maintain a maintenance contract in effect with a licensed competent contractor for the consistent periodic (which shall be at least quarterly, or more frequently if required by any manufacturer's warranty) inspection and maintenance of all heating, ventilation and air conditioning ("HVAC") systems located on and exclusively serving the Premises.

Subject to the terms of the rider attached hereto: The maintenance contract for the HVAC and any grease trap and exhaust hood installed must include all services suggested by the equipment manufacturer in the operation/maintenance manual and those required by applicable laws and codes. All HVAC, grease trap and exhaust hood maintenance contracts will be entered into with responsible, experienced providers. Tenant is obligated to provide copies of all such maintenance contracts to Landlord on an annual basis. All alterations and equipment installed by Tenant shall be subject to Landlord's review and approval. Any cost of repair to the grease trap, sewer system, roof or other Shopping Center elements, which may be caused by improper maintenance of the HVAC, grease trap and/or exhaust hood will be at the sole cost and expense of Tenant.

In addition to the foregoing, to the extent solely allocated to Tenant, Tenant shall, at its sole cost and expense, maintain and keep clean all of Tenant's exhaust hood equipment, trash and refuse receptacles, dumpsters and their surrounding areas. In the event that Tenant has an above ground grease trap or receptacle, Tenant shall, in its sole cost and expense, maintain and keep clean such area. Upon Landlord's request, and at Tenant sole cost and expense, Tenant shall construct and install a concrete pad for its grease trap container.

If Tenant refuses or neglects to commence and to complete repairs or maintenance required by Tenant herein promptly after written notice thereof and adequately, Landlord may, but shall not be required to, make and complete said repairs and Tenant shall be liable for the cost thereof to Landlord as Additional Rent. Except to the extent otherwise expressly provided in Section 6.3 above, or Sections 9.1 or 9.2 below, Landlord shall not be obligated to repair, replace, maintain or alter the Premises, and Tenant waives all laws in contravention thereof.

### **ARTICLE VII - USE OF PREMISES**

**7.1 TENANT'S USE OF THE PREMISES.** Tenant shall use and occupy the Premises only for those permitted uses reflected in Section 1.7 of the Abstract of Lease and for no other purpose without Landlord's prior written consent. Additionally, Tenant shall not violate in any manner (a) the exclusive use rights granted by Landlord to other tenants in the Shopping Center when Tenant has received written notice of such exclusive use rights (and provided that the same does not limit Tenant's permitted use hereunder), (b) any use restriction or prohibition contained in any document of record of which Tenant has been provided a copy, or (c) any of the Prohibited Uses set forth in Exhibit F-1 or the Shopping Center Exclusives and Restrictions as set forth in Exhibit F-2 attached hereto and made a part hereof. If any conflict shall develop between Tenant and any other tenant of the Shopping Center regarding any provisions in this Lease or in leases to other tenants in the Shopping Center, Landlord shall be the sole arbitrator of such conflict. If Landlord permits a deviation from any provision of this Lease, the permission, to be effective, must be in writing and Landlord in its sole discretion may withhold or revoke such permission. Failure of Landlord to enforce any provision in this Lease or in leases to any other tenant in the Shopping Center shall be at Landlord's commercially reasonable discretion and Landlord shall incur no liability to Tenant as a result of any determination made by Landlord. Furthermore, if Tenant's use of the Premises or any improvement constructed by Tenant in, at or upon the Premises or the Shopping Center causes the imposition of any impact fees against any portion of the Shopping Center, then Tenant shall pay such fees prior to delinquency.

**7.2 USE OF COMMON AREAS.** All facilities furnished by Landlord in the Shopping Center and designated for the general use, in common, of occupants of the Shopping Center, including Tenant hereunder, their officers, agents, employees and customers, including, but not limited to, parking areas, streets, sidewalks, canopies, roadways, loading platforms, washrooms, shelters, ramps, landscaped areas and other similar facilities, shall at all times be subject to the exclusive control and management of Landlord. Landlord shall have the right from time to time to change the area, level, location and arrangement of such parking areas and other facilities above referred to; and make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the common facilities; provided that the same do not materially and adversely affect Tenant's visibility, parking or access. Tenant hereunder and any other subtenants and licensees shall comply with all rules and regulations made by Landlord pertaining to the operation and maintenance of said common facilities, including, but not limited to, such reasonable requirements pertaining to sanitation, handling of trash and debris, loading and unloading of trucks and other vehicles, and safety and security against fires, theft, vandalism, personal injury and other hazards. The parking area shall be limited to parking for customers and employees of tenants of the Shopping Center, Landlord and any other parties permitted by Landlord from time to time, and Tenant and its employees may not park in any portion of the parking area, except that portion thereof, if any, designated or which may hereafter be designated as "Employees' Parking Area." Landlord retains the right to grant exclusive parking rights to portions of the Shopping Center to other tenants of the Shopping Center. Landlord shall have the exclusive right at any and all times to close any portion of the common areas for the purpose of making repairs, changes or additions thereto and may change the size, area or arrangement of the parking areas or the lighting thereof within or adjacent to the existing areas and may enter into agreements with adjacent owners for cross-easements for parking, ingress or egress; provided that the same do not materially and adversely impact Tenant's visibility, parking or access.

**7.3 CONDUCT OF TENANT'S OPERATIONS.**

A. Except for state and federal designated holidays, other days when the majority of the Shopping Center is closed and closures resulting from remodeling (for a period not to exceed 30 days), casualty or force majeure or as otherwise permitted hereunder, Tenant shall, at all times during the Term, conduct its business in the Premises a minimum time period from 10:30 A.M. to 9:00 P.M. on Mondays through Saturdays and from 12:00

P.M. to 5:00 P.M. on Sundays and shall continuously and uninterrupted occupy the Premises and operate throughout the Term for the use permitted by this Lease.

B. At all times throughout the Term, and without limitation of Tenant's other obligations set forth in this Lease, Tenant shall:

- (1) comply with any and all requirements of any of the constituted public authorities, and with the terms of any State or Federal law, statute or local ordinance or regulation applicable to Tenant for its use, safety, cleanliness or occupation of the Premises including, but not limited to, the requirements of any applicable permitting or licensing authorities (including payment of such costs), the requirements of the Americans with Disabilities Act and requirements of any insurer of the Shopping Center or the Premises, and shall defend and hold Landlord harmless from penalties, liens, costs, expenses or damages resulting from Tenant's failure to do so. Notwithstanding the foregoing, Tenant's obligations hereunder with respect to compliance with laws relate solely to Tenant's operations in the Premises.
- (2) Give to Landlord prompt written notice of any accident, fire damage or environmental condition occurring on or to the Premises or of any leaks, moisture buildup on or about the Premises.
- (3) Load and unload goods at such times in the areas and through such entrance as may be designated for such purposes by Landlord. Such trailers or trucks shall not be permitted to remain parked overnight in any area of the Shopping Center, whether loaded or unloaded.
- (4) Comply with all reasonable rules and regulations of Landlord in effect at the time of the execution of this Lease or at any time or times, and from time to time, promulgated by Landlord, which Landlord in its sole discretion shall deem necessary in connection with the Premises, the building of which the Premises are a part, or the Shopping Center. Landlord agrees that it shall enforce any such rules and regulations uniformly with respect to the Shopping Center and not in an arbitrary and capricious manner.
- (5) Tenant shall maintain complete and attractive display windows in the Premises. Tenant shall keep all display windows clean and shall keep the same illuminated during normal business hours and at such other times as Landlord may from time to time reasonably require.
- (6) Tenant shall not commit or permit any waste upon the Premises nor shall Tenant perform any act or carry on any practice which may injure the Premises, any other space in the Shopping Center or any other tenant or occupant of the Shopping Center, or cause any offensive odor, noise or vibration, or constitute a nuisance or menace to any other occupant or other persons in the Shopping Center, and in no event shall any offensive noises be emitted from the Premises.
- (7) Tenant shall keep trash and refuse in covered trash receptacles authorized by Landlord, which trash receptacles shall be kept within the Premises at all times, and in no event stored outside of the Premises. Tenant shall contract for its trash removal with a reputable, licensed, and insured trash removal company acceptable to Landlord unless such trash removal is otherwise provided by Landlord in its sole discretion. Tenant shall cause such trash and refuse to be removed from the Premises in the manner, at such times, and in such areas as Landlord may designate for such purpose. If Landlord provides for trash removal by a contractor, Tenant shall use such contractor for its trash removal and pay when due all charges assessed in connection with such trash removal at the rates established therefor. Tenant shall ensure that no trash, garbage and refuse accumulate.
- (8) Tenant will at its expense (a) keep the inside and outside of all glass in the doors and windows of the Premises clean; (b) keep all the walls and interior store surfaces of the Premises clean, dry and free from mold and mildew; (c) replace promptly any cracked or broken glass of the Premises with glass of like kind and quality; (d) maintain the Premises in a clean, orderly and sanitary condition and free of insect, rodents, vermin and other pests; (e) keep all mechanical apparatus free of vibration and noise which may be

transmitted beyond the Premises; and (f) conduct its business in all respects in a manner consistent with the quality and standards of operation of the Shopping Center.

(9) Tenant agrees that neither it nor anyone taking under or through it shall operate or cause or permit to be operated from or at the Premises a catalogue, Internet, mail order or an "800-type" phone-order facility, or a wholesale, discount, outlet, "warehouse," "dollar-type" or unit price store. In regard to the use and occupancy of the Premises and the Common Areas of the Shopping Center, Tenant will not: (i) place or maintain any merchandise, trash, debris, refuse or other articles in any vestibule or entry of the Premises, on the footwalks or corridors adjacent thereto or elsewhere on the exterior of the Premises; (ii) use or permit the use of any objectionable advertising medium such as, without limitation, loudspeakers, public address systems, sound amplifiers, or the reception of radio, television or other media broadcasts which is in any manner audible or visible outside of the Premises; (iii) permit undue accumulations of or burn garbage, trash, rubbish or other debris within or without the Premises; (iv) cause or permit objectionable odors in Landlord's reasonable opinion to emanate or to be dispelled from the Premises (but excluding odors typical of a restaurant); (v) cause water on the Premises to accumulate, pool or cause leaks into adjacent premises, (vi) solicit business in any area of the Shopping Center outside the Premises; (vii) distribute handbills or other matter in any area of the Shopping Center outside the Premises; (viii) receive or ship articles of any kind outside the designated loading areas for the Premises; (ix) use any plaza, exterior areas, corridor, sidewalk, or any other area of the Shopping Center adjacent to or near the Premises for the sale or display of any merchandise or for any other business use, occupation or undertaking; (x) conduct or permit to be conducted any auction, sidewalk sale, distress sale, fire sale, going out-of-business sale, or the like; (xi) use or permit the use of any portion of the Premises for any unlawful purpose or for any activity of a type which is not generally considered appropriate for high-caliber, urban, shopping areas conducted in accordance with good and generally accepted standards of operation; (xii) place a load upon any floor that exceeds the floor load that the floor was designed to carry; or (xiii) deface, damage or demolish any sign, light standard or fixtures, landscaping material or other improvement or property in any areas of the Shopping Center outside the Premises.

(10) Tenant shall not do, or suffer to be done, any act, matter or thing objectionable to the fire insurance companies whereby the fire insurance or any other insurance now in force or hereafter to be placed on the Premises or any part thereof, or on the building of which the Premises may be a part, shall become void or suspended, or whereby the same shall be rated as a more hazardous risk than at the date when Tenant receives possession hereunder. In case of a breach of this covenant, in addition to all other remedies of Landlord hereunder, Tenant agrees to pay to Landlord as Additional Rent any and all increase or increases of premiums on insurance carried by Landlord on the Premises, the Shopping Center or any part thereof, caused in any way by the occupancy of Tenant.

**7.4 RIGHTS RESERVED BY LANDLORD.** All of the following rights are reserved by Landlord, each of which Landlord may (but without obligation to) exercise without notice or liability to Tenant. The exercise of such rights by Landlord shall not be deemed an eviction, disturbance or disruption of Tenant's use or possession of the Premises.

A. **EASEMENTS.** Subject to the terms hereof, Landlord expressly reserves all rights in and with respect to the land hereby leased not inconsistent with Tenant's use of the Premises as provided in this Lease, including (without in any way limiting the generality of the foregoing) the rights of Landlord to establish common areas and grant parking easements to others and to enter upon the Premises and to grant, in Landlord's sole discretion, easements to others (even before the establishment of common areas) for the purpose of installing, using, maintaining, renewing and replacing such overhead or underground water, gas, sewer and other pipe lines, and telephone, electric, and power lines, cables and conduits.

B. **INSPECTION, REPAIR AND INSTALLATION.** Landlord reserves the right to, at all reasonable times, by itself or its duly authorized agents, employees and contractors to go upon and inspect the Premises and every part thereof, to enforce or carry out the provisions of this Lease, at its option to make repairs, alterations and additions to the Premises or the building of which the Premises are a part, to perform any defaulted obligation of Tenant or for any other proper purposes. Landlord also reserves the right to install or place upon, or affix to the roof

and exterior walls of the Premises, equipment, signs, displays, antenna, cables and any other object or structure of any kind, provided the same shall not materially impair the structural integrity of the building or interfere with Tenant's occupancy.

C. PRESENTATION FOR SALE OR LEASE. Landlord hereby reserves the right during normal business hours to enter the Premises and to exhibit the same for purposes of sale, lease or mortgage, and to display a "For Sale" sign at any time, and also after notice from either party of their intention to terminate this Lease, or at any time within twelve (12) months prior to the expiration of this Lease, a "For Rent" sign, a "For Sale" sign, or both, as Landlord shall require, except on doors leading into the Premises.

#### **7.5 HAZARDOUS MATERIALS.**

A. HAZARDOUS MATERIALS. Tenant shall comply with all environmental laws relating to Hazardous Materials (as hereinafter defined) brought onto, kept or used in or about the Premises or Shopping Center by Tenant. Landlord shall comply with all environmental law relating to Hazardous Materials otherwise applicable to the Shopping Center. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, and which is stored, used, disposed of or released in violation of any law, rule, regulation or order of any local governmental authority, the state in which the Premises is located or the United States Government. Without limiting the generality of the foregoing, Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Premises or the Shopping Center by itself or its agents, employees, contractors or invitees without the prior written consent of Landlord. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises caused or permitted by Tenant results in contamination of the Premises, the Shopping Center or any adjacent property, then Tenant shall indemnify, defend and hold Landlord harmless from any and all actual claims, judgments, damages, penalties, fines, costs, liabilities or losses incurred by Landlord. This indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises, the Shopping Center, and/or adjacent property. Without limiting the foregoing, if the presence of any Hazardous Material on the Premises or Shopping Center caused or permitted by Tenant results in any contamination of the Premises, the Shopping Center, and/or adjacent property, Tenant shall promptly take all actions at its sole expense as are necessary to return the Premises, the Shopping Center, and/or adjacent property to the condition existing prior to the introduction of any such Hazardous Material to the Premises, the Shopping Center, and/or adjacent property; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions are in accordance with all applicable laws and governmental requirements and would not potentially have any material adverse long-term or short-term effect on the Premises, the Shopping Center, and/or adjacent property. Landlord shall indemnify, defend and hold Tenant harmless from any and all actual claims, judgments, damages, penalties, fines, costs, liabilities or losses incurred by Tenant with respect to Hazardous Material caused or permitted by Landlord located on the Shopping Center.

B. INSPECTION. Landlord shall have the right, but not the duty, to inspect the Premises at any time to determine whether Tenant is complying with the requirements of this Section 7.5. If Tenant is not in compliance with the requirements of this Section 7.5, Landlord shall have the right, but not the obligation, to immediately enter upon the Premises to remedy any condition which is in violation of the terms of this Lease or caused by Tenant's failure to comply with the requirements of this Lease. Landlord shall use reasonable efforts to minimize interference with Tenant's business as a result of any entry by Landlord to the Premises under this Lease. The provisions of this Section 7.5 shall survive the expiration or earlier termination of this Lease and Tenant's surrender of the Premises to Landlord.

### **ARTICLE VIII - LIABILITY INSURANCE AND INDEMNIFICATION**

#### **8.1 ALLOCATION OF RISKS AND INSURANCE.**

A. OPERATION OF SHOPPING CENTER AND COMMON FACILITIES. Landlord bears the risk of and shall insure, as practical or required by a lender of Landlord, the operation of the Shopping Center as a whole or the common facilities. Such insurance may include, but is not limited to, general liability, umbrella liability,

bodily injury, public liability, property damage liability, automobile insurance, sign insurance and the like in limits selected by Landlord. Tenant shall pay to Landlord its Proportionate Share of such insurance as provided in Section 4.3 above.

**B. PREMISES AND SHOPPING CENTER.** Landlord bears the risk of and shall keep the buildings and improvements forming at any time a part of the Premises insured against loss or damage by fire, with extended coverage and vandalism and malicious mischief endorsement or their equivalents, in such insurance companies as Landlord shall select and in amounts not less than eighty percent (80%) of the replacement cost of the building and structures insured with loss payable thereunder to Landlord and to any authorized encumbrances of Landlord (with standard mortgagee loss payable clause) in accordance with their respective interests. Landlord may also maintain rent insurance equal to at least one year's Rent. If this Lease is canceled for any reason or if Tenant has committed an event of default which has not been cured, all insurance proceeds shall be paid and retained by Landlord, subject to the rights of any authorized encumbrances of Landlord. Tenant shall pay to Landlord its Proportionate Share of such Insurance as provided in Section 4.3 above. Tenant agrees not to keep upon the Premises any articles or goods which may be prohibited by the standard form of fire insurance policy. It is agreed between the parties that in the event the insurance rates applicable to fire and extended coverage insurance covering the within Premises shall be increased by reason of any use of the Premises made by Tenant, then Tenant shall pay to Landlord such increase in Insurance as shall be occasioned by said use.

**C. PROPERTY OF TENANT.** Tenant agrees that all property owned by it in, on, or about the Premises shall be at the sole risk and hazard of Tenant. Landlord shall not, regardless of fault, be liable or responsible for any loss of or damage to Tenant, or anyone claiming under or through Tenant, or otherwise, whether caused by or resulting from a peril required to be insured hereunder, or from water, steam, gas, leakage, plumbing, electricity or electrical apparatus, pipe or apparatus of any kind, the elements or other similar or dissimilar causes, and whether or not originating in the Premises or elsewhere.

**D. OPERATIONS OF TENANT.** All operations conducted by Tenant shall be at Tenant's sole risk. In addition, Tenant shall procure insurance for its operations as specified in the Abstract of Lease and as follows:

(1) **Liability Insurance:** Tenant shall keep in force and at its own expense Commercial General Liability (CGL) insurance, which shall be on a primary and non-contributory basis, naming as Additional Insured parties, Landlord, Landlord's property management company, and any mortgagees designated by Landlord, with coverage for premises/operations, personal and advertising injury, products/completed operations and contractual liability with single limits of liability of not less than \$1,000,000 for bodily injury and property damage per Occurrence, \$2,000,000 for bodily injury and property damage for General Aggregate, and Fire Legal Liability insurance in amounts sufficient to cover the replacement costs of the Premises and loss of use thereof.

(2) **Plate Glass Insurance:** Tenant shall keep and maintain in force during the Term hereof, plate glass insurance upon windows and doors in the Premises.

(3) **Dram Shop/Liquor Liability Insurance:** In the event that at any time during the Term of this Lease or any extension or renewal thereof, drugs, prescription drugs, beer, wines or other alcoholic liquors or beverages are sold or given away upon or from the Premises (it being understood and agreed, however, the foregoing provision shall not authorize the use of the Premises for such purposes without the express written consent of Landlord being set forth otherwise in this Lease), Tenant shall, at its sole expense, obtain, maintain, and keep in force, adequate Dram Shop/Liquor Liability insurance protecting both Tenant and Landlord in connection therewith with policy as required, from time to time, under the laws of the state in which the Premises are located and with a minimum coverage of the greater of (a) \$1,000,000 per occurrence or (b) the amount required by the laws of the state where the Premises are located. In the event Tenant shall fail to procure such insurance, then sales of the foregoing products shall be suspended immediately until such coverage is again in force.

(4) **Physical Damage Insurance** including, but not limited to, fire, sprinkler leakage, vandalism and all other risks of direct physical loss as insured against under special broad form coverage endorsement for the

full replacement cost of all additions, improvements and alterations to the Premises and providing that Landlord and any other parties designated by Landlord from time to time are loss payees or additional insureds as their interests may appear, and covering all furniture, trade fixtures, equipment, machinery, movable partitions, wall and floor coverings, inventory, merchandise and all other items of Tenant's property on the Premises and any alterations to the Premises made by Tenant. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the full replacement cost value of the covered items and in amounts that meet any coinsurance clause of the policies of insurance and with deductibles no greater than \$10,000. In the event of a loss, the proceeds of such insurance shall be used for the repair or replacement of the property insured.

(5) Worker's Compensation Insurance covering all employees, agents and contractors of Tenant performing work in, on, or with respect to the Premises, in amounts not less than those required by applicable law.

(6) Employers liability insurance covering all employees, agents and contractors of Tenant performing work in, on or with respect to the Premises, in amounts not less than \$500,000 for each accident and \$500,000 for diseases. \$500,000 for disease - Each Employee, and \$500,000 for Disease-Policy Limit.

(7) Extra expense and business interruption insurance including loss of rents for periods and with limits not less than twelve (12) months of Minimum Rent and Additional Rent, naming Landlord as loss payee.

(8) Automobile Insurance on a primary and non-contributory basis covering all owned, non-owned and hired automobiles with limits of liability of not less than \$1,000,000 for bodily injury to any one person, and \$1,000,000 for property damage for each accident.

(9) Umbrella or Excess Liability coverage in amounts not less than \$5,000,000 in excess of the CGL insurance required in D (1) hereinabove.

**E. REQUIREMENTS OF ALL POLICIES.** All insurance policies required of Tenant in this Lease shall name Landlord as additional insured (and upon request, any other party named by Landlord). All policies carried by Landlord or Tenant shall contain an express waiver of any right of subrogation against all such named additional insured. Said policies shall be in Class "A" companies authorized to write such coverage in the state in which the Premises are located and shall be acceptable to Landlord and/or its lender (which shall be named as an additional insured if requested in writing). Tenant will further deposit the policy or policies of such insurance or certificates thereof (on Acord forms - the form attached hereto as Exhibit H and made a part hereof) with Landlord with evidence of payment of premium at all times commencing with the date Tenant first enters upon the Premises for any purpose. The deductibles on all such insurance will be in amounts acceptable to Landlord. Tenant will pay all deductible amounts under all such insurance policies carried by Tenant.

**F. FAILURE TO PROCURE INSURANCE.** In the event Tenant shall fail to procure insurance required under this Article and fail to maintain the same in force continuously during the Term, Landlord shall be entitled to procure the same and Tenant shall immediately reimburse Landlord for such premium expense.

**G. WAIVER OF SUBROGATION.** Without limiting the generality of any other waivers of claims contained in this Lease, Landlord and Tenant hereby waive any and all claims and rights of recovery against the other and their respective officers, directors, employees, agents and representatives for any loss or damage to their respective properties or interests (including business interruption and rent loss), to the extent such loss or damage is insured against, or required to be insured against pursuant to the terms of this Lease, by Landlord or Tenant (as applicable) pursuant to this Article VIII, regardless of fault or negligence and regardless of the amount of insurance proceeds actually collected or collectible under any insurance policies in effect, and Landlord and Tenant each represent and warrant to the other that all such policies permit such waiver and contain, and will contain, enforceable waiver of subrogation endorsements. Nothing contained herein shall serve as a waiver for any deductible or self-insured risk. In addition, Landlord and Tenant agree that in the event of any loss or damage to

their respective properties or interests (including business interruptions or loss), the party suffering the loss shall resort to its insurance coverage prior to asserting any claim or demand against the party causing the loss.

**8.2 INDEMNIFICATION AND WAIVER OF CLAIMS.**

A. **INDEMNIFICATION.** Subject to Landlord's waiver contained in Section 8.1G above, Tenant shall indemnify and defend Landlord and hold it harmless from and against any and all claims, actions, damages, liability and expense including, without limitation, court costs and reasonable attorneys' fees suffered, paid or incurred by Landlord (1) in connection with loss of life, personal injury and/or damage to or theft or misappropriation or loss of property occurring in or about, or arising from or out of, the Premises and adjacent sidewalks and loading platforms or areas or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, invitees, customers or employees unless such claim, action, damage, liability or expense is the result of the intentional and willful misconduct or the gross negligence of Landlord, or (2) from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed under this Lease. Subject to the waivers contained in Section 8.1G above and subsection B below, Landlord shall indemnify and defend Tenant and hold it harmless from and against any and all claims, actions, damages, liability and expense including, without limitation, court costs and reasonable attorneys' fees suffered, paid or incurred by Tenant in connection with loss of life, personal injury and/or damage to or theft or misappropriation or loss of property occurring in or about, or arising from or out of, the Shopping Center (other than the Premises) occasioned wholly or in part by any act or omission of Landlord, its agents or employees unless such claim, action, damage, liability or expense is the result of any act or omission of Tenant, its agents, contractors, invitees, customers or employees.

B. **WAIVER OF CLAIMS.** Landlord and Landlord's agents and employees shall not be liable for, and Tenant hereby releases all claims for, damage or injury to person and property or theft or loss of use of property and loss of business sustained by Tenant or any person claiming through Tenant resulting from any theft, fire, accident, occurrence, injury or condition in or upon the Premises or building of which they shall be a part, including, but not limited to, such claims for damage resulting from: (i) any defect in or failure of plumbing, heating or air-conditioning equipment, sprinkler, electric wiring or installation thereof, water pipes, stairs, railings or walks; (ii) any equipment or appurtenances becoming out of repair; (iii) the bursting, leaking or running of any tank, washstand, water closet, waste pipe, drain, sprinkler or any other pipe or tank in, upon or about such building or Premises; (iv) the backing up or overflow of any sewer pipe drain, retention pond, storm water drainage or downspout; (v) the escape of gas, steam or hot water; (vi) water, snow or ice being upon or coming through the roof or any other place upon or near such building or Premises or otherwise; (vii) the falling of any fixture, plaster or stucco; (viii) broken glass; and (ix) any act or omission of co-tenants or other occupants of said building or of adjoining or contiguous property or buildings including their employees, licensees and invitees. In the event the Premises or its contents are damaged or destroyed by fire or other insured casualty, the rights, if any, of either party hereto against the other with respect to such damage or destruction are waived, and all policies of fire and/or extended coverage or other insurance covering the Premises or its contents shall contain a clause or endorsement providing in substance that the insurance shall not be prejudiced if the insureds have waived the right of recovery from any person or persons prior to the date and time of loss or damage, if any.

**ARTICLE IX - LOSS, DESTRUCTION OR  
TAKING OF PREMISES OR SHOPPING CENTER**

**9.1 FIRE OR OTHER CASUALTY.** Tenant shall give to Landlord prompt written notice of any accident, fire or damage occurring on or to the Premises. Thereupon, Landlord's obligation concerning the repair or reconstruction of the Premises will be as follows:

A. **PARTIAL DESTRUCTION OF PREMISES.** If the Premises shall be damaged by the elements or other casualty or by fire, not due to Tenant's intentional acts or negligence, but are not thereby rendered untenantable in whole or in part, Landlord shall promptly after receipt of insurance proceeds cause such damage to be repaired, and the Rent shall not be abated. If by reason of any such occurrence, the Premises shall be rendered untenantable only in part, Landlord shall promptly after receipt of insurance proceeds cause the damage to be repaired and the Rent meanwhile shall be abated proportionately as to the portion of the Premises and only for the

time such Premises are rendered untenantable. If Landlord shall not have completed such repairs within one hundred eighty (180) days after Landlord's receipt of the insurance proceeds and, as a result, a substantial and material portion of the Premises remains untenantable, then Tenant shall have the right to terminate this Lease by delivering notice thereof to Landlord prior to such completion.

**B. SUBSTANTIAL DESTRUCTION OF PREMISES.** If the Premises shall be rendered wholly untenantable by reason of such occurrence (i.e., destruction of 25% or more of the Premises or any casualty which results in Tenant being unable to operate in the Premises, using a commercially reasonable standard), and Tenant actually shall not be operating in any portion of the Premises, then Landlord shall promptly after receipt of insurance proceeds cause such damage to be repaired, and the Rent shall meanwhile be abated in whole, provided, however, that Landlord and Tenant shall each have the right, to be exercised by notice in writing delivered within sixty (60) days from and after said occurrence, to elect to terminate this Lease, and in such event this Lease and the tenancy hereby created shall cease as of the date of the said occurrence, the Rent to be adjusted as of such date. If this Lease is not terminated and Landlord commences repairs and shall not have completed such repairs within one (1) year after the occurrence of such fire or other casualty, then Tenant shall have the right to terminate this Lease by delivering notice thereof to Landlord prior to such completion.

**C. DESTRUCTION OF SHOPPING CENTER.** If the Shopping Center shall be damaged by the elements or other casualty or by fire, not due to Tenant's negligence and which damage does not render the Premises untenantable in whole or in part, Landlord shall promptly after receipt of insurance proceeds cause such damage to be repaired and the Rent shall not be abated. If the Shopping Center or any premises (other than the Premises) located thereon suffers damage or destruction of a substantial nature (i.e., destruction of 10% or more of the Shopping Center or destruction which materially and adversely impacts Tenant's use of the Premises), which damage or destruction does not render the Premises untenantable in whole or in part, Landlord shall after receipt of insurance proceeds cause such damage to be repaired and the Rent shall not be abated; provided, however, that Landlord and Tenant shall each have the right, to be exercised by notice in writing delivered within sixty (60) days from and after said occurrence, to elect to terminate this Lease, and in such event this Lease and the tenancy hereby created shall cease as of the date of the said occurrence, the Rent to be adjusted as of such date.

## **9.2 CONDEMNATION.**

**A. AWARD.** If title to all or any portion of the Premises is taken by a public or quasi-public authority under any statute or by right of eminent domain of any governmental body, whether such loss or damage results from condemnation of part or all of the Premises or any portion of the parking area or service entrances and exits, Tenant shall not be entitled to participate or receive any part of the damages or award except where said award shall provide for moving or other reimbursable expenses for Tenant under applicable statute in which event the latter sum shall be received by Tenant, and except that portion of any award allocated to the taking of Tenant's trade fixtures, equipment and personal property, or to a loss of business by Tenant. None of the awards or payments to Landlord shall be subject to any diminution or apportionment on behalf of Tenant or otherwise.

**B. SUBSTANTIAL OR MATERIAL TAKING OF PREMISES.** Should any power of eminent domain be exercised after Tenant is in possession, such exercise shall not void or impair this Lease unless the amount of the Premises so taken is such as to substantially and materially impair the usefulness of the Premises for the purpose for which the same are hereby demised, in which event either party may cancel this Lease by notice to the other within sixty (60) days after possession is taken, and the Rent herein provided shall abate as of the date possession is taken by the condemning authority.

**C. PARTIAL TAKING OF PREMISES.** If a portion of the Premises shall be taken as herein provided for public improvements or otherwise under the exercise of the right of eminent domain and the Premises shall continue to be reasonably suitable for the use which is herein authorized, then the Rent herein provided shall be reduced from the date of such taking in direct proportion to the reduction in usefulness of the Premises and this Lease shall continue in full force and effect.

**D.** If a portion of the Shopping Center shall be taken as herein provided for public improvements or otherwise under the exercise of the right of eminent domain, such exercise shall not void or impair this Lease unless the amount of the Shopping Center so taken substantially and materially diminishes access to, parking to or visibility

of the Premises, in which event Landlord or Tenant may cancel this Lease by notice to the other within sixty (60) days after possession is taken, the Rent to be adjusted as of such date.

**ARTICLE X - ASSIGNMENT,  
SUBLETTING, MORTGAGING AND SUBORDINATION**

**10.1 ASSIGNMENT AND SUBLETTING BY TENANT.** Tenant may not and shall not assign this Lease, in whole or in part, nor sublet all or any part of the Premises, nor license concessions or lease departments therein, nor pledge or encumber by mortgage or other instruments any interest in this Lease (each individually and collectively referred to in this Section as a "Transfer") without first obtaining the consent of Landlord, which consent shall not be unreasonably withheld or delayed. This prohibition includes, without limitation, any subletting or assignment which would otherwise occur by operation of law, merger, consolidation, reorganization, transfer or other change of Tenant's corporate, partnership or proprietary structure. Consent by Landlord to any transfer shall not constitute a waiver of the requirement for such consent to any subsequent Transfer. The acceptance of any Rent by Landlord from any alleged assignee or subtenant shall not constitute approval of the assignment or sublease of this Lease by Landlord, and the consent by Landlord to one assignment or subletting of the Premises shall not constitute a waiver of Landlord's rights hereunder. Tenant shall pay to Landlord a Transfer Fee of \$1,000.00 for such written consent. In the event of any such assignment, subletting, licensing or granting of a concession made with the prior written consent of Landlord as aforesaid, Tenant will nevertheless remain primarily liable for the performance of all the terms, conditions, and covenants of this Lease. Any Transfer shall be by agreement in a form and content reasonably acceptable to Landlord, and shall specify and require that each Transferee of this Lease by acceptance of any Transfer shall assume, be bound by, and be obligated to perform the terms and conditions of its sublessor and assignor under this Lease. A condition of such Transfer is the agreement of the parties that Landlord shall receive the full and complete Rent payment of the Transferee even though such payments may be in excess of the original Rent between Landlord and Tenant. It is the intent and understanding of the parties to this Lease that Tenant shall not receive any monetary benefit, in excess of the actual Rent obligation of Tenant, as agreed between the original Tenant and Landlord, through a Transfer to a third party. In the event of default of Tenant, Landlord at Landlord's sole option may succeed to the position of Tenant as to any subtenant or licensee of Tenant.

Notwithstanding anything hereinabove to the contrary, Landlord's consent shall not be required to the following transactions: (i) a transfer to a parent, subsidiary, division, or other entity controlling, controlled by, or under common control with Tenant; (ii) a transfer to a successor entity related to Tenant by merger, consolidation, reorganization or governmental action; (iii) assignment of lease to a party that acquires Tenant's leasehold interest along with all or substantially all of Tenant's other store locations (at least 5 locations), (iv) assignment to another Fuzzy Taco franchisee having a minimum tangible net worth of \$1,000,000 and restaurant operational experience similar to Tenant (documentation of which shall be provided to Landlord prior to any such assignment) or (v) assignment to Tenant's franchisor. In all such permitted transactions, Landlord must receive at least thirty (30) days' notice of such assignment, the successor entity must assume in writing all of Tenant's obligations under this Lease, and Landlord must receive a fully executed copy of the assignment instrument between Tenant and the successor.

**10.2 ASSIGNMENT AND MORTGAGING BY LANDLORD.**

**A. TRANSFER BY LANDLORD.** The owner of the Premises shall only remain liable for Landlord's obligations pursuant to the terms and limitations set forth in this Lease during its ownership of the Premises. So long as all sums held on Tenant's behalf in trust or escrow by Landlord are paid over to any purchaser of the Premises and such purchaser specifically assumes all of Landlord's obligations under this Lease, the originally named Landlord shall be relieved of all covenants and obligations of Landlord hereunder after the date of sale of the Premises.

**B. SUBORDINATION.** This Lease is subordinate to any and all leases, mortgages or deeds of trust hereinafter placed upon the Shopping Center, now or in the future, or any part thereof, and to all future modifications, consolidations, replacements, extensions and renewals of, and all amendments and supplements to said leases, mortgages or deeds of trust. Notwithstanding such subordination, as aforesaid, this Lease, except as otherwise hereinafter provided upon an event of default by Tenant, shall not terminate or be divested, and Tenant's right to possession shall not be disturbed, by foreclosure or other default proceedings under said leases, mortgages, deeds of trust, or obligations secured thereby, subject to all of the terms and provisions hereof. Tenant hereby agrees

that Tenant will recognize as its landlord under this Lease and shall attorn to any person succeeding to the interest of Landlord in respect of the land and the buildings on or in which the Premises is contained upon any foreclosure of any mortgage or deed of trust upon such land or buildings or upon the execution of any deed in lieu of such foreclosure in respect of such mortgage or deed of trust. The provisions of this paragraph shall be self-operative, but Tenant acknowledges and agrees that as a material consideration inducing Landlord to enter into this Lease, Tenant shall acknowledge same by executing and delivering to Landlord, on demand at any time or times, any and all instruments in order to subordinate this Lease and Tenant's rights hereunder, as aforesaid, provided that such transferee provides an agreement confirming that such transferee will not disturb Tenant's rights hereunder. Notwithstanding the foregoing, any such mortgagee, beneficiary, purchaser or lessor may elect to give the rights and interests of Tenant under this Lease (excluding rights in and to insurance proceeds and condemnation awards) priority over the lien of its mortgage or deed of trust or the estate of its lease, as the case may be. In the event of such election and upon the mortgagee, beneficiary or lessor notifying Tenant of such election, the rights and interests of Tenant shall be deemed superior to and to have priority over the lien of said mortgage or deed of trust or the estate of such lease, as the case may be, whether this Lease is dated prior to or subsequent to the date of such mortgage, deed of trust or lease. In such event, Tenant shall execute and deliver whatever instruments may be required by such mortgagee, beneficiary or lessor to confirm such superiority on the form customarily used by such party, as reasonably modified by Tenant. In the event of any act or omission by Landlord which would give Tenant the right to damages from Landlord or the right to terminate this Lease, Tenant will not sue for such damages nor exercise any such right to terminate until (i) it shall have given written notice of the act or omission to Landlord and to the holder(s) of the indebtedness or other obligations secured by any mortgage or deed of trust affecting the Premises or of any ground or underlying lease, if the name and address of such holder(s) have been furnished to Tenant, and (ii) a reasonable period of time, in light both of the time required to effect a remedy and of the impact of the act or omission on Tenant's business operations at the Premises, for remedying the act or omission has elapsed following the giving of the notice (which shall in no event be deemed any less than thirty (30) days nor more than ninety (90) days), during which time Landlord and such holder(s), or either of them, and their agents or employees, will be entitled to enter upon the Premises and do therein whatever may be necessary to remedy the act or omission subject to the use of commercially reasonable efforts not to disrupt Tenant's business.

**C. ESTOPPEL AND SUBORDINATION DOCUMENTS.** Each of Landlord and Tenant agrees to execute, acknowledge and deliver standard estoppel documents to the other within twenty (20) days after request thereof by the other party. In the event that upon any sale, assignment, lease, mortgage or hypothecation of the Premises and/or the land thereunder by Landlord, a statement shall be required by Tenant, Tenant agrees to deliver and cause Guarantor to deliver an Estoppel Certificate (if such be the case) that this Lease and Guaranty, as applicable, is in full force and effect and there are no defenses or offsets or Landlord defaults thereto, or stating those claimed by Tenant, the dates to which Rent or other sums have been paid in advance, and any other such certifications of Lease terms as may reasonably be required and such specific subordination agreement on Lender's form as may reasonably be required by Lender, it being intended that any such statements delivered pursuant to this Section may be relied upon by any prospective purchaser, mortgagee, assignee or beneficiary. Tenant hereby grants Landlord a power of attorney to execute any document in the name of Tenant in the event Tenant fails to execute, acknowledge and deliver any document required to effectuate the provisions of this Section within twenty (20) days after request therefor by Landlord.

## **ARTICLE XI - DEFAULT AND REMEDIES FOR DEFAULT**

**11.1 TENANT EVENTS OF DEFAULT.** The occurrence of any of the following shall constitute an event of default by Tenant hereunder:

- (1) The filing of a petition by or against Tenant or any Guarantor for adjudication as a bankrupt or insolvent, or for its reorganization or for the appointment of a receiver or trustee of Tenant's property; an assignment by Tenant for the benefit of creditors or the taking of possession of the property of Tenant by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of Tenant.

- (2) Failure of Tenant to pay when due any installment of Rent hereunder or any other sum herein required to be paid by Tenant, and the continuance of such nonpayment for five (5) days after such installment is due.
- (3) Abandonment, vacation or misuse of the Premises by Tenant.
- (4) Tenant fails to observe or perform any of the covenants with respect to a Transfer.
- (5) Tenant's failure to perform any other covenant or condition of this Lease within thirty (30) days after written notice and demand from Landlord, which such cure time shall be increased as reasonably necessary to complete such cure provided that Tenant diligently pursues the same..

**11.2 REMEDIES OF LANDLORD FOR DEFAULT BY TENANT.** Upon the occurrence of an event of default, Landlord shall have the right, then or at any time thereafter, and while such event of default shall continue, and in addition to and not in lieu of any other remedies, relief or rights available to Landlord at law or equity or contained in this Lease, to do any of the following:

- (1) Landlord by itself or its authorized agents may cure the default and charge Tenant for the actual and reasonable costs of such cure, which charge shall be due and payable as Rent under this Lease immediately upon written notice to Tenant.
- (2) Landlord may enforce every provision of this Lease in accordance with its terms including, but not limited to enforcement of the payment of Rent provisions by a suit or suits in equity or at law. In furtherance thereof, Landlord shall have the right to obtain reports on Tenant's (and any other party responsible for Tenant's performance) credit worthiness from the three (3) major credit reporting agencies or any other credit agency customarily used by Landlord, and Tenant hereby consents thereto.
- (3) Landlord may exercise its rights under the Guaranty.
- (4) Landlord shall have the right to terminate Tenant's right of possession of the Premises without terminating this Lease and, therefore, to reenter the Premises to assume and take possession of the whole or any part thereof, and to remove all persons or personal property by direct or summary action, or in a different type of suit or proceeding, by force or otherwise, without being deemed liable of trespass or other actionable wrong by reason thereof, and without being liable for the damages therefor or in connection therewith, and, after demand made therefor, Tenant or anyone in possession claiming under Tenant shall be deemed guilty of unlawful detainer and subject to such summary judgment or other action as may be provided by law. Tenant hereby agrees that if Landlord shall recover or take possession of the Premises as aforesaid, and be unable to relet and rent the same so as to realize a sum equal to the Minimum Rent and Additional Rent hereby provided, Tenant shall pay to Landlord any loss or difference of Minimum Rent and Additional Rent for the remainder of the Term. Landlord may, but is not required to, assign this Lease to Guarantor, if any, in the name of and on behalf of Tenant or may enter into a new lease with Guarantor on the same terms as this Lease or upon different terms. Tenant acknowledges that Landlord has been granted Tenant's power of attorney coupled with an interest in order to effectuate Landlord's rights hereunder in the event that Tenant fails or refuses to do so within five (5) days of notice from Landlord.
- (5) Landlord, irrespective of the date on which its right of reentry shall have accrued or be exercised, shall have the right, whether for rent or possession or otherwise, to terminate this Lease and the tenancy hereby created. This right to terminate is exercisable by a written notice to Tenant, which written notice may be part of a notice of default previously delivered to Tenant, and, as such, may be conditioned upon Tenant's failure to cure the default and the event of default. The termination may be made effective as of the failure to cure the event of default as provided herein, or thereafter, and, if not otherwise specified, will be deemed to be effective immediately. Upon such termination, Landlord shall be entitled to and may take immediate possession of the Premises, any other notice or demand being hereby waived. Such termination does not, however, release Tenant from liability for Rent then overdue or remaining under this Lease but

shall, if permitted by the laws of the state where the Premises are located, operate to accelerate the entire balance of the Term Rent and additional charges due over the entire Lease Term, which shall become immediately due and payable by Tenant, along with all overdue Rent and charges.

If Landlord terminates this Lease as provided above, Landlord shall be entitled to recover from Tenant all damages and other sums which Landlord is entitled to recover under any provision of this Lease or at law or in equity or otherwise, including, but not limited to, all of the accrued Minimum Rent and Additional Rent for the period up to and including such Termination Date, as well as all other additional sums payable by Tenant or for which Tenant is liable or in respect of which Tenant has agreed to indemnify Landlord under any of the provisions of this Lease which may be then owing and unpaid and all costs and expenses, including without limitation, court costs and reasonable attorneys' fees incurred by Landlord in the enforcement of its rights and remedies hereunder and, in addition, any damages provable by Landlord as a matter of law including, without limitation, an amount equal to the then present value (using a discount rate of five percent (5%)) of the excess of the Minimum Rent and Additional Rent provided to be paid for the remainder of the Term over the fair market rental value of the Premises (determined at the date of termination of this Lease by Landlord in Landlord's reasonable discretion). In the alternative, Landlord shall have the right, at Landlord's option, from time to time, to recover from Tenant, and Tenant shall remain liable for all Minimum Rent, Additional Rent and other amounts due and owing under this Lease, less (y) such amounts as Landlord may receive from reletting, if any, after first paying all costs of such reletting, including, without limitation, brokerage commissions and the costs of reasonable repairs, alterations, additions and redecorations, and the expenses of re-entry. The net amounts of rent from any reletting collected remaining after such expenses shall operate only as an off-setting credit against the amount due hereafter with any excess or residue belonging to Landlord solely. Should the fair market rental value of the Premises after deduction of all anticipated expenses of reletting exceed the Minimum Rent and Additional Rent provided to be paid by Tenant for the remainder of the Term, Landlord shall not be obligated to pay to Tenant any part of such excess or to credit any part of such excess against any other sums or damages for which Tenant may be liable to Landlord.

(6) Tenant shall reimburse and pay to Landlord all costs and expenses of Landlord in connection with Landlord's enforcement of its rights and remedies hereunder, including court costs and reasonable attorneys' fees all of which shall be deemed Additional Rent.

(7) Tenant shall reimburse and pay to Landlord all costs and expenses of Landlord in connection with Landlord's preparation of the Premises for Tenant's occupancy including, but not limited to, Landlord's Work all of which shall be deemed Additional Rent.

(8) Landlord shall have the right to pursue any and all other rights and remedies available at law and in equity.

(9) Should Landlord retake possession of the Premises for the account of Tenant, Landlord shall undertake commercially reasonable efforts to mitigate its damages and relet the Premises.

### **11.3 NON-WAIVER OF REMEDIES.**

A. It is expressly agreed that neither the taking of possession of the Premises nor the institution of any proceedings by way of unlawful detainer, ejection, dispossessory, eviction, quiet title, or otherwise, to secure possession of the Premises, nor the reentry by Landlord with or without the institution of such proceedings, nor the issuance of a writ of possession, nor the rerenting or subletting of the Premises, shall operate to relieve Tenant of its obligations to pay Rent and other amounts due hereunder, or operate to terminate this Lease in whole or in part, nor of itself constitute an exercise of Landlord's option to do so, but only by the giving of the written notice specifically specifying termination shall such termination be effected.

B. Acts of maintenance or preservation or efforts to relet the Premises, or the appointment of a receiver upon the initiation of Landlord to protect Landlord's interest under this Lease, shall not constitute a termination of this Lease.

C. Waiver by Landlord of any default, breach or failure of Tenant under this Lease shall not be construed as a waiver of any subsequent or different default, breach or failure. In case of a breach by Tenant of any of the covenants or undertakings of Tenant, Landlord nevertheless may accept from Tenant any full or partial payments hereunder without in any way waiving Landlord's right to exercise the remedies hereinbefore provided for by reason of any other breach or lapse which was in existence at the time such payment or payments were accepted by Landlord. Following any default by Tenant, Landlord may apply any payment to any Rent then owing, or damages, cost and fees in the manner it chooses in its sole discretion.

D. The specific remedies to which Landlord may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which they may be lawfully entitled in case of any breach or threatened breach by either of them or of any provisions of this Lease.

**11.4 DEFAULTS BY LANDLORD.** An event of default by Landlord shall occur if Landlord fails to perform any of Landlord's obligations under this Lease, which failure continues for more than thirty (30) days after Tenant's delivery of written notice to Landlord (or such shorter period as is reasonable in the case of an emergency) specifying such failure, or if such failure is of a nature to require more than thirty (30) days for remedy and continues beyond the time reasonably necessary to cure (and Landlord has not undertaken procedures to cure the failure within such thirty (30) day period and diligently pursued such efforts to complete such cure). In such event, Tenant may enforce this Lease by a suit or suits in equity or at law. Additionally, if such default is of a nature which could be remedied by Tenant without affecting other tenants, then Tenant may after the notice period provided above, at its option, incur any reasonable expense necessary to cure the default of Landlord specified in such notice and invoice Landlord for the cost thereof. Landlord shall pay any such invoice within thirty (30) days after receipt thereof. In no event shall Tenant withhold, deduct or offset any expense or claim from the payment of Rent.

## ARTICLE XII - GENERAL PROVISIONS

**12.1 BROKERS.** Landlord and Tenant each warrant to the other that it had no dealing with any broker or agent in connection with this Lease other than The Providence Group of the Carolinas, LLC ("Broker"). Landlord and Tenant each agree to hold harmless and indemnify the other from and against any and all costs, expense or liability (including attorneys' fees) for any compensation, commissions and charges claimed by any broker or agent (other than the Broker) by reason of any broker or agent having had conversations or dealings with such party with respect to this Lease or the negotiation thereof. Landlord represents that it shall be responsible for the payment of the Broker's commission, pursuant to a separate written agreement.

**12.2 NO PARTNERSHIP.** Notwithstanding any other express or implied provision of this Lease, it is understood that Landlord does not in any way claim to be or propose a partnership or joint venture with Tenant in the conduct of Tenant's business.

**12.3 SUCCESSORS AND ASSIGNS.** All rights, obligations and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several and respective heirs, executors, administrators, successors, sublessees and assigns of said parties, subject to the provisions of Article X and except to the extent otherwise provided in this Lease, provided, however, that the liability of Landlord hereunder and any successor in interest and title to the Premises shall be limited to his or its interest in the Shopping Center, and no other assets of Landlord other than his or its interest in the Shopping Center shall be affected by reason of any liability which Landlord or successor in interest may have under this Lease. If there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein and the word "Tenant" shall be deemed and taken to mean each and every person or party mentioned as a Tenant herein, be the same one or more; and if there shall be more than one Tenant, any notice required or permitted by the terms of this Lease may be given by or to any one thereof and shall have the same force and effect as if given by or to all thereof.

**12.4 NOTICES.** Wherever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall not be deemed to have been duly given or served unless made in writing and either personally delivered or forwarded by Certified Mail, Return Receipt Requested, postage prepaid, nationally-recognized overnight courier service or personal delivery to the address for each party provided in the Abstract of Lease. Such addresses may be changed from time to time by either

party by serving notices as above provided. While Tenant is in possession of the Premises, notices to Tenant may also be delivered or forwarded by Certified Mail to the Premises. Notice shall be deemed given when delivered (or upon refusal of acceptance of delivery), if given by personal delivery, otherwise one (1) business day following delivery to a nationally-recognized overnight courier service or three (3) business days following deposit in the United States mail.

**12.5 SCOPE AND INTERPRETATION OF THIS AGREEMENT.**

**A. ENTIRE AGREEMENT.** This Lease shall be considered to be the only agreement between the parties hereto pertaining to the Premises. It is understood that there are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, letters of intent, agreements and understandings, written or oral, if any, between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none shall be used to interpret or construe this Lease. All negotiations and oral agreements acceptable to Landlord and Tenant have been merged into and are included in this Lease.

**B. ARTICLE HEADINGS AND CAPTIONS.** The headings or captions of Articles in this Lease are for convenience and reference only and they in no way define, limit, or describe the scope or intent of this Lease or the provisions of such Articles.

**C. GENDER AND INTERPRETATION OF TERMS AND PROVISIONS.** As used in this Lease and whenever required by the context thereof, each number, either singular or plural, shall include all numbers, and each gender shall include all genders. Landlord and Tenant, as used in this Lease, or in any other instrument referred to in or made a part of this Lease, shall likewise include both singular and plural, a corporation, limited liability company, partnership, individual or person acting in any fiduciary capacity as executor, administrator, trustee, or in any other representative capacity. All covenants herein contained on the part of Tenant shall be joint and several.

**D. TIME OF ESSENCE.** Time is hereby expressly declared to be of the essence of this Lease and of each and every covenant, term, condition and provision hereof subject to force majeure.

**E. IMPARTIAL CONSTRUCTION.** The language in all parts of this Lease shall be in all cases construed as a whole according to its fair meaning and not strictly for nor against either Landlord or Tenant.

**F. GOVERNING LAW.** The laws of the State in which the Premises are located shall govern the validity and enforceability of this Lease. Jurisdiction and venue shall be deemed valid and appropriate in the county and state where the Shopping Center is located.

**G. PARTIAL INVALIDITY.** If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**H. AMENDMENT.** All amendments must be in writing executed by the parties or their respective successors in interest.

**I. TENANT'S CONFLICTS.** Tenant hereby covenants, warrants and represents that by executing this Lease and by the operation of the Premises under this Lease, it is not violating, has not violated and will not be violating any restrictive covenant or agreement contained in any other lease or contract affecting Tenant or any affiliate, associate or any other person or entity with whom or with which Tenant is related or connected financially or otherwise. Tenant hereby covenants and agrees to indemnify, defend and save harmless Landlord, any future owner of the fee or any part thereof, and any mortgagee thereof against and from all liabilities, obligations, damages, penalties, claims, costs and expenses, including attorneys' fees, paid, suffered or incurred by them or any of them as a result of any breach of the foregoing covenant. Tenant's liability under this covenant extends to the acts and omissions of any subtenant, and any agent, servant, employee or licensee of any subtenant of Tenant.

**J. LANDLORD, LANDLORD'S PROPERTY MANAGER OR LANDLORD'S BENEFICIARY OR BENEFICIARIES THEREOF.** Wherever in this Lease Landlord is granted a right of consent or approval, a right of inspection, a right to add improvements to the Shopping Center, a right to designate repairs, maintenance or improvements required to be made by Tenant or changes in any plans submitted by Tenant or any other act which involved the exercise of discretion on the part of Landlord hereunder, such right or exercise of discretion may be exercised by Landlord, Landlord's Property Manager or Landlord's beneficiary or beneficiaries thereof. Any obligation set forth in this Lease of Landlord, or any obligation of Tenant which Landlord is given the right to perform on Tenant's behalf, may be performed by Landlord, Landlord's Property Manager, Landlord's beneficiary, or beneficiaries thereof, and when performed, shall be conclusively deemed to have been performed by Landlord. Any obligation of Tenant contained in this Lease to indemnify, defend or hold Landlord harmless (or Landlord and any other party), or to maintain and pay for insurance for the benefit of Landlord (or Landlord and any other party), or to waive any claim against Landlord (or Landlord and any other party) is hereby extended so that such obligations shall run in favor of Landlord and Landlord's Property Manager. Wherever in this Lease it is acknowledged or stated that Landlord has made no representation or warranties or promises with respect to any matter, such provisions shall be deemed to acknowledge or state that neither Landlord nor Landlord's Property Manager nor Landlord's beneficiary or beneficiaries thereof, nor employee of Landlord has made such representations or warranties or promises. All rights to enforce any provision of this Lease on the part of Landlord or any rights to exercise any remedies of Landlord, either specifically provided for herein or at law or equity, may be exercised by Landlord, Landlord's Property Manager or Landlord's beneficiary or beneficiaries thereof, in their own name, alone or in conjunction with Landlord or any of the foregoing parties. Landlord may at any time add to, remove or substitute Landlord's Property Manager.

**K. EXECUTION OF LEASE BY LANDLORD.** The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises and this document becomes effective and binding only upon the execution and delivery hereby by Landlord and Tenant. The execution of this Lease by Tenant shall be deemed an offer by Tenant to lease the Premises from Landlord upon the terms and conditions contained in this Lease, which offer may be accepted by Landlord only by the execution of this Lease by Landlord. All negotiations, considerations, representations and understandings between Landlord and Tenant are incorporated herein and may be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

**L. JURY WAIVER.** LANDLORD AND TENANT WAIVE THEIR RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER, OR WITH RESPECT TO ANY ISSUE OR DEFENSE RAISED THEREIN, INCLUDING THE RIGHT TO AN ADVISORY JURY (EXCEPT FOR PERSONAL INJURY AND PROPERTY DAMAGE), ON ANY MATTERS WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE AND OCCUPANCY OF THE PREMISES INCLUDING SUMMARY PROCEEDING AND POSSESSION ACTIONS, ANY EMERGENCY STATUTORY OR OTHER STATUTORY REMEDY.

**M. RENTS FROM REAL PROPERTY.** Landlord and Tenant hereby agree that it is their intent that all Rent and other charges payable to Landlord under this Lease shall qualify as "rents from real property" within the meaning of Section 856(d) of the Internal Revenue Code, as amended, (the "Code") and the Department of the U.S. Treasury Regulations promulgated thereunder (the "Regulations"). Should the Code or the Regulations, or interpretations thereof by the Internal Revenue Service contained in revenue rulings or other similar public pronouncements, be changed so that any Rent no longer so qualifies as "rent from real property" for purposes of Section 856(d) of the Code and Regulations, or any successor provision thereto, then the parties agree to execute such further instrument as may reasonably be required by Landlord in order to give effect to the foregoing provisions of this Section.

**N. INDEPENDENT COVENANTS.** The covenants of Tenant to pay Rent and any and all other amounts payable by Tenant pursuant to the terms of this Lease are independent covenants, and Tenant shall not have the right to hold back, offset, or fail to pay any such amounts for default by Landlord or any other reason whatsoever.

O. **DAMAGES.** Except as expressly provided herein regarding holdover, neither Landlord nor Tenant shall be liable under any circumstances for incidental or consequential, punitive, compensatory damages or loss profits or for claims hereunder.

**12.6 RADON GAS.** Radon gas is a naturally occurring radioactive gas that when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**12.7 ATTORNEYS' FEES.** In the case of the failure of either party to perform and comply with any of the covenants and conditions hereof within the time herein specified, whether suit be brought or not, the party so failing to perform and comply hereby agrees to pay to the other party hereto all costs, charges, and expenses of such collection or other enforcement of rights in any suit or otherwise, including its reasonable attorneys' fees. The prevailing party in any litigation arising out of this Lease, including any appellate proceedings and bankruptcy proceedings, shall be entitled to the award of its reasonable attorneys' fees and costs.

**12.8 LEASE NOT RECORDABLE.** Under no circumstances shall this Lease be recorded and if Tenant records this Lease in violation of the terms hereof, in addition to any other remedy available to Landlord upon Tenant's default, Landlord shall have the option to terminate this Lease by recording a notice to such effect. Tenant shall have the right to record and Landlord shall join in a customary memorandum or short form of this Lease. If a memorandum or short form of lease is recorded, then, on the termination of this Lease, Tenant shall execute, acknowledge and deliver to Landlord an instrument in writing releasing and quit-claiming to Landlord all right, title and interest of Tenant in and to the Premises and/or the Shopping Center by reason of this Lease or otherwise.

**12.9 ACCORD AND SATISFACTION.** Landlord is entitled to accept, receive and cash or deposit any payment made by Tenant for any reason or purpose, or in any amount whatsoever and apply the same at Landlord's option to any obligation of Tenant and the same shall not constitute payment of any amount owed except that to which Landlord has applied the same. No endorsement or statement on any check or letter of Tenant shall be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such check or payment shall be without prejudice to Landlord's right to recover any and all amounts owed by Tenant hereunder and Landlord's right to pursue any other available remedy and shall not be deemed to constitute a waiver of any of Landlord's rights hereunder.

**12.10 NO WAIVER.** No waiver of any provision of this Lease shall be implied by any failure of Landlord or Tenant to enforce any remedy on account of the violation of such provision, even if such violation be continued or repeated subsequently, and no express waiver shall affect any provision other than the one specified in such waiver and that one only for the time and in the manner specifically stated. No receipt of monies by Landlord from Tenant after the termination of this Lease shall in any way alter the length of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term hereof or create a new tenancy or affect any notice given Tenant prior to the receipt of such monies, it being agreed that after the service of notice or the commencement or a suit for possession of the Premises or after final judgment for possession of the Premises Landlord may receive and collect any Rent due and the payment of said Rent shall not waive, affect or nullify said notice, suit or judgment. Acceptance by Landlord of less than the entire amount due and owing by Tenant shall not constitute a waiver by Landlord of its rights to further collection.

**12.11 COUNTERPARTS.** This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

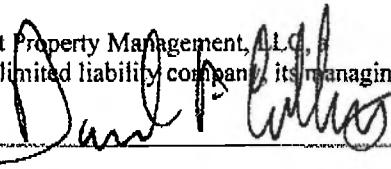
**12.12 EXHIBITS AND SCHEDULES.** All exhibits and schedules attached to this Lease are hereby incorporated by reference.

[Signature Pages Follow]

LANDLORD:

IA Matthews Sycamore, L.L.C.,  
a Delaware limited liability company

By: InvenTrust Property Management, L.L.C.,  
a Delaware limited liability company, its managing agent

By: 

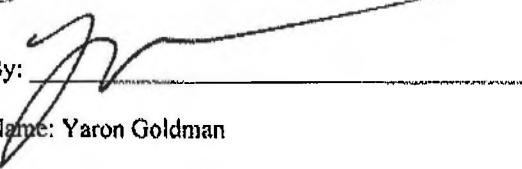
Name: David F. Collins

Its: Executive Vice President

Date: 10/3/17

TENANT:

RTHT INVESTMENTS, LLC,  
a Delaware limited liability company

By: 

Name: Yaron Goldman

Its: Manager

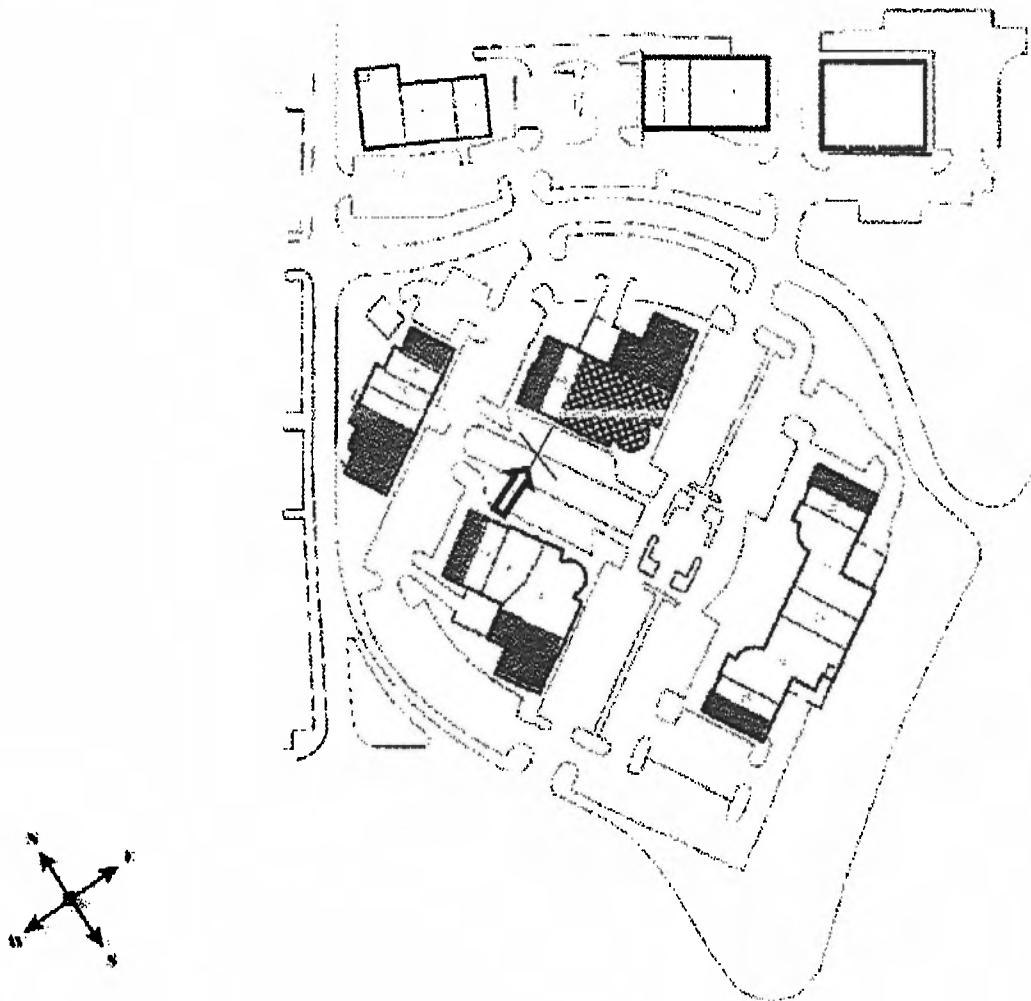
Date: 9/7/2017

**EXHIBIT A**

**SITE PLAN OF SHOPPING CENTER  
AND DEPICTION OF LOCATION OF PREMISES**

This Site Plan is presented solely for the purpose of identifying the approximate location and size of the Premises. The size or configuration of the Shopping Center, building sizes, site dimensions, access and parking areas, existing tenant locations, uses and identities are subject to change at Landlord's discretion, except as otherwise expressly restricted in the text of this Lease.

**"EXHIBIT A"**



Premises



Relocation Area

**EXHIBIT B**

**MINIMUM RENT**

**INITIAL TERM:**

<u>Years</u> <u>PSF</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>	<u>Annual</u>
1	\$11,299.58	\$135,595.00	\$23.50
2	\$11,525.58	\$138,306.90	\$23.97
3	\$11,756.09	\$141,073.04	\$24.45
4	\$11,991.21	\$143,894.50	\$24.94
5	\$12,231.03	\$146,772.39	\$25.44
6	\$12,475.65	\$149,707.84	\$25.95
7	\$12,725.17	\$152,701.99	\$26.46
8	\$12,979.67	\$155,756.03	\$26.99
9	\$13,239.26	\$158,871.15	\$27.53
10	\$13,504.05	\$162,048.58	\$28.08

**FIRST EXTENDED TERM:**

<u>Years</u> <u>PSF</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>	<u>Annual</u>
11	\$13,771.84	\$165,262.03	\$28.64
12	\$14,047.27	\$168,567.27	\$29.21
13	\$14,328.22	\$171,938.62	\$29.80
14	\$14,614.78	\$175,377.39	\$30.39
15	\$14,907.08	\$178,884.94	\$31.00

**SECOND EXTENDED TERM:**

<u>Years</u> <u>PSF</u>	<u>Monthly Rent</u>	<u>Annual Rent</u>	<u>Annual</u>
16	\$15,205.22	\$182,462.64	\$31.62
17	\$15,509.32	\$186,111.89	\$32.26
18	\$15,819.51	\$189,834.13	\$32.90
19	\$16,135.90	\$193,630.81	\$33.56
20	\$16,458.62	\$197,503.43	\$34.23

**EXHIBIT C-1**

**LANDLORD'S WORK FOR FUZZY'S TACO SHOP AT SYCAMORE COMMONS**

Tenant accepts the Premises in its current "as-is" condition, subject to delivery of possession free and clear of the existing tenant and all utilities in good working order as set forth in the Lease. Except as provided in the Lease, Landlord has made no representations or warranties as to the condition of the Premises.

**EXHIBIT C-2**

**TENANT'S WORK**

All work required to complete and place the Premises in finished condition to allow Tenant to open for business is to be done by Tenant, at Tenant's expense (including the payment of all impact fees, if applicable), and in accordance with this Exhibit and the Lease to which this Exhibit is attached.

1. **Tenant's Work.** Subject to additional provisions stated in the Lease, Tenant's work shall be any and all work required to make the Premises ready for its occupancy and use in accordance with applicable statutes, ordinances, regulations, codes, and requirements of Landlord's fire underwriter.
2. **Drawing Submittal:** Tenant shall, before it commences Tenant's work, and within forty-five (45) days after lease execution, furnish Landlord with two (2) sets of reproducible plans and specifications for all its architectural, mechanical and electrical systems. Such plans shall include the data for all electrical and cooling loads, in form accepted by Landlord. Tenant's plans and specifications shall be prepared by an architect or professional engineer licensed in the state where the Premises are located and shall bear the signature and seal thereof.
3. **Changes and Alterations.** Landlord reserves the right to require changes in Tenant's work when necessary by reason of code requirements, or directives of governmental authorities having jurisdiction over the Premises, or directives of Landlord's insurance underwriters.
4. **General Provisions.** All work done by Tenant shall be governed in all respects by, and be subject to, the following:
  - a. Tenant shall not commence Tenant's work until Tenant has secured Landlord's written acceptance of its plans and all contractors to be used in performing Tenant's work. Any work done without Landlord's review and acceptance may be required to be removed by Landlord at its sole discretion. Landlord agrees to notify Tenant of its approval or any changes within ten (10) business days after receipt of the same. If Landlord does not respond within such timeframe, Landlord's consent shall be deemed. Landlord's review shall be completed at Landlord's sole cost and expense.
  - b. Tenant's work shall be performed in a first-class workmanlike manner and shall be in good and usable condition at the date of completion thereof. Tenant shall require any party performing any such work to guarantee the same to be free from any and all defects in workmanship and materials for one (1) year from the date of completion thereof. Tenant shall also require any such party to be responsible for the replacement or repair without additional charge of any and all work done or furnished by or through such part which shall become defective within one (1) year after substantial completion of the work. The correction of such work shall include, without charge, all expenses and damages in connection with such removal, replacement or repair of any part of the work which may be damaged or disturbed thereby. All warranties or guarantees as to materials or workmanship on or with respect to Tenant's work shall be contained in the contract or subcontract which shall be so written that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests appear, and can be directly enforced by either. Tenant covenants and agrees to give Landlord any assignment or other assurances necessary to affect the same.
  - c. Landlord shall have the right (but shall not be obligated) to perform by its own contractor or subcontractor, on behalf of and for the account of Tenant, any of Tenant's work which affects any structural or roofing components, or work of other tenants of, or the general utility systems for, the building in which the Premises are located. If Landlord so determines, it shall so notify Tenant prior to the commencement of such work. Tenant shall promptly, on demand, reimburse

Landlord for all actual and reasonable costs of planning and performing such work when and as incurred by Landlord, and for all permits in connection therewith.

- d. Tenant shall obtain and convey to Landlord copies of all permits, certifications and approvals indicating compliance.

**EXHIBIT D**

**GENERAL SIGN CRITERIA FOR SHOPPING CENTER**

**I. APPROVALS**

1. Tenant must submit final sign shop drawings to Landlord for review and acceptance within ten (10) days after full execution of the Lease.
2. The sign submittal to Landlord must include final sign shop drawings with information on color, materials, size and installation and a scaled storefront elevation showing the proposed signage. If there are multiple signs, provide a key plan. When applicable, include details for the sign panel(s) for pylon or monument signs.
3. Each Tenant must ensure that all of its signs are in conformance with local sign ordinances and codes and applicable Shopping Center declarations and restrictions. When Landlord's requirements vary with local jurisdiction requirements and/or Shopping Center declarations and restrictions, the more restrictive guidelines govern.
4. The Landlord accepted sign shop drawings must be used when applying for a sign permit.
5. All sign vendors and contractors must be reviewed and accepted by Landlord. Sign vendors and contractors must submit required insurance to Landlord prior to commencing any sign work at the Shopping Center.
6. Landlord's acceptance must be in writing to be valid.
7. The installation of signage not previously reviewed by Landlord will be subject to Landlord review and acceptance. Landlord will have the right to request changes to conform to Landlord's requirements.
8. Each Tenant shall be responsible for the costs of obtaining all permit(s) for its sign(s), and for the costs of manufacturing and installing its sign(s).
9. A copy of all sign permits must be submitted to Landlord prior to installation.

**II. MANUFACTURING**

1. All work shall be done in a good and workmanlike manner with all new materials.
2. All signs must be fabricated and installed according to national, local, building and electrical codes and electrical components must be UL approved. The UL label should not be visible to the customers.
3. All signs must provide access to transformers, dimming controls and local disconnect to service sign equipment.
4. All electrical penetrations through the storefront fascia for installation shall use PK housing. Other UL approved insulating sleeve must be acceptable to Landlord and local building codes.
5. All wiring, raceways, cabinets, attachments, labels, fasteners, transformers, ballasts and other necessary equipment must be concealed from view.
6. All signs must be free of light leaks and properly sealed.
7. Tenant's signage shall be mounted entirely on a raceway that matches the color of the fascia on

which it is located. Landlord will specify colors and the design of the raceway mounting devices shall be subject to Landlord's review and acceptance.

8. Aluminum returns or sides of letters and graphics shall be painted Lacyral 20-313E Duranodic or equivalent. Substitutions shall be subject to Landlord's review and acceptance.
9. The weight of signage attached to fascia of Shopping Center shall be appropriate to the mounting device and façade material and structure of the Premises. Excess loads will require further investigation by a licensed structural engineer which shall be Tenant's responsibility.

### III. ALLOWABLE SIGN LOCATION

1. For in-line spaces, Tenant is allowed one sign for the storefront elevation of their Premises. For endcap or outlet spaces, Landlord may permit more than one sign on a case by case basis. Rear signs are permitted only at the discretion of Landlord.
2. Tenant's signage shall be centered with respect to the width of Tenant's total store frontage. The height of Tenant's signage shall be centered within the sign band pertaining to the Premises.
3. Location of sign panels for pylon or monument signs, if permitted by the Lease, is determined by Landlord.

### IV. ALLOWABLE SIGN STYLES (may vary by Shopping Center or building within the Shopping Center)

1. The following types of signs are allowed:
  - (a) Internally illuminated signage
  - (b) Individually formed metal channel letters and graphics / logo
  - (c) Reverse channel halo letters
  - (d) Contour shape cabinet with channel letters
2. The following types of signs are not allowed:
  - (a) Non-illuminated signage
  - (b) Exposed tube neon signs and open face channel letters with exposed tube neon.
  - (c) Freestanding, moving, rotating, flashing, animated or noise making signs.
  - (d) Internally illuminated awnings/canopies.
  - (e) Lettering painted directly on the fascia of Shopping Center
  - (f) Signs which are not professional in appearance.

### V. ALLOWABLE SIGN SIZE

1. The area of a Tenant's sign will be limited to seventy-five percent (75%) of Tenant's storefront sign band.
2. Tenant shall be allowed up to two (2) square feet of sign face for each linear foot of Tenant's store frontage.

3. Letter sizes shall be as follows:

- (a) For storefronts up to thirty feet (30'): letters shall be maximum twenty-four inches (24") high
- (b) For store fronts ranging from thirty feet (30') up to sixty feet (60'): letters shall be maximum thirty inches (30") high.
- (c) Letters/logo may not encroach more than 36" from Tenant's storefront boundaries.

**VI. GENERAL REQUIREMENTS**

- 1. Signage is limited to Tenant's trade name and logo. Registered trademark symbols ®, sign manufacturer's name, stamps or decals are not permitted.
- 2. Each Tenant must develop a maintenance program to assure that its signage will always appear inviting to customers and enhance the overall appearance of the Shopping Center.
- 3. All signage must be fabricated and installed according to national, local building and electrical codes and must bear UL label.
- 4. All signs must be kept clean and in good operating condition.
- 5. Blade signs (signs perpendicular to the face of any building) are not permitted unless there is a Shopping Center specific blade sign program and Landlord has permitted such a sign for Tenant.
- 6. No roof-mounted sign of any kind shall be permitted.
- 7. No flashing, moving or audible signs or beacons shall be permitted.
- 8. No temporary signs or banners shall be permitted unless specifically permitted by Landlord in the Lease.
- 9. No flagpoles or trailer signs or portable signs shall be permitted.
- 10. LED or other energy efficient illumination sources are generally preferred.
- 11. All signs must have illumination control (i.e. dimming module or dimmer control switch) for possible adjustments to be made by Tenant and/or Landlord.
- 12. Electrical service to all signs shall be provided from Tenant's meter, and it shall be the responsibility of each Tenant to hire an electrician accepted by Landlord to perform all required electrical work.
- 13. All signs shall be fully lit and operational from a minimum of dusk until 2:00 a.m., Monday through Sunday (seven days a week). A 7 day, 24 hour time clock on a separate circuit and wired to Tenant's meter is required.
- 14. Any required roof penetrations are subject to Landlord's review and acceptance. In such event, Tenant is required to use Landlord's accepted contractor at Tenant's sole cost and expense.
- 15. During signage installation, repairs or maintenance any damage to building must be promptly restored to its original condition. This shall be done at Tenant's sole cost and expense and to the satisfaction of Landlord.
- 16. Upon vacating its leased premises, Tenant shall promptly remove its signage and restore the fascia

to its original condition. This shall be done at Tenant's sole cost and expense and to the satisfaction of Landlord.

17. When appropriate to the design of the Shopping Center, Landlord may make exceptions or changes to the sign criteria on a case by case basis and must be reviewed and accepted by Landlord in writing. Tenant should contact Landlord prior to finalizing Tenant's sign plans to discuss specific requirements and specifications.

**EXHIBIT E**

**GUARANTY**

THIS GUARANTY (this "Guaranty") dated as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by SD-Missouri, LLC, a Delaware limited liability company ("Guarantor"), having an address of 1207-B Crews Road, Matthews, North Carolina 28105, to IA Matthews Sycamore, L.L.C., a Delaware limited liability company (the "Landlord"), having an address of 3025 Highland Parkway, Suite 350, Downers Grove, Illinois 60515.

**WITNESSETH:**

Contemporaneously herewith, Landlord, as lessor, is entering into a certain lease (the "Lease") for real property located in the City of Matthews, County of Mecklenburg, and State of North Carolina, with RTHT INVESTMENTS, LLC, a Delaware limited liability company, as lessee (and his/her/its successors and assigns, collectively "Tenant"). Guarantor will receive a substantial economic benefit from the Lease and is executing this Guaranty as an inducement to Landlord to enter into the Lease. Landlord would not have executed the Lease with Tenant without Guarantor executing this Guaranty.

NOW THEREFORE, in consideration of the premises, Guarantor agrees as follows:

1. Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Landlord (a) the full and punctual performance and observance by Tenant of all of the terms, conditions, covenants and obligations to be performed and observed by Tenant under the Lease and any month-to-month tenancy created as a result of Tenant holding over after the expiration or termination of the Lease including, without limitation, the payment as and when due, whether by acceleration or otherwise, of all Minimum Rent and Additional Rent (both as defined in the Lease) and any other sums payable by Tenant under the Lease, and (b) payment of all Enforcement Costs (as defined in Section 5 below). This is a guaranty of payment and performance, and not of collection, and Landlord shall not be obligated to enforce or exhaust its remedies against Tenant before proceeding to enforce this Guaranty. Landlord may, at Landlord's option, join Guarantor in any action or proceeding commenced by Landlord against Tenant in connection with or based upon the Lease or any term, covenant or condition thereof, and recovery may be had against Guarantor in such action or proceeding or in any independent action or proceeding against Guarantor without Landlord (i) asserting, prosecuting, or exhausting any remedy or claim against Tenant or (ii) commencing any proceeding to enforce or realize upon any collateral or other security (including, without limitation, any security deposit or other guaranties) which may be given to secure Tenant's obligations under the Lease, or to obtain any judgment, decree or foreclosure sale with respect thereto. Any suit or proceeding brought against Guarantor to collect the amount of any deficiency in payments due from Tenant under the Lease for any month or months shall not prejudice in any way the rights of Landlord to collect any such deficiency for any subsequent month or months in any similar suit or proceeding. Additionally, the maintenance of any action or proceeding by Landlord to recover any sum or sums that may be or become due under the Lease or to secure the performance of any of the other terms, covenants and conditions of the Lease shall not preclude Landlord from demanding and receiving the payment of such sums and the performance of such other terms, covenants and conditions from Guarantor, or from thereafter instituting and maintaining subsequent actions or proceedings for any subsequent default or defaults of Tenant under the Lease. Guarantor does hereby agree that, without affecting the liability of Guarantor under this Guaranty and without notice to Guarantor, Landlord may (i) grant to Tenant additional time for the payment of rent and any other sums due under the Lease or for the performance of any other terms, covenants and conditions contained in the Lease, or (ii) avail itself of or exercise any or all of the rights and remedies against Tenant provided by law, in equity, or by the Lease, and may proceed either against Tenant alone or jointly against Tenant and Guarantor or against Guarantor alone without first proceeding or exhausting any remedy or claim against Tenant.

2. Guarantor hereby assents to all of the provisions of the Lease and waives demand, protest, notice of any indulgences or extensions granted to Tenant, any requirement of diligence or promptness on the part of Landlord in the enforcement of the Lease and any notice thereof, and any other notice whereby to charge Guarantor. Guarantor shall be furnished with a copy of any notice of or relating to default under or termination of the Lease which is served upon Tenant.

3. (a) This Guaranty shall be a continuing guarantee and the liability of Guarantor hereunder shall in no way be affected, modified, diminished, impaired or terminated for any reason whatsoever, including, without limitation, by reason of any of the following, whether or not notice thereof is given to Guarantor: (i) any one or more sublettings of all or any portion of the Premises or any one or more assignments or other transfers of Tenant's interest in the Lease (except as set forth below), (ii) any consent, approval, waiver or other action, inaction or omission under or concerning the Lease, (iii) any modifications, renewals, extensions or amendments of the Lease (except as set forth below), (iv) any dealings or transactions or matter or thing occurring between Landlord and Tenant, (v) any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting Tenant or its successors or assigns, (vi) the release or discharge of Tenant from the performance or observance of any of the terms, covenants or conditions of law, by reason of any of the events described in the foregoing clause (v) hereof, or otherwise, (vii) any change in relationship between Guarantor and Tenant, (viii) the default or failure of Guarantor to perform any of its obligations set forth in this Guaranty, (ix) any action which Landlord may take or fail to take against Tenant by reason of any waiver of, or failure to enforce, any of the rights or remedies reserved to Landlord in the Lease, or otherwise, (x) any failure or refusal of Landlord to re-let the Premises or any part or parts thereof in the event that Landlord shall obtain possession of the Premises after Tenant's insolvency or default except as required under the Lease, (xi) intentionally omitted, (xii) any alterations, repairs, replacements and/or decoration in the Premises as Landlord, in Landlord's reasonable judgment, considers advisable and necessary for the purpose of re-letting the Premises, and (xiii) any other circumstance or condition that may result in a discharge, limitation or reduction of liability of a surety or guarantor. Not later than twenty (20) after the request of Landlord up to twice per calendar year, Guarantor will execute an estoppel certificate in a form requested by Landlord (A) confirming Guarantor's obligations under this Guaranty, (B) acknowledging that this Guaranty has not been modified (or, if so, identifying all modifications) and is in full force and effect, and (C) confirming that Guarantor has no claims or defenses under this Guaranty or otherwise with respect to the full performance and satisfaction of all of the terms, provisions, agreements and obligations of this Guaranty. A failure to issue an estoppel certificate in the requested form shall constitute a default by Tenant under the Lease. Such estoppel certificate will be certified to Landlord and such other parties as are designated by Landlord.

(b) Guarantor hereby waives notice of the acceptance of this Guaranty and presentment and demand for payment, notice of nonpayment, notice of dishonor, protest, notice of protest, nonperformance, nonobservance and any other notice or demand to which Guarantor might otherwise be entitled. Guarantor hereby waives trial by jury of any and all issues arising in any action or proceeding between the parties, upon, under or in connection with this Guaranty or of any of its provisions, directly or indirectly, or any and all negotiations in connection therewith. To the extent permitted by law, Guarantor hereby waives and releases Landlord from all claims, rights and defenses, if any, relating to title VII (the Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15U.S.C. §1601 et seq.) and any successor act and related regulations. Guarantor's obligations hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, and shall not be subject to, and Guarantor hereby irrevocably waives, any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of Tenant's obligations under the Lease or of any of Guarantor's obligations hereunder, or otherwise.

4. The obligations guaranteed by Guarantor pursuant to this Guaranty include all terms, conditions, covenants and obligations to be performed and observed by Tenant during and/or with respect to the initial Term of the Lease, which is the period beginning on the "Commencement Date" and ending on the Termination Date as set forth in Section 1.3 of the Abstract of Lease and Section 3.1 of the Lease, the Extended Term, if any, and any month-to-month tenancy created after the expiration or termination of the Lease. This is a continuing guaranty and Guarantor's obligations hereunder shall survive the expiration of the initial Term and/or any expiration or termination of the Lease and shall continue until all obligations of Guarantor hereunder have been paid and satisfied in full. In the event that the Lease is modified, renewed or extended, or the Premises expanded or contracted, in any respect by agreement between Landlord and Tenant pursuant to an option granted in the Lease, or in the event that Tenant holds over beyond the Term of the Lease, or otherwise, then the obligations hereunder of Guarantor shall extend to the full and faithful performance and observance of all of the covenants, terms and conditions of the Lease and of any such modification, renewal, extension, expansion, contraction and/or hold over. Guarantor intends that Guarantor shall remain liable hereunder as a principal until the full, final and unavoidable performance of all of liabilities and obligations hereunder, notwithstanding any fact, act, event or occurrence which might otherwise operate as a legal or equitable discharge of a surety or guarantor. Notwithstanding the foregoing, if this Lease is

assigned by Tenant, Guarantor shall not be liable for any increased obligations resulting from any amendment of the Lease thereafter unless Guarantor is a party to such amendments.

5. In addition to the amounts specified pursuant to Paragraph 1 hereof, Guarantor shall pay to Landlord any and all costs incurred by Landlord in enforcing this Guaranty, including court costs and reasonable attorneys' fees and costs (collectively, "Enforcement Costs").

6. This Guaranty shall inure to the benefit of and may be enforced by Landlord and its successors and assigns and any assignee of Landlord's interest in the Lease (including Landlord's mortgagee), and shall be binding upon Guarantor and its successors and assigns. No assignment by Guarantor shall affect or reduce its obligations hereunder, and all such obligations shall continue as though no such assignment had been made. All obligations and liabilities of Guarantor pursuant to this Guaranty shall be binding upon their successors, heirs, personal representatives, and assigns.

7. This Guaranty may not be changed or terminated orally, but only by a written instrument signed by the party against whom enforcement of any change or termination is sought.

8. Any notice required hereunder to be sent to Guarantor shall be sufficiently given by mailing by certified or registered mail, postage prepaid, to the address above.

9. If Landlord shall be obligated by any bankruptcy, insolvency or other legal proceedings to repay to Guarantor or to Tenant, or to any trustee, receiver or other representative of any of them, any amounts previously paid by Guarantor pursuant to this Guaranty, this Guaranty shall be deemed reinstated to the extent of that repayment made by Landlord as though such original amount was never paid. Landlord shall not be required to litigate or otherwise dispute its obligation to make such repayments if, in good faith and on the advice of counsel, Landlord believes that such obligation exists. Nothing herein contained is intended or shall be construed to give to Guarantor any right of subrogation under the Lease or any right to participate in any way therein or in Landlord's right, title and interest in the Lease. Notwithstanding any payments made under this Guaranty, all rights of subrogation and participation are expressly subrogated by Guarantor to Landlord's rights hereunder.

10. No delay on the part of Landlord in exercising any right, power or privilege under this Guaranty, nor any failure to exercise the same, shall operate as a waiver of, or otherwise affect, any right, power or privilege of Landlord under this Guaranty, nor shall any single or partial exercise thereof preclude the further exercise of, or the exercise of any other, right, power or privilege of Landlord under this Guaranty.

11. The validity and enforcement of this Guaranty shall be governed by and construed in accordance with the internal laws of the State in which the Premises (as defined in the Lease) are located without regard to principles of conflicts of laws, and such laws shall apply in any action or proceeding arising out of or under this Guaranty.

12. All remedies afforded to Landlord by reason of this Guaranty are separate and cumulative remedies and it is agreed that no one remedy, whether exercised by Landlord or not, shall be deemed to be exclusion of any other remedy available to Landlord and shall not limit or prejudice any other legal or equitable remedy which Landlord may have.

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

14. Guarantor hereby irrevocably:

(a) submits to the jurisdiction of the state courts of the state in which the Shopping Center is located and to the jurisdiction of the United States District Court in which the Shopping Center is located, for the purposes of each and every suit, action or other proceeding arising out of or based upon this Guaranty or the subject

matter hereof brought by Landlord, it being expressly understood and agreed that this consent to jurisdiction shall be self-operative and no further instrument or action, other than service of process in one of the manners specified in this Guaranty or as otherwise permitted by law, shall be necessary in order to confer jurisdiction upon Guarantor in any such court; and

(b) waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding brought in any such court, any claim that Guarantor is not subject personally to the jurisdiction of the above named courts, that Guarantor's property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court, and further agrees to waive, to the fullest extent permitted under applicable law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which Landlord or its successors or assigns are entitled pursuant to the final judgment of any court having jurisdiction; and

(c) consents to service of process by certified or registered mail at Guarantor's address as set forth herein, or in any other manner permitted by law, service in the foregoing manner to be deemed, in every respect, effective service of process upon Guarantor and be taken and held to be valid personal service upon, and personal delivery to, Guarantor. Guarantor agrees that Guarantor's submission to jurisdiction and consent to service of process by mail is made for the express benefit of Landlord.

The headings of sections or paragraphs in this Guaranty are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof. As used in this Guaranty, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable where the context so requires. If this Guaranty is executed by more than one person or entity, then references to "Guarantor" herein shall be deemed to refer to each such person or entity, and the liability of each such person or entity shall be joint and several, and the release by Landlord of any of them shall not release or affect in any manner the obligations of any other of them, and this Guaranty shall not be revoked, discharged or impaired as to any such persons or entities by reason of the death or incapacity or insolvency of any other of them. All payments to be made hereunder shall be made in currency and coin of the United States of America which is legal tender for public and private debts at the time of payment. This Guaranty constitutes the entire agreement between Guarantor and Landlord with respect to the subject matter hereof and supersedes all prior such agreements and understandings, both written and oral. If this Guaranty is executed in several counterparts, each of those counterparts shall be deemed an original, and all of them together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty as of the day and year first above written.

**GUARANTOR:**

SD-Missouri, LLC, a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
                  ) ss  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public, in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_, the \_\_\_\_\_ of SD-Missouri, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act and deed and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

My Commission Expires: \_\_\_\_\_

Notary Public: \_\_\_\_\_

**EXHIBIT F-1**

**PROHIBITED USES**

Tenant shall not violate any of the following Prohibited Uses:

1. Funeral establishment;
2. Automobile sale, leasing, repair or display establishment or used car lot, including body repair facilities;
3. Auction or bankruptcy sale;
4. Pawn shop;
5. Outdoor circus, carnival or amusement park, or other entertainment facility;
6. Outdoor meetings;
7. Bowling alley;
8. Primarily pool or billiard establishment;
9. Shooting gallery;
10. Off-track betting (provided that state sponsored lottery tickets shall not be prohibited);
11. Refinery;
12. Adult bookstore or facility selling or displaying or selling access to pornographic books, literature, websites or videotapes (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality), massage parlor (not to include therapeutic massage clinics such as Massage Envy, Heavenly Massage, day spas or chiropractic clinics), steam bath, nude modeling, establishment with nude or semi-nude waiters, waitresses or entertainers;
13. Any residential use, including, but not limited to living quarters, sleeping apartments or lodging rooms;
14. Theater including, but not limited to, an X-rated theater;
15. Auditorium, meeting hall, ballroom, school, educational facilities (including, but not limited to, beauty schools, barber colleges, reading rooms or libraries, or other place of public assembly);
16. Unemployment agency, service or commission;
17. Gymnasium, health club, exercise or dance studio;
18. Dance hall;
19. Cocktail lounge, bar, disco or night club;
20. Bingo or similar games of chance, but lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business;
21. Video game or amusement arcade, except as an incidental part of another primary business;
22. So called "head shop" which sells drug paraphernalia;
23. Skating or roller rink;
24. Car wash, car repair or car rental agency;
25. Second hand store, auction house, or flea market, Army/Navy-type store or governmental surplus;
26. Drive-in or drive-through restaurants;
27. Non-retail use;
28. Any other uses which conflict with the uses of existing tenants; or
29. Tenant may not install an Automatic Teller Machine in or on the Premises without the express written consent of Landlord which consent Landlord may deny in its sole discretion.

**EXHIBIT F-2**

**SHOPPING CENTER EXCLUSIVES AND RESTRICTIONS**

Tenant shall not violate any of the Exclusives and Restrictions granted by Landlord to other parties and occupants of the Shopping Center as redacted below or as otherwise contained in any documents of record. Defined terms and references to sections and exhibits shall correspond to those in the respective lease or governing document.

**AMENDED AND RESTATED CROSS EASEMENT AGREEMENT AND DECLARATION OF RESTRICTIONS FOR Sycamore Commons dtd. 10/31/01 (Original Developer, Developer, Lowe's and Costco)**

Article VI, Section 5, Use Restrictions. No Tract shall be used, in whole or in part, for any of the following purposes:

- (a) Warehouse and/or storage uses (excluding storage for retail purposes within an enclosed building and incidental to the retail use conducted within such building) or for any manufacturing, distilling, refining, smelting, agricultural or mining operation (provided that this restriction shall not be construed to limit or restrict the operation on the Lowe's Property of a Lowe's store consistent with the operation of other Lowe's stores in the Charlotte, North Carolina, area or the operation on the Costco Property of a Costco store);
- (b) "Secondhand" store whose principal business is selling used merchandise, thrift shops, salvation army type stores, "goodwill" type stores and similar businesses and retail operations;
- (c) Mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance of improvements or the use of trailers as permitted in Section 3(c) of Article I herein);
- (d) Dumping, disposing, incinerating or reducing of garbage (exclusive of dumpsters for the temporary storage of garbage and any garbage compactors, provided (i) the locations of such dumpsters and/or garbage compactors shall be reasonably approved in advance by Developer and (ii) such facilities shall be regularly emptied so as to minimize offensive odors);
- (e) Fire, going out of business, relocation, bankruptcy or similar sales (unless pursuant to court order);
- (f) Central laundry, dry cleaning plant or laundromat; provided, however, this restriction shall not be construed to prevent on-site pickup and delivery by consumers in connection with laundry or dry cleaning businesses, provided that no on-site cleaning or processing activities are conducted on the Property;
- (g) Selling or leasing new or used automobiles, trucks, trailers or recreational vehicles; provided, however, this restriction shall not be construed to limit or restrict Costco's ability to display up to 5 vehicles on the Costco Property at locations such that the displayed vehicles do not obstruct the view of the signage on the Lowe's Building from the East-West Connector (as shown on the Site Plan);
- (h) Any bowling alley, skating rink or bar (unless such bar is part of a sit down Restaurant for which the sale of alcoholic beverages comprises less than fifty percent (50%) of said Restaurant's gross revenue),

dance hall, discotheque, night club, amusement gallery [unless such amusement gallery is incidental to and contained entirely within a cinema or movie theatre or a Chuck E. Cheese's, Jumpyard, Discovery Zone, lillian's or similar amusement center (as and to the extent any of such uses may be approved by Developer pursuant to the terms of this Agreement)], gymnasium or video game room [unless such video game room is incidental to and contained entirely within a cinema or movie theatre or a Chuck E. Cheese's, Jumpyard, Discovery Zone, lillian's or similar amusement center (as and to the extent any of such uses may be approved by Developer pursuant to the terms of this Agreement)] or off-track betting parlor; provided, however, in no event shall this restriction prevent the operation of a bar or private club on the Developer Property (including, without limitation, any Outparcel) if and to the extent such use has been approved in writing by Developer; provided, further, Developer hereby covenants that it shall not permit any such use in any building located within 100 feet of the Costco Property without the consent of Costco, such consent not to be unreasonably withheld;

(i) Veterinary hospital or animal raising or boarding facilities (except that this restriction shall not be deemed to preclude the retail operation of pet shops or pet supply stores, including, without limitation, a "PetsMart");

(j) Funeral home or mortuary;

(k) Any adult book store or establishment selling, displaying or exhibiting pornographic materials or materials depicting lewd and lascivious acts. As used herein, an "adult book store or establishment selling, displaying or exhibiting pornographic materials or materials depicting lewd and lascivious acts" shall include, without limitation, a store displaying for sale or exhibit books, magazines or other publications containing any combination of photographs, drawing, or sketches of a sexual nature which are not primarily scientific or educational (collectively, "Sex Magazines") (it being acknowledged, however, that "Playboy," "Playgirl," and "Penthouse" are not deemed to be Sex Magazines), or a store offering for exhibition, sale or retail video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which is pornographic; provided that the foregoing shall not be deemed to prohibit the sale or rental of video tapes of adult nature so long as such sale or rental is incidental to the operation of a mainstream, full line, family-oriented video store or video department within a store and provided same are not openly displayed and are access controlled, and provided that the foregoing shall not be deemed to prohibit the operation of a movie theater (to the extent the same is otherwise permitted in accordance with the terms of this Agreement) so long as such theater shows films commonly shown by national or regional movie theater chains and is not operated as what is commonly referred to as an "adult movie theatre";

(l) Any establishment which stocks, displays, sells, rents or offers for sale or rent any merchandise or material commonly used or intended for use with or in consumption of any narcotic, dangerous drug or other controlled substance, including, without limitation, any hashish pipe, waterpipe, bong, cilium, pipe screens, rolling papers, rolling devices, coke spoons or roach clips;

(m) Flea market;

(n) Car wash (unless ancillary to the operation of a convenience store or motor fuel facility); provided, however, such car wash shall not materially, adversely affect the water service provided to the remainder of the Project;

(o) Operation whose principal use is a massage parlor (provided this restriction shall not prohibit massages in connection with a salon, health club or athletic facility);

(p) Living quarters, sleeping apartments or lodging rooms, except as may be approved by Developer in Developer's sole and absolute discretion; provided, however, Developer hereby covenants that it shall not permit any such use in any building located within 100 feet of the Costco Property without the consent of Costco, such consent not to be unreasonably withheld;

(q) Tattoo parlor;

(r) Church, school or related religious or educational facility (exclusive of a Sylvan Learning Center or Hammett's Learning World or similar retail learning facility or day care center) or religious reading room; provided, however, Developer hereby covenants that it shall not permit any such use (otherwise permitted hereunder) within 150 feet of the Costco Property without the consent of Costco;

(s) Automotive service and repair facility, except as may be approved by Developer in Developer's sole and absolute discretion; provided, however, such restriction shall not preclude Costco from operating a Costco tire center on the Costco Property;

(t) General or professional office facility, except for insurance or travel agencies, finance companies, dental or medical clinics, and other than Developer's office located on the Property and used for the purposes of managing the Project and any office used by any other Owner or tenant so long as any such office is incidental to such Owner's or tenant's use of any portion of the Project;

(u) Cinema or movie theater, except as may be approved by Developer in Developer's sole and absolute discretion; provided, however, Developer hereby covenants that it shall not permit any such use in any building located within 100 feet of the Costco Property without the consent of Costco, such consent not to be unreasonably withheld

(v) Sidewalk sales or special promotions (except as may be approved by Developer in Developer's sole and absolute discretion), inventory storage, do-it-yourself or demonstration areas or for the sale or display of any merchandise or for any other business, occupation or undertaking outside of any building in the Project (provided that this restriction shall not be construed to limit or restrict do-it-yourself or demonstration activities, sidewalk sales, special promotions or the sale or display of certain merchandise outside of a building on the Lowe's Property or the Costco Property, if and to the extent such uses and/or activities are a part of the operation of a Lowe's store or Costco store, Costco tire center, Costco fuel dispensing facility, including the display by Costco of up to 5 vehicles);

(w) Operation (i) of a supermarket, warehouse supermarket, supercenter or combination store, or the operation of any of the foregoing within a larger department store or other store, (ii) of a store for the sale (for consumption away from the premises on which they are sold) of canned goods, groceries, fresh vegetables, fresh fruits, dairy products, frozen foods, fish, fowl or meat, or the sale of any combination of the foregoing; provided, however, nonperishable items (as such term is defined in the retail supermarket business) may be sold by an Owner or tenant of space in the Project to the extent that the floor space devoted to the sale of such items does not, in the aggregate, exceed ten percent (10%) of the gross floor area in such Owner's or tenant's building or space (as the case may be); and provided, further, the incidental sale of prepackaged gourmet foods and snacks shall be permitted [provided that the floor space devoted to the sale of such items does not, in the aggregate, exceed twenty-five percent (25%) of the gross floor area in such Owner's or tenant's building or premises (as the case may be)], or (iii) of a food store or grocery store. Notwithstanding the foregoing provisions of this Section 5(w) to the contrary, Developer shall be entitled to designate, in Developer's sole and absolute discretion, one (1) portion or Tract of the Project for use as one (1) "Costco" warehouse store or similar membership warehouse store (but not a "supercenter" format store such as a "Wal-Mart Supercenter" or a "Super K-Mart"), except that one (1) "supercenter" format store (such as a "Wal-Mart Supercenter" or a "Super K-Mart") may be constructed and operated upon the Lowe's Property at anytime after January 17, 2002. In addition to any other parties (including, but not limited to, the parties to this Agreement) that may have the right under this Agreement to enforce the restrictions provided in this Section 5(w), Boney Wilson & Sons, Inc. ("Boney Wilson") and its successors and assigns relative to that certain lease agreement between Matthews Corners Associates, Limited Partnership, as landlord, and Boney Wilson, as tenant, dated November 6, 1995 (the "Hannaford's Lease"), shall be entitled to enforce the restrictions provided in this Section 5(w) in a suit or action brought in any court of competent jurisdiction. Additionally, during the term of the Hannaford's Lease, the provisions of this Section 5(w) shall not be amendable except with the specific joinder and consent of the then-current tenant under the Hannaford's Lease; or

(x) Strip clubs.

Notwithstanding the foregoing to the contrary, the following uses shall not be permitted in any building on Tract P or within two hundred fifty (250) feet of the Lowe's Building or in any building within one hundred (100) feet of the Costco Property: Chuck E. Cheese's, Jumpyard, Discovery Zone, Jillian's or a similar amusement center; a bar or private club; massage parlor, salon, health club or athletic facility; living quarters, sleeping apartments or lodging rooms; a Sylvan Learning Center, Hammett's Learning World or a similar retail learning facility or day care center; a religious reading room; an automotive service and repair facility (other than the Costco tire center); a general or professional office facility (including, without limitation, insurance or travel agencies, finance companies, dental or medical clinics) (except that Developer's property management office located on the Property and any office used by any other Owner or tenant shall be permitted in any location on the Property so long as any such office is incidental to such Owner's or tenant's use of such portion of the Property). Additionally, no cinema or movie theater shall be permitted to operate within the portion of the Project located on the southwestern side of the Creek.

Article VII, Section 1, Lowe's Use Restrictions. In addition to the restrictions provided in Article VI herein, no portion of the Developer Property (including the Outparcels) may be used for the following purposes (provided that such restrictions shall only apply for a period of time not to exceed one (1) year after the Lowe's Property is no longer used by Lowe's as a retail and/or warehouse home improvement center, home improvement service center, lumber yard or building materials supply center):

- (a) A hardware store containing more than 5,000 square feet;
- (b) An appliance store and/or home electronics store containing more than 5,000 square feet [except that Developer shall be entitled to designate, in Developer's sole and absolute discretion, one (1) portion or Tract of the Project for use as an electronics "superstore" (e.g., a "Best Buy," "Circuit City" or similar store concept) that may exceed 5,000 square feet in size];
- (c) A lawn and garden store containing more than 3,000 square feet;
- (d) A paint and/or decor center containing more than 5,000 square feet; or
- (e) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center or other store or center similar to those operated by Lowe's, Home Depot, Home Owner's Warehouse, Home Quarters, Hechinger's, Builders Square, 84 Lumber, Wickes, Hughes Lumber, McCoys, Home Base, Eagle, Menard's, Sears Hardware, Sutherlands, Orchard Supply or Payless Cashways.

The restrictions or exclusive rights in this Section 1 also shall apply to prohibit a larger business from having space in its store devoted to selling the merchandise described in subparagraphs (a) through (d) above in this Section 1 when the space devoted to the sale of such items exceeds the limitations of such subparagraphs (a) through (d).

Subject to the restrictions above in this Section 1, Developer reserves the right to subdivide, convey, lease or assign the Developer Property (including the Outparcels) or any portion(s) thereof through any means, including, but limited to, subdivision, lease, ground lease, condominium declaration or airlot condominium declaration.

Notwithstanding the foregoing, the restrictions in this Section 1 shall not apply to the Costco Property.

**SUPPLEMENTAL AGREEMENT TO AMENDED AND RESTATED CROSS EASEMENT AGREEMENT AND DECLARATION OF RESTRICTIONS FOR Sycamore Commons dtd. 7/22/02 (Inland, Costco and Matthews)**

8. Costco's Exclusive.

(a) At such time as Costco's exclusive may become effective pursuant to the provisions of Subsection 8(b) below, Inland and Matthews shall not thereafter lease, rent or occupy or permit any other premises in Inland Property or the Matthews Outparcels, respectively, to be occupied, whether by a tenant, sublessee, assignee, licensee

or other occupant or itself, for the operation of a membership warehouse business similar to the business operated by Costco Wholesale Corporation d/b/a Costco Corporation (the "Exclusive Use"). Notwithstanding the foregoing, any tenant or subtenant in the Inland Property or the Matthews Outparcels shall have the right to utilize its respective premises for the operation of the Exclusive Use if Costco has ceased, other than as the result of a casualty, condemnation or events of force majeure, using the Costco Building for the Exclusive Use. At such time as Costco's exclusive becomes effective pursuant to the provisions of Subsection 8(b) hereof, then existing tenants of the Inland Property and the Matthews Outparcels (and current or future assignees or sublessees of such tenants) shall nevertheless be subject to the restrictions contained in this Subsection 8(a) if and to the extent that: (i) the lease between Inland or Matthews and any such tenant requires Inland's or Matthew's consent to any assignment or subletting or to a change in the use of the applicable premises to permit the operation of the Exclusive Use; or (ii) Inland's or Matthews' consent is required for an expansion of the applicable premises for the operation of the Exclusive Use.

(b) Notwithstanding anything contained in this Section 8 to the contrary, the foregoing exclusive rights granted to Costco (as provided in Subsection 8(a) above) shall not be in effect unless and until Inland or Matthews grants an exclusive right, restrictive covenant or other similar agreement to display and/or sell designated types or categories of merchandise or services to an existing or future tenant or occupant of the Inland Property and the Matthews Outparcels (excluding Lowe's, Hannaford's and any tenants or occupants of the Project occupying less than 10,000 square feet of Gross Building Area) and at the time the same shall become so effective, Costco's exclusive shall be applicable to leases entered into by Inland and Matthews from and after the date the exclusive becomes applicable, except as set forth in Subsection 8(a) above.

9. Exclusives in General. From and after the date hereof, Inland, Costco and Matthews each hereby agree that, with respect to their individual Tracts, they shall not grant any exclusive right, restrictive covenant or other similar agreement to display and/or sell designated types or categories of merchandise or services to an existing or future tenant or occupant of the Project, such that the granting of such exclusive use provision shall trigger the "springing" exclusive use provision of Costco, as described Section 8 hereof, or of the tenants pursuant to leases described on Exhibit "E", attached hereto and by this reference made a part hereof. Subject to the rights of existing tenants that have a memorandum of lease recorded prior to the date hereof, Inland, Costco and Matthews each hereby agree that they shall not enter into any new lease after the date hereof which grants an exclusive right which affects any Tract other than their own Tract.

Michael's

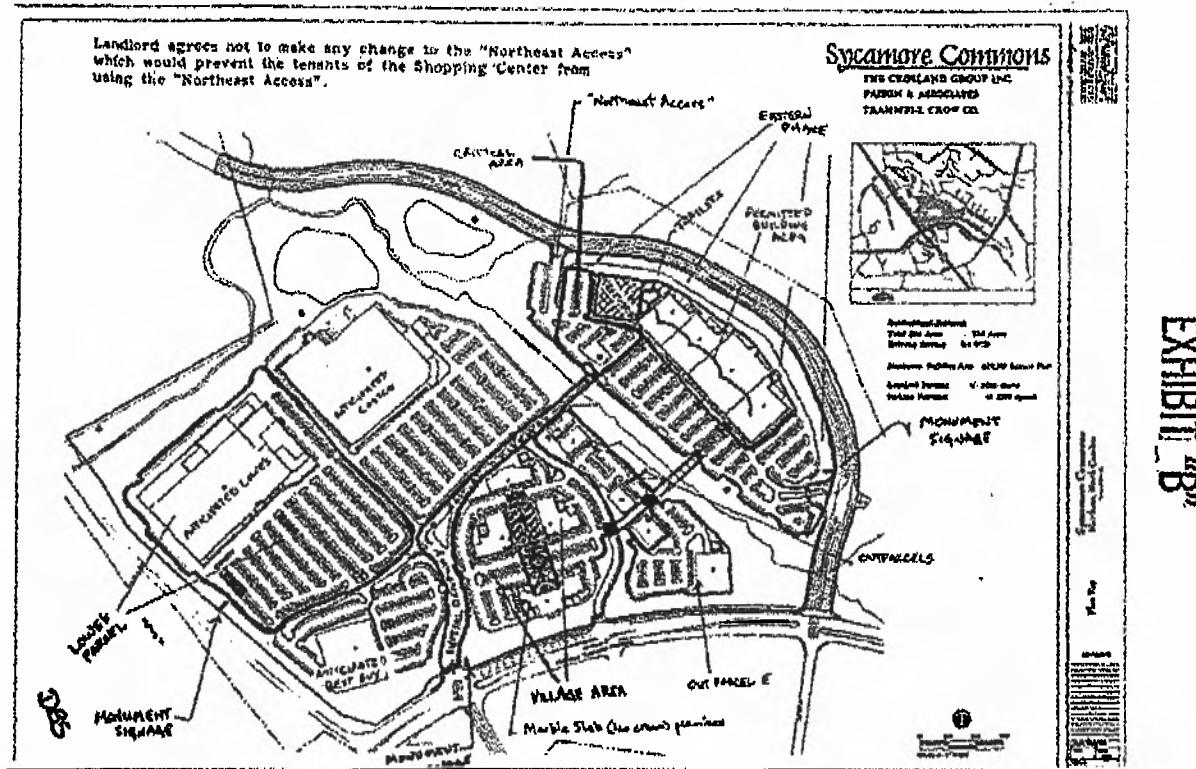
Exclusive:

16.4.1 Limitation on Use. Landlord hereby represents and warrants to Tenant that Landlord has not granted any "exclusive" to any other lessee or occupant of the Shopping Center (other than Lowe's). If Landlord's representation or warranty in the preceding sentence is untrue, or if Landlord in the future, grants any exclusive to any existing or future lessee or occupant of the Shopping Center (other than Lowe's and "Marble Slab" as shown on Exhibit B of this Lease), then Landlord shall immediately grant "Tenant's Exclusive" (below defined) to Tenant, and cause Tenant's Exclusive to be placed of record to run with the land during the remainder of the Lease Term, including any Extensions exercised by Tenant. The date on which Landlord grants any other lessee or occupant of the Shopping Center (other than Lowe's) an exclusive shall be deemed the "Exclusive Commencement Date". The term "Tenant's Exclusive" shall mean that from and after the Exclusive Commencement Date, neither Landlord nor any entity controlled by Landlord will enter into a direct lease or occupancy agreement, for any portion of the Shopping Center or any property contiguous to the Shopping Center owned by or controlled now or at any time hereafter by Landlord or any affiliate of Landlord, to (i) any store which devotes more than the lesser of (a) 1,000 Leasable Square Feet or (b) ten percent (10%) of the total Leasable Square Feet in the aggregate (including properly allocable space) within its premises to the sale or display of arts and crafts, art supplies, craft supplies, picture frames, artificial flowers, artificial floral arrangements, wedding (except apparel) or party goods (the "Protected Items"), or (b) any store similar to Tenant in operation or merchandising (including by way of example, but not limited to, Garden Ridge, A.C. Moore, Ben Franklin, Joanne Fabrics, Joanne, Etc., Hobby Lobby, Old America, Waccamaw/Home Place, Pat Catans, MJDesigns, and Ross (to the extent Ross devotes more than 1,500 Leasable Square Feet in the aggregate (including properly allocable space) within its premises to the sale or display of any of the Protected Items), or (c) any store rendering custom framing services (it being the intention that no other lessee or

occupant who has entered into a direct lease or occupancy agreement with Landlord or any affiliate of Landlord will be permitted to render custom framing services). Notwithstanding the foregoing, Tenant will acknowledge that the operation of a first class "Art Gallery" within the Shopping Center shall not be deemed in violation of Tenant's Exclusive if such "Art Gallery" arranges for a sold painting exclusively displayed at such "Art Gallery to be delivered to a third party for custom framing purposes but in no event shall such complimentary service offered to its customers be more than an ancillary portion of its business or be for a profit.

**Restrictions:**

16.5 Prohibited Uses. Neither Tenant nor its sublessees, assignees, licensees, or concessionaires will use or lease (or permit the use, lease or sublease of) the Premises or any portion thereof during the Lease Term allowing for use as any of the Prohibited Uses set forth on Exhibit J to this Lease. Neither Landlord nor any entity controlled by Landlord will use or lease (or permit the use, lease or sublease of) or sell any space in or portion of the Shopping Center during the Lease Term allowing for use as any of the Prohibited Uses set forth on Exhibit J to this Lease.



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**EXHIBIT J – (deleted and substituted in First Amendment)**

### First Amendment

2. Exhibit J of the Lease. Exhibit J of the Lease shall be deleted and Annex A of this First Amendment shall be substituted therefore. From and after the Effective Date, all references in the Lease to Exhibit J shall be deemed to refer to Annex A of this First Amendment.

## Annex "A"

EXHIBIT J  
TO  
SHOPPING CENTER LEASE

BETWEEN  
MATTHEWS MARKET, LLC  
AND  
MICHAEL'S STORES, INC.

PROHIBITED USES

The attached list consisting of three (3) page, in addition to being subject to the prohibited uses set forth on the following three (3) pages, and except to the extent that any such uses are not prohibited within the applicable spaces under the terms of those certain leases with Dick's Sporting Goods, Inc. ("Dick's") and Cost Plus, Inc. ("World Market") for space within the Eastern Phase of the Shopping Center which have fully executed prior to the Effective Date of the Lease, in no event shall (i) any restaurant use be permitted in the Eastern Phase of the Shopping Center shown on Exhibit B of the Lease within 200' of the perimeter of the Premises; (ii) any theater be permitted in the Eastern Phase of the Shopping Center; (iii) any health club/fitness center be permitted in the Eastern Phase of the Shopping Center; or (iv) any non-retail use be permitted in the Eastern Phase of the Shopping Center. With respect to those certain leases with Dick's and World Market for space within the Eastern Phase of the Shopping Center which have been fully executed prior to the Effective Date, Landlord agrees to use commercially reasonable efforts to enforce the prohibited uses set forth in (i) through (iv) hereinabove to the extent the language of said leases and/or the REA prohibit same (it being understood that this agreement by Landlord shall not require Landlord to recapture any of such spaces).

EXHIBIT J  
PROHIBITED USES

No portion of the Shopping Center shall be used, in whole or in part, for any of the following purposes:

- (a) Warehouse and/or storage uses (excluding storage for retail purposes within an enclosed building and incidental to the retail use conducted within such building) or for any manufacturing, distilling, refining, smelting, agricultural or mining operation (provided that this restriction shall not be construed to limit or restrict the operation on the Lowe's Property of a Lowe's store consistent with the operation of other Lowe's stores in Charlotte, North Carolina, area or the operation on the Costco Property of a Costco store);
- (b) "Secondhand" store whose principal business is selling used merchandise, thrift shops, salvation army type stores, "goodwill" type store and similar business and retail operations;
- (c) Mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance of Improvements or the use of trailers as permitted in Section 3(c) of Article I herein);
- (d) Dumping disposing, incinerating or reducing of garbage (exclusive of dumpsters for the temporary storage of garbage and any garbage compactors, provided (i) the locations of such dumpsters and/or garbage compactors shall be reasonably approved in advance by Landlord and (ii) such facilities shall be regularly emptied so as to minimize offensive odors);
- (e) Fire, going out of business, relocation, bankruptcy or similar sales (unless pursuant to court order);
- (f) Central laundry, dry cleaning plant or Laundromat; provided, however, this restriction shall not be construed to prevent on-site pickup and delivery by consumers in connection with laundry or dry cleaning businesses, provided that no on-site cleaning or processing activities are conducted on the Shopping Center property;
- (g) Selling or leasing new or used automobiles, trucks, trailers or recreational vehicles; provided, however, this restriction shall not be construed to limit or restrict Costco's ability to display up to five (5) vehicles on the Costco Property at locations such that the displayed vehicles do not obstruct the view of the signage on the Lowe's Building from the East-West Connector (as shown on the Site Plan);

- (h) Any bowling alley, skating rink or bar (unless such bar is part of a sit down restaurant for which the sale of alcoholic beverages comprises less than fifty percent (50%) of said restaurant's gross revenue), dance hall, discotheque, night club, amusement gallery (unless such amusement gallery is incidental to and contained entirely within a cinema or movie theatre or a Chuck E. Cheese's, Jumpyard, Discovery Zone, Jillian's or similar amusement center (as and to the extent any such uses may be approved by Landlord)), gymnasium or video game room [unless such video game room is incidental to and contained entirely within a cinema or movie theatre or a Chuck E. Cheese's, Jumpyard, Discovery Zone, Jillian's or similar amusement center (as and to the extent any such uses may be approved by Landlord)], or off-track betting parlor; provided, however, in no event shall this restriction prevent the operation of a bar or private club if an to the extent such use has been approved in writing by Landlord;
- (i) Veterinary hospital or animal raising or boarding facilities (except that this restriction shall not be deemed to preclude the retail operation of pet shops or pet supply stores, including, without limitation, a "PetsMart");
- (j) Funeral home or mortuary;
- (k) Any adult book store or establishment selling, displaying or exhibiting pornographic materials or materials depicting lewd and lascivious acts. As used herein, an "adult book store or establishment selling, displaying or exhibiting pornographic materials or materials depicting lewd and lascivious acts" shall include, without limitation a store displaying for sale or exhibit books, magazines or other publications containing any combination of photographs, drawing, or sketches of a sexual nature which are not primarily scientific or educational (collectively, "Sex Magazines") (it being acknowledged, however, that "Playboy," Playgirl," and "Penthouse" are not deemed to be Sex Magazines), or a store offering for exhibition, sale or retail video cassettes or other medium capable or projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which is pornographic; provided that the foregoing shall not be deemed to prohibit the sale or rental of video tapes of adult nature so long as such sale or rental is incidental to the operation of a mainstream, full line, family-oriented video store or video department within a store and provided same are not openly displayed and are access controlled, and provided that the foregoing shall not be deemed to prohibit the operation of a movie theater so long as such theater shows films commonly shown by national or regional movie theater chains and is not operated as what is commonly referred to as an "adult movie theatre";
- (l) Any establishment which stocks, displays, sells, rents or offers for sale or rent any merchandise or material commonly used or intended for use with or in consumption of any narcotic, dangerous drug or other controlled substance, including, without limitation, any hashish pipe, waterpipe, bong, cilium pipe screens, rolling papers, rolling devices, coke spoons or roach clips;
- (m) Flea market;
- (n) Car wash (unless ancillary to the operation of a convenience store or motor fuel facility);
- (o) Operation whose principal use is a massage parlor (provided this restriction shall not prohibit massages in connection with a salon, health club or athletic facility);
- (p) Living quarters, sleeping apartments or lodging rooms, except as may be approved by Landlord in Landlord's sole and absolute discretion;
- (q) Tattoo parlor;
- (r) Church, school or related religious or educational facility (exclusive of a Sylvan Learning Center or Hammett's Learning World or similar retail learning facility or day care center) or religious reading room;
- (s) Automotive service and repair facility, except as may be approved by Landlord in Landlord's sole and absolute discretion; provided, however, such restriction shall not preclude Costco from operating a Costco tire center on the Costco Property;
- (t) General or professional office facility, except for insurance or travel agencies, finance companies, dental or medical clinics, and other than Landlord's office located on the property and used for the purposes of managing the

Shopping Center and any office sued by any other owner or tenant so long as any such office is incidental to such owner's or tenant's use of any portion of the Shopping Center;

(u) Cinema or movie theatre, except as may be approved by Landlord in Landlord's sole and absolute discretion;

(v) Sidewalk sales or special promotions (except as may be approved by Landlord in Landlord's sole and absolute discretion), inventory storage, do-it-yourself or demonstration areas or for the sale or display of any merchandise or for any other business, occupation or undertaking outside of any building in the Project (provided that this restriction shall not be construed to limit or restrict do-it-yourself or demonstration activities, sidewalk sales, special promotions or the sale or display of certain merchandise outside of a building on the Lowe's Property or Costco Property, if and to the extent such uses and/or activities are a part of the operation of a Lowe's store or Costco store, Costco tire center, Costco fuel dispensing facility, including the display by Costco of up to 5 vehicles);

(w) Strip clubs.

#### Cost Plus

Exclusive: None

Restrictions: Tenant has entered into this Lease in reliance upon representations by Landlord that the Shopping Center is and will remain retail in character (including retail service uses such as a travel agency, insurance agency, bank or dry cleaners), and, further, that no part of Phase 1 of the Shopping Center (as shown on the Site Plan) shall be used for office (other than as incidental to a retail use) or residential purposes or as a theater, auditorium, meeting hall, school, church or other place of public assembly, "flea market," gymnasium and/or health club (unless located at least 250 feet from the Store), dance hall, billiard or pool hall (other than as incidental to another primary use or in connection with a restaurant use), massage parlor, video game arcade (other than as incidental to another primary use), bowling alley, skating rink, car wash, facility for the sale, leasing or repair of motor vehicles, night club or adult book or adult video store (which are defined as stores at least twenty-five percent (25%) of the inventory of which is not available for sale or rental to children under 15 years old because such inventory explicitly deals with or depicts human sexuality). No restaurant in excess of 5,000 square feet shall be permitted in Phase 1 of the Shopping Center within two hundred fifty (250) feet of the Store without the prior written consent of Tenant. Delicatessens, cookie stores and ice cream stores shall not be considered restaurants.

#### Bed Bath & Beyond

Exclusive: At such times as Tenant's exclusive may become effective pursuant to the provisions of Subsection 13.2.5 hereof, Landlord shall not thereafter lease, rent or occupy or permit any other premises in the Shopping Center to be occupied, whether by a tenant, sublessee, assignee, licensee or other occupant or itself, for the sale, rental or distribution, either singly or in any combination, of items contained in any of the following respective categories of merchandise: (a) linens and domestics; (b) bathroom items; (c) housewares; (d) frames and wall art; (e) window treatments; and/or (f) closet, shelving and storage items (which item, either singly or in any combination, are hereinafter referred to as the "Exclusive Items"). Notwithstanding the foregoing, any tenant or subtenant in the Shopping Center shall have the right to utilize its respective premises for the sale, rental and/or distribution of one or more of the categories of Exclusive Items set forth in subparagraphs (a) through (f) above: (a) if Tenant has ceased, for a period in excess of nine (9) months (other than Excused Periods, as defined in Section 1.1.9 above), using portions of the Premises for the sale, rental and/or distribution of any particular category of Exclusive Items (and such other tenant or subtenant's sale, rental and/or distribution of Exclusive Items shall be limited to the category of Excluded Items which Tenant has ceased selling renting and/or distributing), and (b) within an aggregate area (which shall include an allocable portion of the aisle space adjacent to such sales, rental and/or distribution area) not to exceed the lesser of (x) five percent (5%) of the Floor Area of such tenant's or subtenant's premises, or (y) two thousand (2,000) square feet of Floor Area within such tenant's or subtenant's premises. [For example only, a tenant occupying premises containing a total of five thousand (5,000) square feet of Floor Area could sell Exclusive Items (either singly or in any combination) so long as the aggregate area within its entire demised premises in which any and all Exclusive Items are sold shall not exceed two hundred fifty (250) square feet.] At such time as Tenant's exclusive becomes effective pursuant to the provisions of Subsection 13.2.5 hereof, then

existing tenants of the Shopping Center (and current or future assignees or sublessees of such tenants) shall nevertheless be subject to the restrictions contained in this Section 13.2 if and to the extent that: (i) the lease between Landlord and any such tenant requires Landlord's consent to any assignment or subletting or to a change in the use of the applicable premises to permit the sale, rental or distribution of the Exclusive Items; or (ii) Landlord's consent is required for any expansion of the applicable premises for the sale, rental, or distribution of the Exclusive Items.

13.2.2 The restrictions set forth in Subsection 13.2.1 above shall not apply to a full-line national or regional department store commonly located in first-class shopping centers in the state in which the Shopping Center is located and occupying at least 100,000 square feet of Floor Area within the Shopping Center, such as, by way of example, Wal-Mart, Macy's, or Target, as such department stores are currently operated (as of the Effective Date).

13.2.5 Notwithstanding anything contained in this Section 13.2 to the contrary, the foregoing exclusive rights granted to Tenant (as provided in this Section 13.2) shall not be in effect unless and until Landlord grants an exclusive right to display and/or sell designated types or categories of merchandise or services to an existing or future tenant or occupant of the Shopping Center (excluding Lowe's and any tenants or occupants of the Shopping Center occupying less than 5,000 square feet of Floor Area).

Restrictions: 13.1.2 Prohibited Uses.

Landlord shall not lease, rent or occupy or permit any portion of the Shopping Center to be occupied (except to the extent otherwise permitted under any lease for space in the Shopping Center) for any of the "Prohibited Uses" (defined in Exhibit M hereto annexed).

Exhibit M  
Prohibited Uses

(a) As used in this Lease, the term "Prohibited Uses" shall mean any of the following uses: unlawful use; "Pornographic use" "hereinafter defined); "second -hand" or "surplus" store; laundry or dry cleaners (except that a dry cleaner that performs all dry cleaning outside the Shopping Center shall be permitted, so long as its on-site premises are located more than 150 feet away from the Premises); pawn shop; daycare center within Phase I; veterinary office (except as may be incidental to a full-line pet and pet supply store operating in at least 15,000 square feet of Floor Area located at least 150 feet away from the perimeter of the Premises); living quarters; hotel/motel; manufacturing; bowling alley; off-track betting parlor or other gambling establishment; bingo; bingo hall; funeral parlor; skating rink; nightclub, discotheque or dance hall; so-called "head shop"; catering or banquet hall; children's entertainment or activity facility within Phase I of the Shopping Center only; meeting hall auction hall; place of religious worship; sporting event; karate center within Phase I of the Shopping Center only; auditorium; warehouse; theater within Phase I of the Shopping Center only; automobile repair shop, or any business servicing motor vehicles in any respect including, without limitation, any quick lube oil change service, tire center or gasoline or service station or facility within Phase I; supermarket within Phase I of the Shopping Center only, provided, however, the term "Prohibited Uses" shall not mean to include "gourmet supermarkets", such as "Trader Joe's" and operations similar thereto; restaurant serving meals for on or off premises consumption within 250 feet of the Premises (except that (i) a "coffee bar" and/or a restaurant, not to exceed 5,000 square feet of Floor Area in the aggregate, shall be permitted to be located within the Premises, and (ii) up to two restaurant(s), each occupying up to 2,500 square feet of Floor Area individually, shall be permitted within said 250-foot radius, but outside of a radius of 150 feet from the Premises); beauty parlor and/or nail salon within Phase I of the Shopping Center only; billiard parlor or pool hall (except as may be incidental to a permitted restaurant use hereunder outside of Phase I); sales office or showroom for automobiles, boats, or other vehicles; an establishment selling alcoholic beverages for on or off-premises consumption (except as may be incidental to a permitted restaurant use); massage parlor, office [excluding office space used in connection with and ancillary to a permitted retail use hereunder]; health spa, exercise facility or similar type business within Phase I of the Shopping Center only; car wash within Phase I; a so-called "flea market"; carnival, amusement park or circus; video/pinball arcade or game room within Phase I; entertainment or educational uses (including, but not limited to Sylvan Learning in Centers or Hammet's Learning World][ within Phase I of the Shopping Center only; any use generally deemed to

be "obnoxious or a nuisance" (hereinafter defined); medical or dental clinics or offices including, but not limited to insurance offices, travel agencies and finance companies) or any other non-retail uses within Phase 1 of the Shopping Center only.

(b) As used above, the term "pornographic use" shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto. The parties hereto acknowledge and agree the sale of books, magazines and other publications by a national bookstore of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Borders and Barnes & Noble, as said stores currently operate) shall not be deemed a "pornographic use" hereunder.

(c) As used above, the term "educational uses" shall include, without limitation, a beauty school, barber school, reading room, place of instruction, or any other activity, facility, school or program. Catering primarily to students or trainees as opposed to shoppers.

(d) As used above, the term "obnoxious or a nuisance" shall include, without limitation, a use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse.

#### **Dick's Sporting Goods**

Exclusive: In the event that Landlord grants a tenant or occupant in the Shopping Center, other than (i) Lowe's Home Improvement (ii) Boney Wilson, Inc. or (iii) to a tenant or occupant in less ten thousand (10,000) square feet, an exclusive right during the original term of this Lease, then the following exclusive of Tenant shall apply. Landlord warrants and agrees that during the term of this Lease that it will not, nor will any entity under common control with Landlord, enter into any lease(s) or occupancy agreement(s) for premises situated on the Shopping Center (other than the Demised Premises), or otherwise transfer or allow a possessory interest in the Shopping Center to a tenant or occupant whose primary use (exceeding forty-five percent (45%) of the retail sales area of any such premises) shall be the sale of sporting goods and sporting equipment or athletic footwear (the "Precluded Sales Activity"). The above restriction shall not become effective if during the Extension periods Landlord grants an exclusive to another tenant in the Shopping Center, provided however in no event shall Tenant be subject to any exclusive during the term of this Lease other than as provided in the first sentence of this Section.

Restrictions: Landlord agrees that during the term of this Lease and as long as any retail sales activity shall be conducted in the Demised Premises (subject to fire and casualty, force majeure, compliance with laws, or repairs, remodeling and renovation) the Shopping Center shall not be used (i) for any of the Prohibited Uses set forth on Exhibit I or (ii) in conflict with Title Matters or OEA.

#### **Exhibit I**

#### **Prohibited Uses**

Section 1. Use Restrictions. Neither the Demised Premises nor the Shopping Center shall be used, in whole or in part, for any of the following purposes:

(a) Warehouse and/or storage uses (excluding storage for retail purposes within an enclosed building and incidental to the retail use conducted within such building) or for any manufacturing, distilling, refining, smelting, agricultural or mining operation (provided that this restriction shall not be construed to limit or restrict the operation on the Lowe's Property of a Lowe's store consistent with the operation of other Lowe's stores in the Charlotte, North Carolina area or the operation on the Costco Property of a Costco store);

- (b) "Secondhand" store whose principal business is selling used merchandise, thrift shops, salvation army type stores, "goodwill" type stores and similar businesses and retail operations;
- (c) Mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance of improvements or the use of trailers as permitted in Section 2(c) of Article of the OEA);
- (d) Dumping, disposing, incinerating or reducing of garbage (exclusive of dumpsters for the temporary storage of garbage and any garbage compactors, provided (i) the locations of such dumpsters and/or garbage compactors shall be reasonably approved in advance by Developer and (ii) such facilities shall be regularly emptied so as to minimize offensive odors);
- (e) Fire, going out of business, relocation, bankruptcy or similar sales (unless pursuant to court order);
- (f) Central laundry, dry cleaning plant or Laundromat; provided, however, this restriction shall not be construed to prevent on-site pickup and delivery by consumers in connection with laundry or dry cleaning businesses, provided that no on-site cleaning or processing activities are conducted on the Property;
- (g) Selling or leasing new or used automobiles, trucks, trailers or recreational vehicles; provided, however, this restriction shall not be construed to limit or restrict Costco's ability to display up to 5 vehicles on the Costco Property at locations such that the displayed vehicles do not obstruct the view of the signage on the Lowe's Building from the East-West Connector (as shown on the Site Plan);
- (h) Any bowling alley, skating rink, or bar (unless such bar is part of a sit down Restaurant for which the sale of alcoholic beverages comprises less than fifty percent (50%) of said Restaurant's gross revenue), dance hall, discotheque, night club, amusement gallery [unless such amusement gallery is incidental to and contained entirely within a cinema or movie theatre or a Chuck E. Cheese's, Jumpyard, Discovery Zone, Jillian's or similar amusement center (as and to the extent any of such uses may be approved by Developer pursuant to the terms of this Agreement)], gymnasium or video game room [unless such video game room is incidental to and contained entirely within a cinema or movie theatre or a Chuck E. Cheese's, Jumpyard, Discovery Zone, Jillian's or similar amusement center (as and to the extent any of such uses may be approved by Developer pursuant to the terms of this Agreement)] or off-track betting parlor; provided, however, in no event shall this restriction prevent the operation of a bar or private club on the Developer Property (including, without limitation, any Outparcel) if and to the extent such use has been approved in writing by Landlord; provided, further, Landlord hereby covenants that it shall not permit any such use in any building located within 100 feet of the Costco Property without the consent of Costco, such consent not to be unreasonably withheld;
- (i) Veterinary hospital or animal raising or boarding facilities (except that this restriction shall not be deemed to preclude the retail operation of pet shops or pet supply stores, including, without limitation, a "PetsMart");
- (j) Funeral home or mortuary;
- (k) Any adult book store or establishment selling, displaying or exhibiting pornographic materials or materials depicting lewd and lascivious acts. As used herein, an "adult book store or establishment selling, displaying or exhibiting pornographic materials or materials depicting lewd and lascivious acts" shall include, without limitation, a store displaying for sale or exhibit books, magazines or other publications containing any combination of photographs, drawing, or sketches of a sexual nature which are not primarily scientific or educational (collectively, "Sex Magazines") (it being acknowledged, however, that "Playboy," "Playgirl," and "Penthouse" are not deemed to be Sex Magazines), or a store offering for exhibition, sale or retail video cassettes or other medium capable of projecting, transmitting or reproducing,

independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which is pornographic; provided that the foregoing shall not be deemed to prohibit the sale or rental of video tapes of adult nature so long as such sale or rental is incidental to the operation of a mainstream, full line, family-oriented video store or video department within a store and provided same are not openly displayed and are access controlled, and provided that the foregoing shall not be deemed to prohibit the operation of a movie theater (to the extent the same is otherwise permitted in accordance with the terms of this Agreement) so long as such theater shows films commonly shown by national or regional movie theater chains and is not operated as what is commonly referred to as an "adult movie theatre";

(l) Any establishment which stocks, displays, sells, rents or offers for sale or rent any merchandise or material commonly used or intended for use with or in consumption of any narcotic, dangerous drug or other controlled substance, including, without limitation, any hashish pipe, waterpipe, bong, cilium, pipe screens, rolling papers, rolling devices, coke spoons or roach clips;

(m) Flea market;

(n) Car wash (unless ancillary to the operation of a convenience store or motor fuel facility); provided, however, such car wash shall not materially, adversely affect the water service provided to the remainder of the Project;

(o) Operation whose principal use is a massage parlor (provided this restriction shall not prohibit massages in connection with a salon, health club or athletic facility);

(p) Living quarters, sleeping apartments or lodging rooms, except as may be approved by Developer in Developer's sole and absolute discretion; provided, however, Landlord hereby covenants that it shall not permit any such use in any building located within 100 feet of the Costco Property without the consent of Costco, such consent not to be unreasonably withheld;

(q) Tattoo parlor;

(r) Church, school or related religious or educational facility (exclusive of a Sylvan Learning Center or Hammett's Learning World or similar retail learning facility or day care center) or religious reading room; provided, however, Landlord hereby covenants that it shall not permit any such use (otherwise permitted hereunder) within 150 feet of the Costco Property without the consent of Costco;

(s) Automotive service and repair facility, except as may be approved by Developer in Developer's sole and absolute discretion; provided, however, such restriction shall not preclude Costco from operating a Costco tire center on the Costco Property;

(t) General or professional office facility, except for insurance or travel agencies, finance companies, dental or medical clinics, and other than Developer's office located on the Property and used for the purposes of managing the Project and any office used by any other Owner or tenant so long as any such office is incidental to such Owner's or tenant's use of any portion of the Project;

(u) Cinema or movie-theater, except as may be approved by Developer in Developer's sole and absolute discretion; provided, however, Landlord hereby covenants that it shall not permit any such use in any building located within 100 feet of the Costco Property without the consent of Costco, such consent not to be unreasonably withheld;

(v) Sidewalk sales or special promotions (except as may be approved by Developer in Developer's sole and absolute discretion), inventory storage, do-it-yourself or demonstration areas or for the sale or display of any merchandise or for any other *business*, occupation or undertaking outside of any building in the Project (provided that this restriction shall not be construed to limit or restrict do-it-yourself or demonstration activities, sidewalk sales, special promotions or the sale or display of certain merchandise

outside of a building on the Lowe's Property or the Costco Property, if and to the extent such uses and/or activities are a part of the operation of a Lowe's store or Costco store, Costco tire center, Costco fuel dispensing facility, including the display by Costco of up to 5 vehicles);

(w) Operation (i) of a supermarket, warehouse supermarket, supercenter or combination store, or the operation of any of the foregoing within a larger department store or other store, (ii) of a store for the sale (for consumption away from the premises on which they are sold) of canned goods, groceries, fresh vegetables, fresh fruits, dairy products, frozen foods, fish, fowl or meat, or the sale of any combination of the foregoing; provided, however, nonperishable items (as such term is defined in the retail supermarket business) may be sold by an Owner or tenant of space in the Project to the extent that the floor space devoted to the sale of such items does not, in the aggregate, exceed ten percent (10%) of the gross floor area in such Owner's or tenant's building or space (as the case may be); and provided, further, the incidental sale of prepackaged gourmet foods and snacks shall be permitted [provided that the floor space devoted to the sale of such items does not, in the aggregate, exceed twenty-five percent (25%) of the gross floor area in such Owner's or tenant's building or premises (as the case may be)], or (iii) of a food store or grocery store. Notwithstanding the foregoing provisions of this Section 1(w) to the contrary, Developer shall be entitled to designate, in Developer's sole and absolute discretion, one (1) portion or tract of the Shopping Center Project for use as one (1) "Costco" warehouse store or similar membership warehouse store (but not a "supercenter" format store (such as a "Wal-Mart Supercenter" or a "Super K-Mart"), except that one (1) "supercenter" format store (such as a "Wal-Mart Supercenter" or a "Super K-Mart") may be constructed and operated upon the Lowe's Property at any time after January 17, 2002. In addition to any other parties (including, but not limited to, the parties of the OEA) that may have the right under this Agreement to enforce the restrictions provided in this Section 1(w), Boney Wilson & Sons, Inc. ("Boney Wilson") and its successors and assigns relative to that certain lease agreement between Matthews Comers Associates, Limited Partnership, as landlord, and Boney Wilson, as tenant, dated November 6, 1995 (the "Hannaford's Lease"), shall be entitled to enforce the restrictions provided in this Section 1(w) in a suit or action brought in any court of competent jurisdiction. Additionally, during the term of the Hannaford's Lease, the provisions of this Section 1(w) shall not be amendable except with the specific joinder and consent of the then-current tenant under the Hannaford's Lease; or

(x) Strip clubs.

Notwithstanding the foregoing to the contrary, the following uses shall not be permitted in any building on Tract P or within two hundred fifty (250) feet of the Lowe's Building or in any building within one hundred (100) feet of the Costco Property: Chuck E. Cheese's, Jumpyard, Discovery Zone, Jillian's or a similar amusement center; a bar or private club; a massage parlor, salon, health club or athletic facility; living quarters, sleeping apartments or lodging rooms; a Sylvan Learning Center, Hammett's Learning World or a similar retail learning facility or day care center; a religious reading room; an automotive service and repair facility (other than the Costco tire center); a general or professional office facility (including, without limitation, insurance or travel agencies, finance companies, dental or medical clinics) (except that Developer's property management office located on the Property and any office used by any other Owner or tenant shall be permitted in any location on the Property so long as any such office is incidental to such Owner's or tenant's use of such portion of the Property). Additionally, no cinema or movie theater shall be permitted to operate within the portion of the Project located on the southwestern side of the Creek.

Section 2. Lowe's Use Restrictions. In addition to the restrictions provided in Section 1 hereinabove, no portion of the Developer Property (including the Outparcels) may be used for the following purposes (provided that such restrictions shall only apply for a period of time not to exceed one (1) year after the Lowe's Property is no longer used by Lowe's as a retail and/or warehouse home improvement center, home improvement service center, lumber yard or building materials supply center):

- (a) A hardware store containing more than 5,000 square feet;
- (b) An appliance store and/or home electronics store containing more than 5,000 square feet [except that Landlord shall be entitled to designate, in Landlord's sole and absolute discretion, one (1) portion or tract of the Shopping Center for use as an electronics "superstore" (e.g., a Best Buy, "Circuit City" or similar store concept) that may exceed 5,000 square feet in size];

- (c) A lawn and garden store containing more than 3,000 square feet;
- (d) A paint and/or décor center containing more than 5,000 square feet; or
- (e) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center or other store or center similar to those operated by Lowe's, Home Depot, Home Owner's Warehouse, Home Quarters, Hechinger's Builders Square, 84 Lumber, Wickes, Hughes Lumber, McCoy's, Home Base, Eagle, Menard's, Sears Hardware, Sutherlands, Orchard Supply or Payless Cashways.

The restrictions or exclusive rights in this Section 2 also shall apply to prohibit a larger business from having space in its store devoted to selling the merchandise described in subparagraphs (a) through (d) above in this Section 2 when the space devoted to the sale of such items exceeds the limitations of such subparagraphs (a) through (d).

Subject to the restrictions above in this Section 2, Landlord reserves the right to subdivide, convey, lease or assign the Developer Property (including the Outparcels) or any portion(s) thereof through any means, including, but limited to, subdivision, lease, ground lease, condominium declaration or airlot condominium declaration.

The Lease is subject to the Cross Easement Agreement and Declaration of Restrictions.

#### Old Navy

Exclusive: Except as hereinafter provided, Landlord shall not operate, lease or permit any other store located in the Shopping Center or any other property owned or leased by Landlord or any affiliate of Landlord, which is within the Shopping Center (the "Restricted Area") in excess of 10,000 square feet of GLA to be used for either (i) the sale of khaki apparel in any premises in excess of 10,000 square feet, except for incidental sales in not more than 15% of the Premises (the "Denim Exclusive"); (ii) the sale of baby apparel in any premises in excess of 10,000 square feet, except for incidental sales in not more than fifteen percent (15%) of the Premises (the "Baby Exclusive"); (iii) the sale of children's apparel in any premises in excess of 15,000 square feet, except for incidental sales in not more than fifteen percent (15%) of the Premises (the "Children's Exclusive"). Collectively, they are referred to here as the "Tenant's Exclusives". Notwithstanding anything contained to the contrary in this Section 27.8, the Tenant's Exclusive shall be waived so long as Landlord does not grant any Tenant (other than Lowe's, Hannaford's and Marble Slab Creamery) an exclusive or restriction.

Restrictions: None

#### Pier 1

Exclusive: None

Restrictions: 7.4 LANDLORD, as to the portion of the Shopping Center owned or controlled by LANDLORD or any affiliates of LANDLORD, shall not lease space or permit the use of any space in the Shopping Center to be used in violation of Section 1 of the use restrictions set forth in Exhibit I attached hereto.

#### **EXHIBIT I**

#### **USE RESTRICTIONS FOR MATTHEWS MARKET**

Section 1. Use Restrictions. Neither the Demised Premises nor the Shopping Center shall be used, in whole or in part, for any of the following purposes:

- (a) Warehouse and/or storage uses (excluding storage for retail purposes within an enclosed building and incidental to the retail use conducted within such building) or for any manufacturing, distilling, refining, smelting, agricultural or mining operation (provided that this restriction shall not be

construed to limit or restrict the operation on the Lowe's Property of a Lowe's store consistent with the operation of other Lowe's stores in the Charlotte, North Carolina area or the operation on the Costco Property of a Costco store);

(b) "Secondhand" store whose principal business is selling used merchandise, thrift shops, salvation army type stores, "goodwill" type stores and similar businesses and retail operations;

(c) Mobile home park, trailer court, labor camp, junkyard or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance of improvements or the use of trailers as permitted in Section 2(c) of Article of the OEA);

(d) Dumping, disposing, incinerating or reducing of garbage (exclusive of dumpsters for the temporary storage of garbage and any garbage compactors, provided (i) the locations of such dumpsters and/or garbage compactors shall be reasonably approved in advance by Developer and (ii) such facilities shall be regularly emptied so as to minimize offensive odors);

(e) Fire, going out of business, relocation, bankruptcy or similar sales (unless pursuant to court order);

(f) Central laundry, dry cleaning plant or Laundromat; provided, however, this restriction shall not be construed to prevent on-site pickup and delivery by consumers in connection with laundry or dry cleaning businesses, provided that no on-site cleaning or processing activities are conducted on the Property;

(g) Selling or leasing new or used automobiles, trucks, trailers or recreational vehicles; provided, however, this restriction shall not be construed to limit or restrict Costco's ability to display up to 5 vehicles on the Costco Property at locations such that the displayed vehicles do not obstruct the view of the signage on the Lowe's Building from the East-West Connector (as shown on the Site Plan);

(h) Any bowling alley, skating rink, or bar (unless such bar is part of a sit down Restaurant for which the sale of alcoholic beverages comprises less than fifty percent (50%) of said Restaurant's gross revenue), dance hall, discotheque, night club, amusement gallery [unless such amusement gallery is incidental to and contained entirely within a cinema or movie theatre or a Chuck E. Cheese's, Jumpyard, Discovery Zone, Jillian's or similar amusement center (as and to the extent any of such uses may be approved by Developer pursuant to the terms of this Agreement)], gymnasium or video game room [unless such video game room is incidental to and contained entirely within a cinema or movie theatre or a Chuck E. Cheese's, Jumpyard, Discovery Zone, Jillian's or similar amusement center (as and to the extent any of such uses may be approved by Developer pursuant to the terms of this Agreement)] or off-track betting parlor; provided, however, in no event shall this restriction prevent the operation of a bar or private club on the Developer Property (including, without limitation, any Outparcel) if and to the extent such use has been approved in writing by Landlord; provided, further, Landlord hereby covenants that it shall not permit any such use in any building located within 100 feet of the Costco Property without the consent of Costco, such consent not to be unreasonably withheld;

(i) Veterinary hospital or animal raising or boarding facilities (except that this restriction shall not be deemed to preclude the retail operation of pet shops or pet supply stores, including, without limitation, a "PetsMart");

(j) Funeral home or mortuary;

(k) Any adult book store or establishment selling, displaying or exhibiting pornographic materials or materials depicting lewd and lascivious acts. As used herein, - an "adult book store or establishment selling, displaying or exhibiting pornographic materials or materials depicting lewd and lascivious acts" shall include, without limitation, a store displaying for sale or exhibit books, magazines or other publications containing any combination of photographs, drawing, or sketches of a sexual nature which are

not primarily scientific or educational (collectively, "Sex Magazines") (it being acknowledged, however, that "Playboy," "Playgirl," and "Penthouse" are not deemed to be Sex Magazines), or a store offering for exhibition, sale or retail video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which is pornographic; provided that the foregoing shall not be deemed to prohibit the sale or rental of video tapes of adult nature so long as such sale or rental is incidental to the operation of a mainstream, full line, family-oriented video store or video department within a store and provided same are not openly displayed and are access controlled, and provided that the foregoing shall not be deemed to prohibit the operation of a movie theater (to the extent the same is otherwise permitted in accordance with the terms of this Agreement) so long as such theater shows films commonly shown by national or regional movie theater chains and is not operated as what is commonly referred to as an "adult movie theatre";

(l) Any establishment which stocks, displays, sells, rents or offers for sale or rent any merchandise or material commonly used or intended for use with or in consumption of any narcotic, dangerous drug or other controlled substance, including, without limitation, any hashish pipe, waterpipe, bong, cilium, pipe screens, rolling papers, rolling devices, coke spoons or roach clips;

(m) Flea market;

(n) Car wash (unless ancillary to the operation of a convenience store or motor fuel facility); provided, however, such car wash shall not materially, adversely affect the water service provided to the remainder of the Project;

(o) Operation whose principal use is a massage parlor (provided this restriction shall not prohibit massages in connection with a salon, health club or athletic facility);

(p) Living quarters, sleeping apartments or lodging rooms, except as may be approved by Developer in Developer's sole and absolute discretion; provided, however, Landlord hereby covenants that it shall not permit any such use in any building located within 100 feet of the Costco Property without the consent of Costco, such consent not to be unreasonably withheld;

(q) Tattoo parlor;

(r) Church, school or related religious or educational facility (exclusive of a Sylvan Learning Center or Hammett's Learning World or similar retail learning facility or day care center) or religious reading room; provided, however, Landlord hereby covenants that it shall not permit any such use (otherwise permitted hereunder) within 150 feet of the Costco Property without the consent of Costco;

(s) Automotive service and repair facility, except as may be approved by Developer in Developer's sole and absolute discretion; provided, however, such restriction shall not preclude Costco from operating a Costco tire center on the Costco Property;

(t) General or professional office facility, except for insurance or travel agencies, finance companies, dental or medical clinics, and other than Developer's office located on the Property and used for the purposes of managing the Project and any office used by any other Owner or tenant so long as any such office is incidental to such Owner's or tenant's use of any portion of the Project;

(u) Cinema or movie-theater, except as may be approved by Developer in Developer's sole and absolute discretion; provided, however, Landlord hereby covenants that it shall not permit any such use in any building located within 100 feet of the Costco Property without the consent of Costco, such consent not to be unreasonably withheld;

(v) Sidewalk sales or special promotions (except as may be approved by Developer in Developer's sole and absolute discretion), inventory storage, do-it-yourself or demonstration areas or for the sale or display of any merchandise or for any other *business*, occupation or undertaking outside of any building in

the Project (provided that this restriction shall not be construed to limit or restrict do-it-yourself or demonstration activities, sidewalk sales, special promotions or the sale or display of certain merchandise outside of a building on the Lowe's Property or the Costco Property, if and to the extent such uses and/or activities are a part of the operation of a Lowe's store or Costco store, Costco tire center, Costco fuel dispensing facility, including the display by Costco of up to 5 vehicles);

(w) Operation (i) of a supermarket, warehouse supermarket, supercenter or combination store, or the operation of any of the foregoing within a larger department store or other store, (ii) of a store for the sale (for consumption away from the premises on which they are sold) of canned goods, groceries, fresh vegetables, fresh fruits, dairy products, frozen foods, fish, fowl or meat, or the sale of any combination of the foregoing; provided, however, nonperishable items (as such term is defined in the retail supermarket business) may be sold by an Owner or tenant of space in the Project to the extent that the floor space devoted to the sale of such items does not, in the aggregate, exceed ten percent (10%) of the gross floor area in such Owner's or tenant's building or space (as the case may be); and provided, further, the incidental sale of prepackaged gourmet foods and snacks shall be permitted [provided that the floor space devoted to the sale of such items does not, in the aggregate, exceed twenty-five percent (25%) of the gross floor area in such Owner's or tenant's building or premises (as the case may be)], or (iii) of a food store or grocery store. Notwithstanding the foregoing provisions of this Section 1(w) to the contrary, Developer shall be entitled to designate, in Developer's sole and absolute discretion, one (1) portion or tract of the Shopping Center Project for use as one (1) "Costco" warehouse store or similar membership warehouse store (but not a "supercenter" format store (such as a "Wal-Mart Supercenter" or a "Super K-Mart"), except that one (1) "supercenter" format store (such as a "Wal-Mart Supercenter" or a "Super K-Mart") may be constructed and operated upon the Lowe's Property at any time after January 17, 2002. In addition to any other parties (including, but not limited to, the parties of the OEA) that may have the right under this Agreement

to enforce the restrictions provided in this Section 1(w), Boney Wilson & Sons, Inc. ("Boney Wilson") and its successors and assigns relative to that certain lease agreement between Matthews Comers Associates, Limited Partnership, as landlord, and Boney Wilson, as tenant, dated November 6, 1995 (the "Hannaford's Lease"), shall be entitled to enforce the restrictions provided in this Section 1(w) in a suit or action brought in any court of competent jurisdiction. Additionally, during the term of the Hannaford's Lease, the provisions of this Section 1(w) shall not be amendable except with the specific joinder and consent of the then-current tenant under the Hannaford's Lease; or

(x) Strip clubs.

Notwithstanding the foregoing to the contrary, the following uses shall not be permitted in any building on Tract P or within two hundred fifty (250) feet of the Lowe's Building or in any building within one hundred (100) feet of the Costco Property: Chuck E. Cheese's, Jumpyard, Discovery Zone, Jillian's or a similar amusement center; a bar or private club; a massage parlor, salon, health club or athletic facility; living quarters, sleeping apartments or lodging rooms; a Sylvan Learning Center, Hammett's Learning World or a similar retail learning facility or day care center; a religious reading room; an automotive service and repair facility (other than the Costco tire center); a general or professional office facility (including, without limitation, insurance or travel agencies, finance companies, dental or medical clinics) (except that Developer's property management office located on the Property and any office used by any other Owner or tenant shall be permitted in any location on the Property so long as any such office is incidental to such Owner's or tenant's use of such portion of the Property). Additionally, no cinema or movie theater shall be permitted to operate within the portion of the Project located on the southwestern side of the Creek.

Section 2. Lowe's Use Restrictions. In addition to the restrictions provided in Section 1 hereinabove, no portion of the Developer Property (including the Outparcels) may be used for the following purposes (provided that such restrictions shall only apply for a period of time not to exceed one (1) year after the Lowe's Property is no longer used by Lowe's as a retail and/or warehouse home improvement center, home improvement service center, lumber yard or building materials supply center):

- (a) A hardware store containing more than 5,000 square feet;
- (b) An appliance store and/or home electronics store containing more than 5,000 square feet [except that Landlord shall be entitled to designate, in Landlord's sole and absolute discretion, one (1) portion or

tract of the Shopping Center for use as an electronics "superstore" (e.g., a Best Buy, "Circuit City" or similar store concept) that may exceed 5,000 square feet in size];

- (c) A lawn and garden store containing more than 3,000 square feet;
- (d) A paint and/or décor center containing more than 5,000 square feet; or
- (e) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center or other store or center similar to those operated by Lowe's, Home Depot, Home Owner's Warehouse, Home Quarters, Hechinger's Builders Square, 84 Lumber, Wickes, Hughes Lumber, McCoys, Home Base, Eagle, Menard's, Sears Hardware, Sutherlands, Orchard Supply or Payless Cashways.

The restrictions or exclusive rights in this Section 2 also shall apply to prohibit a larger business from having space in its store devoted to selling the merchandise described in subparagraphs (a) through (d) above in this Section 2 when the space devoted to the sale of such items exceeds the limitations of such subparagraphs (a) through (d).

Subject to the restrictions above in this Section 2, Landlord reserves the right to subdivide, convey, lease or assign the Developer Property (including the Outparcels) or any portion(s) thereof through any means, including, but limited to, subdivision, lease, ground lease, condominium declaration or airlot condominium declaration.

Notwithstanding the foregoing, the restrictions in this Section 2 shall not apply to the Costco Property.

**New Balance**

Exclusive: None.  
Restrictions: None.

**Lane Bryant**

Exclusive: None.

**Restrictions:** Section 8.2 Landlord further warrants and agrees that Landlord shall not permit any portion of the Shopping Center to be used or occupied by any (a) pawn shop, flea market or junk yard, (b) gun sales or rental shop, (c) gambling, off-track betting, electronic gaming or bingo parlor, (d) psychic, tarot card reading or similar services, (e) bail bondsman, (f) sale or distribution of drug supplies or paraphernalia (except as sold by a licensed pharmacist), including, but not limited to, roach clips, water pipes, bongs, coke spoons, cigarette papers or hypodermic syringes, (g) tattoo parlor, massage parlors, or exotic or erotic dance clubs, (h) sale or distribution of any pornographic or "adult" materials including, but not limited to, "adult books, videos, or recordings of any kind, or (i) any use which constitutes a public or private nuisance or produces objectionable noise or vibration. In addition, Landlord shall not permit any leasable space immediately adjacent to the Leased Premises to be occupied by (x) a nail salon, (y) dry cleaning processing plant, or (z) a pet store.

**Weight Watchers**

Exclusive: Landlord shall not, without Tenant's reasonable consent, enter into a lease with any occupant in Tenant's building within the Shopping Center, which shall permit such occupant to have as a primary use for its premises the following: weight management center (the "Exclusive Right"). Any lease of space in the Shopping Center for the greater of two times the square footage of the Premises is excluded from the Exclusive Right set forth herein; The Exclusive Right shall not apply to the following uses/potential tenants: medical offices, gyms & health clubs and restaurant and food sales

Restrictions: None.

**GameStop**

Exclusive: None.

Restrictions: Section 3 Landlord agrees that it will not locate any kiosks, gazebos, building structure or other obstruction directly in front of the Leased Premises, which materially and adversely affects the visibility of and access to the Tenant's Premises.

**McAlister's Deli**

Exclusive: None.  
Restrictions: None.

**UPS Store**

Restrictions: None.  
Exclusive: None.

**Matthews Alterations & Cleaners**

Exclusive: None.  
Restrictions: None.

**Batteries Plus**

Exclusive: None.  
Restrictions: None.

**Famous Hair**

Exclusive: None.  
Restrictions: None.

**HealthNutz Discount Nutrition**

Exclusive: None.  
Restrictions: None.

**Amor De Brazil Steakhouse**

Exclusive: None.  
Restrictions: None.

**America's Best Contacts & Eyeglasses**

Restrictions: None.  
Exclusive: None.

**Jimmy John's Gourmet Sandwiches**

Exclusive: None.  
Restrictions: None.

**Great Clips**

Exclusive: None.  
Restrictions: None.

**Grapes Wine Bar**

Exclusive: None.  
Restrictions: None.

**Odoba Mexican Grill**

Exclusive: None.  
Restrictions: None.

**Mooyah Burgers & Fries**

Exclusive:

R-9 **SPRINGING EXCLUSIVE:** Tenant will not be granted an Exclusive Use for this center. However, if any other tenant within the Shopping Center (other than existing tenants, their successors, assigns and replacements) is granted an Exclusive then the following Exclusive Use clause shall apply:

Provided that Tenant has not committed an event of default, and subject to the limitations set forth below, Landlord agrees that during the Term, as such Term may be extended pursuant to the provisions of the Lease, Landlord shall not, without Tenant's reasonable consent, enter into a lease with any occupant in Tenant's building within the Shopping Center, which shall permit such occupant to have as a primary use for its premises, a fast casual hamburger restaurant serving hamburgers French fries and milkshakes (the "Exclusive Right"). For purposes hereof, "primary" shall mean that 50% or more of such tenant's gross sales are derived from the sale of hamburgers, French fries and milkshakes.

Tenant's Exclusive Right is subject to the following express limitations:

A. Existing tenants of the Shopping Center (which leases may be assigned, renewed, extended or replaced), as well as land, buildings or spaces which are not owned by Landlord, are not subject to the Exclusive Right;

B. The Exclusive Right shall not apply to the replacement of an existing use in the Shopping Center with a similar use, or to the following uses/potential tenants: grocery stores, convenience stores, gas stations, vegetarian restaurants, full service casual restaurants with a varied menu, including without limitation, Chili's, TGI Fridays and Applebee's.

C. The Exclusive Right shall only limit competing uses that are the primary business of competing tenants as such business is engaged in at the Shopping Center and shall not be construed as prohibiting ancillary uses or business that competing tenants do not engage in at the Shopping Center;

D. Exclusive Right shall only be effective so long as and while Tenant continuously operates its exclusive business in the entire Premises (excluding temporary closures permitted under the Lease), and shall not restrict uses that Tenant does not engage in at the Shopping Center;

E. The Exclusive Right shall not apply to, and shall not be deemed to permit Tenant, any use otherwise prohibited by this Lease, by the prohibited uses applicable to the Shopping Center or by the exclusive uses granted to tenants at the Shopping Center prior to the date of this Lease;

F. Any lease of space in the Shopping Center for at least the greater of two times the square footage of the Premises or 5,000 square feet is excluded from the Exclusive Right set forth herein; and

G. The Exclusive Right shall automatically terminate and be of no further force or effect upon the occurrence of any of the following: (i) an event of default by Tenant, (ii) the assignment or sublease by Tenant of the Premises or any part thereof (unless otherwise agreed to by Landlord in writing at the time of Tenant's request for Landlord's consent to such an assignment or sublease, which may be withheld in Landlord's sole discretion), or (iii) the failure of Tenant to timely or properly exercise its rights to renew the Term as provided in Section 3.1(B) of this Lease.

If Landlord violates the foregoing Exclusive Right and an occupant thereby has been using, and is continuing to use, its premises for the use prohibited hereby (an "Exclusive Use Violation"), Tenant shall be entitled to pay, in lieu of Minimum Rent during such period, 50% of the Minimum Rent otherwise due. If such Exclusive Use Violation continues for a consecutive period of twelve (12) months, Tenant shall, by written notice to Landlord ("Tenant's Election Notice") within thirty (30) days of the end of such twelfth month, elect to either (i) terminate the Lease and surrender the Premises to Landlord within thirty (30) days of Tenant's Election Notice or (ii) resume full payment of the Minimum Rent otherwise due pursuant to the Lease. In the event Tenant fails to deliver Tenant's Election Notice to Landlord within the time provided for herein, Tenant shall be deemed to have elected to resume full payment of Minimum Rent and Tenant's right to terminate the Lease hereunder shall be deemed waived.

Notwithstanding the foregoing, Tenant shall have no remedy for a violation of the Exclusive Right if another tenant or occupant in the Shopping Center violates a provision of its lease regarding its premises, which provision either

does not permit or specifically prohibits a use that violates Tenant's Exclusive Use (a "Rogue Tenant"); provided, however, that Landlord agrees to provide notice of the lease violation to the Rogue Tenant promptly after Tenant has notified Landlord of the same; and thereafter, if the Rogue Tenant does not cease its violation, Landlord agrees to commence an action (or arbitration, if required by such lease) against such other tenant or occupant, and thereafter uses good faith efforts to enforce its rights under such lease and to obtain Judicial Relief. For purposes hereof, "Judicial Relief" shall mean a temporary restraining order, preliminary injunction, order of eviction, other court order or order resulting from an arbitration proceeding enjoining the prohibited use; provided, however, Landlord shall not be required to appeal any adverse decision denying Judicial Relief.

Restrictions: None.

**Sweet Frog Frozen Yogurt**

Exclusive: None.

Restrictions: None.

**Starbucks**

Exclusive: Item #3 Tenant will not be granted an Exclusive for this center. However, if any other tenant within the Shopping Center (other than Marble Slab Creamery) is granted an Exclusive (most favored nation's clause) then the following Exclusive Use clause shall apply:

Except for the premises leased to Anchors (defined as stores in excess of 15,000 square feet) and outparcels labeled on the attached Exhibit A, Landlord will not sell or expressly permit any party, other than Tenant, to sell within the Shopping Center (a) freshly ground and whole coffee beans, (b) espresso, espresso-based and coffee-based drinks, (c) tea or tea-based drinks, (d) gourmet brand-identified brewed coffee, and (e) blended beverages, including without limitation, those containing the following ice, coffee, espresso, tea, milk, cream, juice and/or fruits (except landlord will be allowed to lease to one (1) "smoothie" type tenant (i.e., Smoothie King or Smoothie Planet). Notwithstanding the foregoing, Landlord may permit any full service sit down restaurant with wait staff serving a complete dinner menu to sell brewed coffee or espresso based drinks for on-premises consumption.

Restrictions: None.

**Best Buy**

Exclusive: Landlord agrees that if any other party or occupant of the Shopping Center shall be granted any form of exclusive right, Landlord shall immediately notify Tenant of the same and the following exclusive provision shall automatically then commence to apply without any further act or documentation being required: Landlord shall not permit any person or entity other than Tenant (or Tenant's parent company, affiliates, assignees, sublessees and assigns) in space within the Shopping Center, to sell or service (including diagnostic testing, maintenance and repair) any of Tenant's Protected Products without Tenant's prior written consent, which may be granted or withheld in Tenant's sole but reasonable discretion. Notwithstanding the foregoing, Tenant's springing exclusive shall not be applicable to the following: (i) the incidental sales (as hereinafter defined) of any of Tenant's Protected Products, but shall however, be applicable to direct competitors of Tenant such as by way of example and not limitation, hhgregg, Ultimate Electronics or Fry's Electronics; (ii) any occupants or tenants of the Shopping Center that exist as of the moment Tenant's exclusive springs into existence and their respective subtenants, licensees, concessionaires, successors, assigns and replacements (if the replacement is substantially the same use) provided that if Landlord ever recovers control of the premises occupied by an existing tenant, then the restriction set forth in this paragraph shall thereafter apply to such premises; (iii) office supply superstore such as OfficeMax or Staples so long as the same shall operate as an office supply superstore; (iv) book store such as Barnes and Noble, Books A Million, Borders so long as the same shall operate as a book store; (v) national or regional department store such as JCPenney or Kohls so long as the same shall operate as a department store; (vi) discount department store such as Walmart or Target so long as the same shall operate as a discount department store; (vii) a wholesale club such as Sam's Club or Costco so long as the same shall operate as a wholesale club; (viii) home improvement store such as Lowes or Home Depot so long as the same shall operate as a home improvement store; (ix) supermarket or grocery store like Winn-Dixie, Safeway, Stop & Shop, Publix, The Fresh Market, or Whole Foods, so long as the same shall operate as a supermarket or grocery store; (x) a toy or children's store like Toys R Us, Babies R Us or buybuy Baby

so long as the same shall operate as a toy or children's store; or (xi) a specialty retailer carrying primarily one single brand such as Bose, Sony or Apple, so long as the same shall operate primarily as a single brand retailer. Furthermore, Landlord shall be permitted to enter into a lease with (1) no more than two cellular store operators, provided the same shall be located at least 100' from Tenants storefront entrance and shall not be in shop space that is substantially in-line with the Premises, (2) one operator selling new or used games, new or used DVD's and gaming equipment such as GameStop or Play N Trade provided the same shall occupy no more than 3,000 leasable square feet and be located within the "Approved Game Area" shown on Exhibit B, and (3) one operator that primarily offers video and game rentals such as but not limited to Blockbuster. For purposes of clause (i) above, "incidental sales" shall be defined as the sale and/or display of anyone, all, or any combination of Tenant's Protected Products by any tenant or occupant of the Shopping Center in an area not to exceed the greater of (1) five hundred (500) square feet or (2) ten percent (10%) of the total floor area occupied by such tenant or occupant it being understood that the calculation of the foregoing shall include one-half of any aisle space adjacent to the display of items within Tenant's Protected Products.

Restrictions: PERMITTED USE AND SPRINGING EXCLUSIVITY; GO DARK AND RECAPTURE.

Subject to Senior Tenant Rights, Landlord shall not use or authorize use of any portion of the Shopping Center, and Tenant shall not use or authorize use of any portion of the Premises in violation of the "Prohibited Uses" as set forth in Exhibit H attached hereto and made a part hereof, or the provisions of this Lease, or applicable Laws.

PROHIBITED USES - Subject to the rights of any tenants or occupants of the Shopping Center whose lease or occupancy agreement was executed before the Effective Date, Landlord shall not use or authorize use of any portion of the Shopping Center, and Tenant shall not use or authorize use of any portion of the Premises (except as ancillary to Tenant's primary use as set forth in Article 30 in compliance with applicable Laws), for the following purposes:

1. A facility for any use which is illegal or would reasonably be determined to cause a threat of imminent harm to persons or property, constitutes a public or private nuisance or emits an obnoxious odor, noise, or sound which can be heard or smelled (in either event to more than a *de minimus* extent) outside of any building in the Shopping Center, it being understood that Tenant shall have the right to operate a mobile installation bay in a portion of the Premises ancillary to Tenant's business in accordance with applicable Laws and that no reasonable sounds or noises arising from such use shall be deemed obnoxious.
2. Any dumping, disposing (other than in the designated trash removal areas), incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of or in any building in the Shopping Center).
3. Establishment providing nude or topless entertainment or waitstaff, or any establishment selling or exhibiting pornographic materials (including, without limitation, adult books or videos). Materials shall be considered "adult" or "pornographic" under this paragraph if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict sexuality; provided, however, that the sale of materials such as books and videos commonly carried by reputable national or regional book and/or video retailers (such as Barnes and Noble, Blockbuster or Best Buy) shall not be deemed adult or pornographic hereunder.
4. Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation.
5. Any pawn shop, "second hand" store, schlock store, or "surplus" store; provided, however, that this provision shall not restrict or prohibit: (a) the ancillary sale of used or refurbished merchandise, or (b) a national or regional chain such as Play It Again Sports.
6. Any "rent to own" type business, except that Tenant may provide such financing ancillary to its primary business.
7. Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this

provision shall not restrict the absolute freedom of an occupant to determine its own selling prices nor shall it preclude the conduct of any seasonal sales, promotional or clearance sales or legitimate going out of business sales in compliance with applicable Laws).

8. Any central laundry, dry cleaning plant, or Laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located.
9. Any automobile, truck, trailer, recreational vehicle, mobile home or boat sales, leasing, display, service and/or repair operation; provided, however, this prohibition shall not prohibit or restrict Tenant, or another tenant/occupant ancillary to its primary use, from (a) the display and sale of electronic scooters, electronic bicycles, electronic motorcycles, segways, electric cars or other electric vehicles, or other vehicles so long as Tenant's primary business shall not be a dealership, or (b) operating an installation bay for the installation, service and/or repair of consumer electronics for motor vehicles or other ancillary vehicular services, or (c) the leasing of trucks by the hour by any tenant/occupant to its customers for the sole purpose of transporting purchases from such tenant/occupant's premises to the customer's home, storage, or use destination.
10. Any tire center business, oil change service, gas station or carwash (except car wash ancillary to primary business and services permitted by Tenant in the previous paragraph); provided, however, the foregoing shall not prevent the sale of such merchandise or the rendition of such services if it is part of wholesale club, home improvement store or department store such as Lowe's, Home Depot, Costco, BJ's Warehouse, Sam's Club, Walmart and the like.
11. Any bowling alley, skating rink or roller rink; provided, however, the foregoing shall not prevent the operation of an upscale bowling alley (e. g. Lucky Strike, Comer Alley, etc.) that is located at least 300 feet away from the Premises.
12. Any mortuary or funeral home.
13. Any veterinary hospital or animal raising or boarding facilities except as may be operated in connection with a national or regional pet and pet supply store operating in at least 6,000 square feet of floor area and located at least 50 feet away from the Premises.
14. Any bar, pub, tavern or night club except (a) as an incidental part of a restaurant or incidental to a non-retail use such as a book store or bowling alley so long as such business shall serve food and meet such other requirements as necessary to comply with applicable Laws, or (b) an upscale wine bar so long as the same is located at least 250 feet from the Premises.
15. Any flea market.
16. Any amusement, video arcade, children's play center (including, without limitation, any business primarily providing physical play activities for children, kiddie rides or games), pinball, computer or other gamerooms, pool or billiard hall, dance or music hall, disco or nightclub or any other facility operated solely for entertainment purposes, such as a "laser tag" or "virtual reality" theme operation, except that this prohibition shall not prohibit (x) Chuck E Cheese or another similar fast food establishment, so long as it is open and operating as a restaurant from having an amusement or video arcade, children's playcenter, pinball, computer and/or other gameroom and other physical play activities for children, kiddie rides and games as part of its leased premises in the Shopping Center to the extent permitted under its lease, (y) a consumer electronics store such as Best Buy from operating video or gaming equipment for demonstration purposes, or (z) a facility otherwise prohibited by this paragraph that is located at least 250 feet from the Premises.
17. Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading

rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers, or any day care center; provided however, this prohibition shall not be applicable to any of the following: (a) to the extent the same are ancillary to an occupant's business at the Shopping Center: (i) any onsite employee training by an occupant, or (ii) any "how to" training for customers; or (b) to the extent that the aggregate square footage devoted to such uses does not exceed 5,000 square feet of gross leasable floor area and is located at least 250 feet from the Premises.

18. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant. Notwithstanding the above, this paragraph is not intended to prohibit the installation and use of video game machines by the occupants, subject however to the provisions of Paragraph 14 above.
19. Any carnival, amusement park or circus.
20. Any banquet hall, auditorium, or other place of public assembly.
21. Any house of worship.
22. Any liquor store (provided, however, that the foregoing shall not be deemed to prohibit the sale of beer, wine and/or alcohol by any occupant ancillary to its primary use of the premises, or the sale of beer, wine or alcohol for on-premises consumption at any restaurant or bar permitted hereunder).
23. Any venue for in-person, on-site sporting events (except to the extent within a permitted health club); provided, however, that the foregoing shall not prohibit the demonstration of sporting goods for sale.
24. Any Hazardous Substances, except in the ordinary course of its usual operations conducted thereon, and any such use shall at all times be in compliance with all applicable Laws.
25. A theater of any kind (excluding demonstration purposes ancillary to primary use as a consumer electronics store such as Best Buy) unless located at least 350 feet from the Premises.
26. Any outdoor meetings or events (except to the extent permitted by Landlord in Landlord's Promotional Area under Article 27 or by Tenant within Tenant's Protected Area under Article 27 of the Lease).
27. Any shooting gallery.
28. Any residential use, hotel, motel or other overnight stay facility.
29. Any health club, gymnasium, exercise or dance studio unless located at least 250 feet from the Premises.

Section 30:

Neither Landlord as to the Shopping Center, nor Tenant as to the Premises, shall permit the same to be used for any non-retail purpose unless and to the extent that the same is permitted under the REA in which event such use shall be at least two hundred fifty (250) feet from the Premises.

In no event shall any restaurant, entertainment facility, health club or grocery store be permitted to operate within two hundred fifty feet (250) feet of the Premises. Notwithstanding the foregoing, quick service restaurants (as opposed to full service restaurants) shall be permitted to operate within 250 feet of the Premises so long as (a) each such restaurant shall be located at least fifty (50) feet from the Premises with at least one other business located between the Premises and any quick service restaurant, and (b) the aggregate gross leasable area of any such quick

service restaurants shall be 2,500 square feet.

**Palm Beach Tan**

Exclusive: None.  
Restrictions: None.

**Nemo Fish**

Exclusive: None.  
Restrictions: None.

**Massage Envy**

Exclusive: None.  
Restrictions: None.

**Kabab -Je Rotisserie & Grille**

Exclusive: None.  
Restrictions: None.

**Five Below**

Exclusive: 7.2 Landlord covenants that during the Term it shall not grant to any other tenant or occupant of the Shopping Center ("Other Tenant") any exclusive right to sell any specific product, item or service, or any category of product, item or service (an "Exclusive Right"). If at any time during the Term of this Lease, Landlord grants an Exclusive Right to any Other Tenant ("Triggering Event"), Landlord shall immediately give Tenant written notice of the occurrence of the Triggering Event. If any Other Tenant is granted exclusive rights at any time, Tenant shall not be obligated to recognize such rights, and from and after the date of the Triggering Event, the following exclusive use rights for Tenant shall be deemed to be in effect throughout the remainder of the initial Term of this Lease and any extensions thereof:

"Provided the Premises is open and operating in the Shopping Center (except for closures permitted pursuant to the terms of this Lease), Landlord shall not lease, rent, occupy or permit to be occupied or used, any space in the Shopping Center for the retail sale of teen and pre-teen variety and general merchandise at price points that are primarily Ten Dollars (\$10.00) and less (the foregoing is hereinafter referred to as the "Exclusive Use"). It is understood and agreed that the restriction on Exclusive Use would prevent Landlord from leasing space in the Shopping Center to a tenant whose business is focused on selling teen and pre-teen variety and general merchandise at price points primarily below \$10.00 ("Exclusive Use Items"), but shall not, in any event, prevent Landlord from leasing space in the Shopping Center to tenants who sell merchandise at price points primarily above \$10.00, or specialty retailers such as a footwear store, apparel store, sporting goods store, video store, cosmetics store, bed and bath store, book store, toy store, health and beauty aids store, or any other such "specific type" store that devotes at least seventy five percent (75%) of its floor area to the sale of one principal category of merchandise. The provisions of this Section shall not be construed to prohibit (i) any tenant existing as of the Effective Date and situated within the Shopping Center, or its assignee or replacement, which has, pursuant to the current terms and provisions of such tenant's lease (as of the Effective Date), the right to handle and sell certain of the Exclusive Use Items, from now or hereafter handling and selling those certain items, provided that a replacement tenant shall have a substantially similar use, with no broader rights to sell the Exclusive Use Items, and have a substantially equal amount of space, or less, in the Shopping Center, as the tenant being replaced, or (ii) any tenant from utilizing up to ten percent (10%) of such tenant's premises for the sale, in the aggregate of the Exclusive Use Items, or (iii) any tenant greater than twenty thousand (20,000) square feet of contiguous space, or (iv) food or restaurant uses."

Restrictions:

7.4 During the Term of this Lease, Tenant shall not operate and, subject to the rights of existing leases and occupants as of the date of this Lease, Landlord shall not lease, rent, occupy or permit to be occupied or used, any space in the Shopping Center for the following uses: (a) bowling alley within 500 feet of the Premises; (b) arcade within 250 feet of the Premises; (c) tavern or bar, unless such use is incidental to a restaurant use; (d) night club or discotheque; (e) any "second hand" or "surplus store" within 500 feet of the Premises except for antique stores or

national or regional second hand stores such as "Play It Again Sports"; (f) any mobile home park, trailer court, labor camp, junkyard, or stockyard (exclusive of temporary construction facilities); (g) any dumping, disposing, incineration, or reduction of garbage (exclusive of dumpsters and related trash removal equipment located in the rear of any building and drop centers for recycling or donations); (h) any fire sale, bankruptcy sale or auction house operation unless ordered or approved by a court; (i) any laundromat; (j) any skating rink; (k) any living quarters, sleeping apartments, or lodging rooms; (l) any veterinary hospital within 500 feet of the Premises (except for the kind which is an incidental use to a pet store); (m) any mortuary; (n) intentionally omitted; (o) off-track betting business; (p) billiard or pool hall unless incidental to a restaurant; (q) adult book or adult video tape store (which are defined as stores in which greater than ten percent (10%) of the inventory is not for sale to minors because of its explicit sexual nature), (r) liquor store within one hundred feet (100') of the Premises, (s) other than in any out parcel areas, a gasoline station or oil change service station, (t) health club, spa or gymnasium (unless the same is not larger than 3,000 square feet or is located more than 200 feet from the Premises), (u) medical office or medical facility unless it is located more than 100 feet from the Premises or on a pad site in the Shopping Center, (v) office use (unless such office use is not located adjacent to the Premises and is typically found in shopping centers such as, without limitation, accounting, tax, legal, travel agency, bank, real estate, savings and loan or offices incidental to another permitted business), (w) call center except as incidental to an otherwise permitted use; and (x) military recruitment center within 100 feet of the Premises.

**North Carolina Special Warranty Deed dated 1/24/2002 by and between MATTHEWS MARKET LLC and FIRST CC LLC**

This restriction shall be binding on Grantee and all of Grantee's successors and assigns relative to the Property.

5. Use Restrictions. In addition to any and all use restrictions to which the Property may be subject to by virtue of the Master Declaration (as amended, from time to time), the following uses will be prohibited on the Property:

1. Pawn shop;
2. Hotel/Motel;
3. Bingo hall;
4. Catering or banquet hall;
5. Meeting hall;
6. Auction hall;
7. Sporting event;
8. Auditorium;
9. Billiard parlor or pool hall, except as may be incidental to a permitted restaurant use;
10. Sales office or showroom for boats; and
11. Carnival, amusement park or circus.

These use restrictions set forth in this Paragraph 5 shall be binding on Grantee and any future owner of the Property, its heirs, successors and assigns, from time to time, during the full term of that certain Lease Agreement between Grantor and Bed Bath & Beyond Inc. dated March 26, 2001 relating to the lease by Bed Bath & Beyond Inc. of approximately 25,000 square feet of space in the Center.

**OUTPARCEL 1**

**Synergy Salon**

Exclusive: None.  
Restrictions: None.

**Modern Nails**

Exclusive: None.  
Restrictions: None.

**The Men's Wearhouse**

Exclusive: Section 5.1 Landlord represents and warrants that Tenant shall have the exclusive right within the Property to sell men's suits, sport coats and slacks as a Primary Use, and the exclusive right to rent and/or sell formalwear (collectively, the "Exclusive Use"). "Primary Use" shall mean the sale or display of men's suits, sport coats and slacks and formalwear in thirty percent (30%) or more of the retail selling space of an occupant of the Property. Therefore, Landlord shall not lease, or permit any assignment or sublet of any lease in the Property, to any tenant whose primary use thereof would violate the Exclusive Use.

Restrictions: None.

### OUTPARCEL 2

#### Sleepy's The Mattress Professionals

Exclusive: None

Restrictions: None

#### Dental Works

Exclusive: None.

Restrictions: None.

#### Sprint

Exclusive: Section 1.01 R. Tenant shall have the exclusive right within the Shopping Center to operate a retail store that sells mobile radio and cellular phones, pagers, personal communicators, cellular and wireless voice, data and internet services and related software accessories. Additionally, Landlord warrants that it will not lease space to, or allow the operation of a competing business whose primary use includes the sale of cellular telephone equipment and/or pager devices and/or cellular and wireless voice, date, or internet services. As used herein, "primary use" shall be defined as any business whose sales in the aforesaid items are greater than twenty percent (20% of its gross revenues. This exclusive does not apply to Ritz Camera or King Sleep shops.

Restrictions: None.

**EXHIBIT G**

**RULES AND REGULATIONS**

1. Tenant shall advise and cause its vendors to deliver all merchandise before noon on Mondays through Fridays, not at other times.
2. All deliveries are to be made to designated service or receiving areas and Tenant shall request delivery trucks to approach their service or receiving areas by designated service routes and drives.
3. Tractor-trailers which must be unhooked or parked must use steel plates under dolly wheels to prevent damage to the asphalt paving surface. In addition, wheel blocking must be available for use. Tractor trailers are to be removed from the loading areas after unloading. No parking or storing of such trailers will be permitted in the Shopping Center.
4. Tenant shall not dispose of the following items in sinks or commodes: plastic products (plastic bags, straws, boxes); sanitary napkins; tea bags; cooking fats, cooking oils; any meat scraps or cutting residue; petroleum products (gasoline, naphtha, kerosene, lubricating oils); paint products (thinner, brushes); or any other time which the same are not designed to receive.
5. Tenant shall not permit or suffer any advertising medium to be placed on exterior walls or windows, on the sidewalks or on the parking lot areas or light poles. No permission, expressed or implied, is granted to exhibit or display any banner, pennant, sign and trade or seasonal decoration of any size, style or material within the Shopping Center, outside the Premises.
6. Tenant shall not permit or suffer the use of any advertising medium which can be heard or experienced outside of the Premises, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios, or television. No radio, television, or other communication antenna equipment or device is to be mounted, attached, or secured to any part of the roof, exterior surface, or anywhere outside the Premises, unless Landlord has previously given its written consent.
7. Tenant shall not permit or suffer any portion of the Premises to be used for lodging or extended stay purposes.
8. Tenant shall not, in or on any part of the Common Area:
  - a. Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever.
  - b. Exhibit any sign, placard, banner, notice or other written material, except for activities as approved in writing by Landlord.
  - c. Distribute any circular, booklet, handbill, placard or other material, except for activities as approved in writing by Landlord.
  - d. Solicit membership in any organization, group or association or contribution for any purpose.
  - e. Create a nuisance.
  - f. Throw, discard or deposit any paper, glass or extraneous matter of any kind except in designated receptacles, or create litter or hazards of any kind.
  - g. Deface, damage or demolish any sign, light standard or fixture, landscaping materials or other improvement within the Shopping Center, or the property of customers, business invitees or employees situated within the Shopping Center.
9. Tenant shall not locate furnishings or cabinets adjacent to mechanical or electrical access Panels or over air-conditioning outlets so as to prevent operating personnel from servicing such units as

routine or emergency access may require. Cost of moving such furnishings for Landlord's access will be at Tenant's cost. The lighting and air-conditioning equipment of the Shopping Center will remain in the exclusive control of the building designated personnel.

10. Tenant shall comply with all commercially reasonable parking rules and regulations as may be posted and/or distribution from time to time.
11. Prior written approval, which shall be at Landlord's sole discretion, must be obtained for installation of window shades, blinds, drapes or any other window treatment of any kind whatsoever.
12. Tenant shall keep the Premises at a temperature compatible with comfortable occupancy during business hours and at all times sufficiently high to prevent freezing of water in pipes and fixtures.
13. Tenant shall keep the signs, exterior lights and display window lights of the Premises lighted each and every day of the Term during the hours designated by Landlord for the operation of the Shopping Center.
14. No animals shall be brought into or kept in or about the Shopping Center other than as handicap aids.
15. Except as otherwise provided herein, Landlord reserves the right to modify or rescind any of these rules and regulations and to make such other or further reasonable rules and regulations as it deems in its reasonable judgment shall from time to time be necessary or advisable for the operation of the Shopping Center, which rules and regulations shall be binding upon Tenant upon their notification of said further rules and regulations; provided that the same do not materially and adversely impact Tenant's operations in the Premises. Further, all such rules and regulations shall apply universally to the Shopping Center.

**EXHIBIT H**

**SAMPLE CERTIFICATE OF INSURANCE**

# CERTIFICATE OF LIABILITY INSURANCE

DATE ISSUED/VALIDITY

7/1/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(s) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

SAMPLE CERTIFICATE

CONTACT NAME	Producer's Information	FAX
PHONE	Producer's Information	JPG, PDF
FAX	Producer's Information	
ADDRESS	Producer's Information	
<b>INSURER(S) AFFORDING COVERAGE</b>		NAME
INSURER A:	ABC Insurer	
INSURER B:	DEF Insurer	
INSURER C:	GHI Insurer	
INSURER D:	JKL Insurer	
INSURER E:	MNO Insurer	
INSURER F:	PRC Insurer	

COVERS

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

FORM LINE	TYPE OF INSURANCE	DESCRIPTION	INSURER	POLICY NUMBER	FROM/TO DATE	TO/FROM DATE	POLICY EFF. DATE	POLICY EXP. DATE	LIMITS
<b>GENERAL LIABILITY</b>									
A	COMMERCIAL GENERAL LIABILITY EXCL. AUTO & AUTO EXCLUDED	X	X	INSERT POLICY NUMBER	Start	End			EACH OCCURRENCE \$ 1,000,000.00 DAMAGES TO PROPERTY PREMISES (EX. EXCLUDED) \$ 1,000,000.00 PERSONAL & ADV. LIABILITY \$ 1,000,000.00 GENERAL AGGREGATE \$ 2,000,000.00 PRODUCTS & SERVICES \$ 1,000,000.00 6
	CRIM. AGGREGATE LIMIT APPLIED PER POLICY EXCL. AUTO & AUTO EXCLUDED	X	X						
	AUTOMOBILE LIABILITY								
	PAY AUTO ALL OWNED AUTOS Hired Autos	X X X	EXCLUDED AUTOS NON OWNED AUTOS	X	INSERT POLICY NUMBER	Start	End		EACH OCCURRENCE \$ 1,000,000.00 BODILY INJURY PER PERSON \$ 1,000,000.00 PROPERTY DAMAGE PER INCIDENT \$ 1,000,000.00 5
	UMBRELLA LIABILITY	X	EXCLUDED		INSERT POLICY NUMBER	Start	End		EACH OCCURRENCE \$ 5,000,000.00 AGGREGATE \$ 5,000,000.00 5
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PERSONNEL PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED	Y/N	N/A	INSERT POLICY NUMBER	Start	End			X IN U.S. STATE/TERRITORY LIMITS \$ 500,000.00 X EACH ACCIDENT \$ 500,000.00 X DISEASE - EACH DISEASE \$ 500,000.00 X DISEASE - POLICY LIMIT \$ 500,000.00
	ENVIRONMENTAL POLLUTION								
	Any other required insurance such as DRAST or Pollution/Environmental								

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (3100) ACORD 110, Additional Payment Schedules, if applicable is required

INVENTRUST PROPERTY MANAGEMENT, LLC AND LANDLORD ARE NAMED AS ADDITIONAL INSURED ON LIABILITY POLICIES AND WAIVER OF SUBROGATION APPLIES. SUCH INSURANCE IS PRIMARY AND NON-CONTRIBUTORY WITH ANY OTHER INSURANCE AVAILABLE TO THE OWNER AND PROPERTY MANAGER. TIA XXXXX-XX-XXXX-XXXX

\*\*\*\*\*THIS IS JUST A SAMPLE CERTIFICATE. PLEASE APPLY YOUR INSURANCE REQUIREMENTS PER YOUR LEASE AGREEMENT\*\*\*\*\*

CERTIFICATE HOLDER	CANCELLATION
INVENTRUST PROPERTY MANAGEMENT, LLC AND LANDLORD 2809 BUTTERFIELD RD STE 200 OAKBROOK, IL 60521	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**RIDER**

THIS RIDER IS ATTACHED TO AND IS MADE PART OF THAT CERTAIN SHOPPING CENTER LEASE (THE "LEASE") DATED \_\_\_\_\_, 2017 BY AND BETWEEN IA MATTHEWS Sycamore, L.L.C., LANDLORD FOR THE SHOPPING CENTER COMMONLY KNOWN AS SYCAMORE COMMONS SHOPPING CENTER AND RTHT INVESTMENTS, LLC, AS TENANT

This Rider is dated and is effective the same date as the Lease. All capitalized terms, unless expressly defined herein, shall have the same meaning as in the Lease. In the event of a conflict between the terms of the Lease and those contained in this Rider, this Rider shall prevail.

**R-1. CAP ON CAM – CALENDAR YEAR:** Notwithstanding the provisions of the Lease to the contrary, for each calendar year following the initial full calendar year of the Lease Term, Tenant's Proportionate Share of Operating Expenses, but exclusive of items requested by Tenant or to the extent caused by Tenant or Tenant's use, and exclusive of taxes, snow and ice removal, weather related expenses, security, insurance premiums and deductibles, fuel charges, and all utilities, shall not exceed the Cap on CAM (as defined hereafter) for such year. The "Cap on CAM" shall initially be equal to 105% of the Tenant's Proportionate Share of Operating Expenses for the initial full calendar year of the Lease Term. The "Cap on CAM" for subsequent years shall be 105% of the prior year's Cap on CAM. Fractional years during the Lease Term shall be prorated. Notwithstanding the foregoing, in the event Tenant elects to exercise and option pursuant to Section 3.1B of this Lease or the Term is otherwise extended or renewed, Landlord reserves the right to reset the Cap on CAM to an amount that reflects 105% of the Tenant's Proportionate Share of Operating Expenses for the calendar year in which such extension or renewal begins without regard as to the Cap on CAM in effect prior thereto.

**R-2. CONTINGENCY – EXISTING LEASE:** The parties hereto acknowledge and confirm that this Lease and the enforceability of all its terms and conditions are contingent upon the termination of the existing lease for the Premises and the surrender of the Premises by the existing tenant. Landlord hereby covenants to exercise good faith efforts to meet this contingency and deliver possession of the Premises in a timely manner.

**R-3. PERMIT CONTINGENCY:** Tenant shall timely submit Tenant's Drawings to Landlord in accordance with the terms of Exhibit C-2 and, within fifteen (15) days following approval by Landlord of Tenant's Drawings as required by Exhibit C-2, Tenant shall apply to the City for building permits for the construction and installation of the leasehold improvements (the "Permits") and shall use commercially reasonable efforts to secure the Permits at Tenant's sole cost and expense. Tenant shall comply in all respects with all applicable codes, ordinances, statutes, rules and regulations and any other laws affecting the submission of any required documentation necessary to obtain the Permits. If Tenant has not obtained the Permits on or before the date ("Permit Contingency Date") that is ninety (90) days following Tenant's application, then Tenant shall provide Landlord written notice ("Permit Notice") thereof on or before the Permit Contingency Date. Following Landlord's receipt of the Permit Notice (or upon Tenant's failure to obtain the Permits by the Permit Contingency Date), Landlord may elect by written notice to Tenant to either (i) attempt to obtain the Permits for and on behalf of Tenant, at Tenant's expense (but nothing herein shall require Landlord to so obtain or attempt to obtain the Permits), (ii) extend the Permit Contingency Date for an additional reasonable period of time to enable Tenant to obtain the Permits, provided, Tenant shall continue to use commercially reasonable efforts to secure the Permits, and (iii) terminate this Lease, in which event this Lease shall terminate as of the date of Landlord's notice and the parties shall be forever released and discharged of any obligations which have not accrued under this Lease. If Landlord elects to exercise the right provided in clause (ii) above, then Landlord shall continue to be able to exercise the rights set forth in clauses (i) and (iii) above until the date the Permits are issued. If Landlord elects to obtain the Permits for and on behalf of Tenant or extend the Permit Contingency Date for an additional reasonable period of time to enable Tenant to obtain the Permits as aforesaid, and neither Landlord nor Tenant have obtained the Permits on or before the date one hundred twenty (120) days following the

Permit Contingency Date, then either party shall have the right to terminate this Lease upon prior written notice to the other given prior to the date the Permits are issued. Landlord agrees to reasonably cooperate with Tenant in obtaining the Permits, provided Tenant reimburses Landlord for any actual and reasonable out-of-pocket costs incurred in connection with such cooperation. Tenant shall provide Landlord with copies of the Permits (promptly following the issuance thereof) to Landlord.

**R-4. DELAYED DELIVERY:** In the event Landlord is not able to deliver possession of the Premises in the condition required hereunder by October 1, 2017, then Tenant shall receive a Rent credit of one (1) day of Minimum Rent for each day of delay. In the event Landlord is not able to deliver possession of the Premises by January 1, 2018, then Tenant may terminate this Lease without penalty by written notice to Landlord or continue to receive a Rent credit of one (1) days of Minimum Rent for each day of delay until possession is delivered to Tenant.

**R-5. CONSTRUCTION ALLOWANCE:** Landlord will reimburse Tenant up to the amount of \$55.00 per square foot, Three Hundred Seventeen Thousand Three Hundred and Fifty and 00/100 Dollars (\$317,350.00) for tenant improvements to the Premises done as part of Tenant's Work (the "Construction Allowance"), which reimbursement shall be payable in two installments, the first installment in the amount of One Hundred Fifty Eight Thousand Six Hundred Seventy Five and 00/100 Dollars (\$158,675.00), payable within twenty-one (21) days after the date in which Tenant's Work has been fifty percent (50%) completed by Tenant's contractor, and the final installment in the amount of the balance of the Construction Allowance payable within thirty (30) days after the date Tenant's Work is completed in accordance with the terms of this Lease. With respect to each such reimbursement, Tenant shall submit to Landlord a written statement requesting such payment and at the time of such request and scheduled payment:

- A. Tenant shall not be in default under any provision of this Lease;
- B. For the first installment, Tenant provides copies of paid invoices together with partial lien waivers and releases or lien in form and substance satisfactory to Landlord covering the completed portion of Tenant's Work;
- C. For the final installment, the Premises have been opened for business to the public in accordance with the requirements of this Lease for at least three (3) consecutive business days;
- D. For the final installment, Tenant shall have paid its full first month's Minimum Rent; and
- D. For the final installment, Tenant certifies that the Shopping Center is free and clear of all mechanics' liens and other encumbrances relating to Tenant's Work and provides to Landlord final waivers, affidavits, copies of paid invoices and final releases of lien in form and substance reasonably satisfactory to Landlord covering Tenant's Work.

**R-6. SIGNAGE:** Tenant shall have the right to install, at Tenant's sole cost and expense, the maximum signage allowable to the Premises provided the same conforms to the Shopping Center Sign Criteria (Exhibit D) and all local signage codes and is approved by all governmental agencies having jurisdiction over the same. All signage, including the type, size, lettering and location of the signage, must be approved in advance by Landlord in accordance with Exhibit D.

**R-7. OUTDOOR SEATING AREA:** Provided such use is not in conflict with local laws, governmental regulations, existing leases and/or any recorded easements or restrictions affecting the Shopping Center, Tenant is permitted to use the Common Area directly adjacent to the Premises only as an outdoor seating area containing no more than two (2) small tables and four (4) chairs. As a condition to such use, Tenant agrees to the following: (i) Tenant, at its sole cost, shall obtain all needed permits and comply with all laws and governmental regulations which affect Tenant's use of the outdoor seating area; (ii) the outdoor seating area shall be a part of the Premises for the purposes of the Lease and Tenant's obligations in the

Lease including those related to indemnification of Landlord, insurance, and maintenance shall apply to the outdoor seating area, except that the outdoor seating area shall not be counted as floor area for purposes of Rent; (iii) Tenant shall not alter the outdoor seating area in any way or build any permanent structures thereon (including, without limitation, adding permanent posts or fences), without Landlord's written consent which shall not be unreasonably withheld; (iv) Prior to use of the outdoor seating area, Tenant shall submit for Landlord's approval, which shall not be unreasonably withheld a plan for the outdoor seating area including placement of furniture, equipment, decorative elements, and barriers and shall not make any material changes to the outdoor seating area without Landlord's written approval, which shall not be unreasonably withheld; (v) Tenant shall only install televisions, speakers or other such devices for use on the outdoor seating area in commercially reasonable areas designated by Tenant as part of Tenant's Work; (vi) in the event Tenant serves alcohol on the outdoor seating area, Tenant shall obtain all necessary licensing and insurance required by Landlord, and shall in no event permit the sale of alcohol for off-premises consumption from the outdoor seating area; (vii) Tenant shall keep the outdoor seating area clean and orderly, which shall include daily cleaning and securing of furniture, equipment and other property at closing, weekly (or more often if needed) washing of the outdoor seating area, and disposal of trash as needed; (viii) Tenant shall not permit the outdoor seating area to be used as a "drive up" or "drive through" and Tenant shall prevent loitering outside of the outdoor seating area; and (ix) in the event Tenant's use of the outdoor seating area is restricted or prevented for any reason, Tenant shall not have a right to a rent reduction or any other remedy from Landlord. To the extent required by applicable law or governmental regulations, Tenant shall be permitted to construct a fence around the outdoor seating area (subject to Landlord's review of the associated plans in accordance with the terms of the Lease).

**R-8. RESTAURANT OBLIGATIONS:** Without limiting Tenant's obligations elsewhere under this Lease, Tenant shall provide the following services and maintenance at its sole cost and expense:

- (a) Tenant shall cause extermination services, including treatment for insects, spiders, rats, mice, moles and other rodents, to be provided to the Premises by a reputable exterminator on a monthly basis, or more often as Landlord, in Landlord's reasonable discretion, may require, at Tenant's expense.
- (b) In order to eliminate the problem of sewer back-ups and health hazards, Tenant shall install grease traps in the Premises, the type and manner of installation of such grease traps being subject to Landlord's prior written approval and all governmental laws and requirements, and shall establish a quarterly cleaning program with respect thereto. In addition to the quarterly cleaning of the grease traps, Tenant shall use "Cloroben PT" or a similar type of chemical in all drain lines, in accordance with the manufacturer's recommendations, to help dissolve any grease build-up. Tenant shall provide Landlord with copies of its cleaning contract for its grease traps and its extermination contracts prior to the Tenant Opening Date and upon request by Landlord thereafter. Without limitation of any of the foregoing, Tenant shall take commercially reasonable efforts in order to maintain properly the grease trap and prevent, at all times, any overflow or discharge of grease at the surface of the grease trap manhole. The grease trap and all plumbing pipes shall be rooted and cleaned regularly and as often as necessary to prevent clogging or discharge. In the event of any such overflow or discharge, Tenant shall be responsible for all costs of cleanup of the overflow or discharge, including all costs of removing grease, and repair, restoration or replacement of property damaged by such overflow or discharge. If Tenant's grease trap(s) does not exclusively serve the Premises and is not exclusively used by Tenant, Tenant shall pay to Landlord as Additional Rent, for the costs of cleaning, servicing, maintaining and repairing the same pursuant to paragraph (c) below and Landlord shall undertake all such obligations. Tenant, as Additional Rent, shall be liable for the cost of any maintenance to or repairs of any of the pumps and pipes as a result of Tenant's failure to comply with the terms and conditions of this provision or as a result of any grease, garbage, beer, soda or other disposal of items through the drain system by Tenant.
- (c) Notwithstanding any other provision of this Lease, Landlord shall have the right to require Tenant to pay as a direct reimbursement to Landlord (or, at Landlord's election, pay to Landlord as part of the monthly estimate of Common Area Expenses or separate from and in addition to Common Area Expenses), Tenant's share of the costs of cleaning, servicing, maintaining and repairing any common (non-exclusive) grease trap(s) serving the Premises, which Tenant's share is equal to a fraction the

numerator of which is the number of square feet of floor area in the Premises, and the denominator of which is the number of square feet of floor area of all premises using said grease trap(s).

(d) The kitchen exhaust systems, including roofing hoods, ducts and fans used in connection with the kitchen operation, whether located in or outside of the Premises, to the extent allocated for the exclusive use of Tenant, shall be maintained by Tenant in good condition so as to meet applicable laws and commercially reasonable standards of cleanliness and health. Tenant shall establish a quarterly (or more frequent as Landlord may reasonably require) cleaning program with respect thereto with a reputable contractor. Tenant shall provide Landlord with a copy of its cleaning contract for the exhaust system prior to opening for business and thereafter as requested by Landlord. Tenant shall do wherever is necessary in order to properly maintain the exhaust system. In the event of discharge, Tenant shall be responsible for all costs of clean up, including all costs of repair, restoration or replacement of property damaged by such discharge. Tenant's cleaning contract shall provide for grease deposit removal from all surfaces (powder coating is not permitted).

(e) Tenant shall install grease guards on the HVAC units serving the Premises.

(f) Tenant shall store all trash and other waste in odor and vermin proof containers, such containers to be kept in temperature controlled areas not visible to members of the public. Tenant shall, at Tenant's expense, attend to the frequent disposal of such materials. Trash removal must be done by Tenant using containers approved by Landlord and at such times and in such manner as Landlord may reasonably direct and subject to such rules and regulations in respect thereto as Landlord may, from time to time, adopt.

(g) Tenant shall not permit noise or odors to emanate from the Premises into any Common Areas or other spaces in the Shopping Center in excess of noise and odors generally emitted by a restaurant, and upon written notice from Landlord, Tenant shall immediately cease and desist from causing such noise or odor in excess of those generally emitted by a restaurant. Tenant shall obtain, maintain and conspicuously display any and all permits, licenses and approvals required by any governmental authority for the operation of its business. Tenant shall have the obligation to provide for the orderly control of patrons, customers and invitees of the Premises. In connection therewith, Landlord may require that Tenant provide stanchions or otherwise direct the queuing of such individuals in the Common Areas adjacent to the Premises. Any stanchions and any queuing procedure shall be subject to the prior written approval of Landlord, but shall in no event interfere with the use of the Common Areas by Landlord, other tenants or their respective employees, patrons, customers or invitees.

(h) Tenant shall make the following items part of a continuing maintenance program in order to reduce the possibility of fire:

(i) Cooking hood filters and/or grease extractors should be cleaned weekly.

(ii) The entire exhaust system should be inspected by a properly trained, qualified, and certified company or person quarterly.

(iii) After inspection, if components are found to be contaminated with deposits from grease laden vapors, the entire exhaust system (hoods, grease removal devices, fans, ducts, and other included appurtenances) should be cleaned by a properly trained, qualified and certified company or person. The cleaning should be to bare metal using mechanical means (scraping, washing, steam cleaning, etc.) and not coated with chemicals or powder. A certificate of service should be provided by any contracted service.

**R-9. FRANCHISOR PROVISIONS.** The provisions of the Franchisor Addendum attached hereto are incorporated herein.

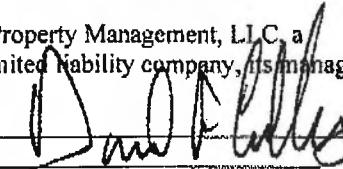
[Signature Page Follows]

If the terms and conditions of this Rider conflict in any way with the terms and conditions of the Lease to which this Rider is attached, the terms and conditions of this Rider shall control.

LANDLORD:

IA Matthews Sycamore, L.L.C.,  
a Delaware limited liability company

By: InvenTrust Property Management, LLC, a  
Delaware limited liability company, its managing agent

By: 

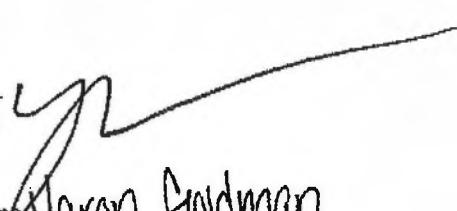
Name: David F. Collins

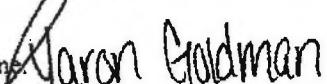
Its: Executive Vice President

Date: 10/3/17

TENANT:

RTHT INVESTMENTS, LLC,  
a Delaware limited liability company

By: 

Name: 

Its: CEO/Manager

Date: 9/7/2017

**FUZZY'S TACO SHOP®  
FRANCHISE AGREEMENT**

**LEASE RIDER**

**THIS RIDER** (this "Rider") is incorporated into the body of the lease to which this rider is attached, dated \_\_\_\_\_ (the "Lease") between \_\_\_\_\_, having its principal offices at \_\_\_\_\_ ("Landlord"), and \_\_\_\_\_, having its principal offices at \_\_\_\_\_ ("Tenant"), for that certain real property premises located at \_\_\_\_\_ (the "Premises"). The provisions hereof shall be cumulative of those set forth in the Lease, but to the extent of any conflict between any provisions of this Rider and the provisions of the Lease, this Rider shall govern and control.

- 1. Acknowledgement of Franchise Relationship.** Landlord acknowledges that Tenant intends to operate as a FUZZY'S TACO SHOP® franchise restaurant at the Premises (the "Franchised Business"), and consents to such use for the term of the Lease, including any extensions. Landlord further acknowledges and agrees that that Tenant's rights to operate the Franchised Business is solely pursuant to a franchise agreement ("Franchise Agreement") between Tenant and Fuzzy's Taco Opportunities, LLC ("Franchisor"). Tenant's operations at the Premises are independently owned and operated. Landlord acknowledges that Tenant alone is responsible for all obligations under the Lease unless and until Franchisor or another franchisee expressly, and in writing, assumes such obligations and takes actual possession of the Premises. Landlord agrees not to take an action that would prohibit Tenant from operating the Franchised Business, as contemplated by the Franchise Agreement, at the Premises.
- 2. Collateral Assignment of Lease.** Landlord hereby consents, without payment of a fee and without the need for further Landlord consent, to (i) the collateral assignment of Tenant's interest in the Lease to Franchisor to secure Tenant's obligations to Franchisor under the Franchise Agreement, and/or (ii) Franchisor's succeeding to Tenant's interest in the Lease as a result of Franchisor's exercise of rights or remedies under such collateral assignment or as a result of Franchisor's termination of, or exercise of rights or remedies granted in or under, any other agreement between Franchisor and Tenant.
- 3. Tenant Signage.** Landlord agrees to allow Tenant to use Franchisor's standard interior and exterior signage and designs to the maximum extent permitted by local governmental authorities. Tenant shall be provided, at Tenant's sole cost and expense, with a panel on any pylon/monument/directory sign for the development in which the Premises is located, and shall be permitted to install a standard sign thereon approved by Franchisor, including without limitation Franchisor's logo.
- 4. Franchisor Not a Guarantor.** Landlord acknowledges and agrees that notwithstanding any terms or conditions contained in this Rider or any other agreement, Franchisor shall in no way be construed as a guarantor or surety of Tenant's obligations under the Lease.
- 5. Notice and Cure Rights to Franchisor.** Prior to exercising any remedies hereunder (except in the event of imminent danger to the Premises), Landlord shall give Franchisor written notice of any default by Tenant, and commencing on receipt thereof by Franchisor, Franchisor shall have fifteen (15) additional days to the established cure period as is given to Tenant under the Lease for such default to cure such defaults. Landlord agrees to accept cure tendered by Franchisor as if the same was tendered by Tenant, but Franchisor has no obligation to cure such default.

6. Non-disturbance from Mortgage Lenders. It shall be a condition of the Lease being subordinated to any mortgage, deed of trust, deed to secure debt or similar encumbrance on the Premises that the holder of such encumbrance agree not to disturb Tenant's rights under the Lease or Tenant's possession of the Premises, so long as Tenant is not in default of its obligations hereunder beyond an applicable grace or cure period provided therein or herein.

7. Franchisor Right to Enter. Landlord acknowledges and agrees that Franchisor or its designee may enter the Premises for all purposes permitted under the terms of the Franchise Agreement, including to inspect the Premises and the Franchised Business' operations, to manage the Tenant's business on Tenant's behalf under certain circumstances (to-wit: Tenant's failure to timely cure its default of the Franchise Agreement, and while Franchisor evaluates its right to purchase the location), or to remove any trade fixtures or signage upon termination or expiration of the Franchise Agreement. If Franchisor enters the Premises for any such purposes, it will do so without assuming any liability under the Lease.

8. Amendments. Tenant agrees that neither the Lease nor this Rider may be amended by the parties thereto without the prior written consent of Franchisor.

9. Third Party Beneficiary. Franchisor is a third party beneficiary of the terms of this Rider, or any other terms of the Lease applicable to Franchisor's rights under the Lease, and as a result thereof, shall have all rights (but not the obligation) to enforce the same. Failure of Franchisor to enforce or exercise any of its rights hereunder shall not constitute a waiver of the rights hereunder or a waiver of any subsequent enforcement or exercise of its rights hereunder.

10. Severability. If any provision of this Rider or any part thereof is declared invalid by any court of competent jurisdiction, such act shall not affect the validity of this Rider and the remainder of this Rider shall remain in full force and effect according to the terms of the remaining provisions.

11. Remedies. The rights and remedies created herein shall be deemed cumulative and no one such right or remedy shall be exclusive at law or in equity of the rights and remedies which Franchisor may have under this or any other agreement to which Franchisor and Tenant are parties.

12. Execution. This Rider may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement with the Lease. This Rider and all other documents related to this Rider may be executed by manual or electronic signature. Either party may rely on the receipt of a document executed or delivered electronically.

**[SIGNATURE PAGE TO FOLLOW]**

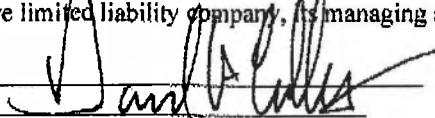
IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Lease Rider to be effective as of the effective time of the Lease.

LANDLORD:

IA Matthews Sycamore, L.L.C.,  
a Delaware limited liability company

By: InvenTrust Property Management, LLC, a  
Delaware limited liability company, its managing agent

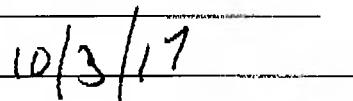
By: \_\_\_\_\_



Name: David F. Collins

Its: Executive Vice President

Date: \_\_\_\_\_



TENANT:

RTHT INVESTMENTS, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_



Name: Yaron Goldman

Its: CEO/Manager

Date: 9/7/2017

**Exhibit B-2**

Assignment and Assumption of Interest in the Matthews Lease

**ASSIGNMENT AND ASSUMPTION  
OF INTEREST IN LEASE AGREEMENT  
("ASSIGNMENT")**

For good and valuable consideration, the receipt of which is hereby acknowledged, **RTHT Investments, LLC**, a Delaware limited liability company ("Assignor"), does hereby assign to **SD Restaurant Group, LLC**, a Delaware limited liability company ("Assignee"), as of May 1, 2018 (the "Effective Date"), all of Assignor's right, title and interest in and under that certain Shopping Center Lease Agreement dated October 3, 2017, by and between **IA Matthews Sycamore, L.L.C.**, a Delaware limited liability company ("Landlord") and Assignor, as Tenant, regarding the premises described as Suite C (Unit 19) containing approximately 5,770 square feet of gross floor space (the "Premises") located at 2225 Matthews Township Parkway, Matthews, North Carolina 28105, including any and all addendums, amendments, extensions and modifications thereto (the "Lease"), a copy of which is attached hereto as Exhibit "A" and made a part hereof by this reference.

Assignor warrants and represents to Assignee that: (1) the Lease is in full force and effect; (2) the Lease has not been modified, changed, altered, amended and/or assigned except as shown by the Lease attached hereto; (3) Assignor is not in default under the Lease; (4) Assignor has full and lawful authority to assign the Lease and (5) Assignor has no knowledge of any defaults or breaches by Landlord or of any defense or offsets against Landlord to the enforcement of the Lease.

By execution hereof, Assignee hereby assumes the Lease and all existing obligations thereunder as of the Effective Date and shall perform and observe all of the covenants, terms, promises, agreements and conditions therein contained on Assignor's part to be performed and observed, including the prompt payment of all rental payments for the full term hereof. Assignee shall indemnify, defend and hold Assignor harmless from any and all liability arising under the Lease from and after the Effective Date.

Nothing in this Assignment shall be deemed to waive or modify any of the provisions of the Lease, except as otherwise expressly set forth herein.

Assignee's address for notices shall be as set forth in the Lease.

If any party(s) to this Assignment commences an action against another party(s) hereto arising out of or in connection with this Assignment, the prevailing party(s) shall be entitled to recover from the losing party(s) reasonable attorney's fees and costs of suit as part of its judgment.

This Assignment contains all of the agreements of the parties hereto with respect to the matters contained herein, and no prior agreement, arrangement or understanding pertaining to any such matters shall be effective for any purpose.

[Signature Page Follows]

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

ASSIGNOR:

RTHT INVESTMENTS, LLC  
a Delaware limited liability company

By: *Yaron P. Goldman*

Name: Yaron Goldman

Title: *CEO/Manager*

ASSIGNEE:

SD RESTAURANT GROUP, LLC,  
a Delaware limited liability company

By: *Yaron P. Goldman*

Name: Yaron Goldman

Title: *CEO/Manager*

**Exhibit B-3**

**Guaranty of Matthews Lease**

**GUARANTY**

THIS GUARANTY (this "Guaranty") dated as of the 26<sup>th</sup> day of September, 2017, by SD-Missouri, LLC, a Delaware limited liability company ("Guarantor"), having an address of 1207-B Crews Road, Matthews, North Carolina 28105, to IA Matthews Sycamore, L.L.C., a Delaware limited liability company (the "Landlord"), having an address of 3025 Highland Parkway, Suite 350, Downers Grove, Illinois 60515.

**WITNESSETH:**

Contemporaneously herewith, Landlord, as lessor, is entering into a certain lease (the "Lease") for real property located in the City of Matthews, County of Mecklenburg, and State of North Carolina, with RTHT INVESTMENTS, LLC, a Delaware limited liability company, as lessee (and his/her/its successors and assigns, collectively "Tenant"). Guarantor will receive a substantial economic benefit from the Lease and is executing this Guaranty as an inducement to Landlord to enter into the Lease. Landlord would not have executed the Lease with Tenant without Guarantor executing this Guaranty.

NOW THEREFORE, in consideration of the premises, Guarantor agrees as follows:

1. Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Landlord (a) the full and punctual performance and observance by Tenant of all of the terms, conditions, covenants and obligations to be performed and observed by Tenant under the Lease and any month-to-month tenancy created as a result of Tenant holding over after the expiration or termination of the Lease including, without limitation, the payment as and when due, whether by acceleration or otherwise, of all Minimum Rent and Additional Rent (both as defined in the Lease) and any other sums payable by Tenant under the Lease, and (b) payment of all Enforcement Costs (as defined in Section 5 below). This is a guaranty of payment and performance, and not of collection, and Landlord shall not be obligated to enforce or exhaust its remedies against Tenant before proceeding to enforce this Guaranty. Landlord may, at Landlord's option, join Guarantor in any action or proceeding commenced by Landlord against Tenant in connection with or based upon the Lease or any term, covenant or condition thereof, and recovery may be had against Guarantor in such action or proceeding or in any independent action or proceeding against Guarantor without Landlord (i) asserting, prosecuting, or exhausting any remedy or claim against Tenant or (ii) commencing any proceeding to enforce or realize upon any collateral or other security (including, without limitation, any security deposit or other guarantees) which may be given to secure Tenant's obligations under the Lease, or to obtain any judgment, decree or foreclosure sale with respect thereto. Any suit or proceeding brought against Guarantor to collect the amount of any deficiency in payments due from Tenant under the Lease for any month or months shall not prejudice in any way the rights of Landlord to collect any such deficiency for any subsequent month or months in any similar suit or proceeding. Additionally, the maintenance of any action or proceeding by Landlord to recover any sum or sums that may be or become due under the Lease or to secure the performance of any of the other terms, covenants and conditions of the Lease shall not preclude Landlord from demanding and receiving the payment of such sums and the performance of such other terms, covenants and conditions from Guarantor, or from thereafter instituting and maintaining subsequent actions or proceedings for any subsequent default or defaults of Tenant under the Lease. Guarantor does hereby agree that, without affecting the liability of Guarantor under this Guaranty and without notice to Guarantor, Landlord may (i) grant to Tenant additional time for the payment of rent and any other sums due under the Lease or for the performance of any other terms, covenants and conditions contained in the Lease, or (ii) avail itself of or exercise any or all of the rights and remedies against Tenant provided by law, in equity, or by the Lease, and may proceed either against Tenant alone or jointly against Tenant and Guarantor or against Guarantor alone without first proceeding or exhausting any remedy or claim against Tenant.

2. Guarantor hereby assents to all of the provisions of the Lease and waives demand, protest, notice of any indulgences or extensions granted to Tenant, any requirement of diligence or promptness on the part of Landlord in the enforcement of the Lease and any notice thereof, and any other notice whereby to charge Guarantor. Guarantor shall be furnished with a copy of any notice of or relating to default under or termination of the Lease which is served upon Tenant.

3. (a) This Guaranty shall be a continuing guarantee and the liability of Guarantor hereunder shall in no way be affected, modified, diminished, impaired or terminated for any reason whatsoever, including, without limitation, by reason of any of the following, whether or not notice thereof is given to Guarantor: (i) any one or more sublettings of all or any portion of the Premises or any one or more assignments or other transfers of Tenant's interest in the Lease (except as set forth below), (ii) any consent, approval, waiver or other action, inaction or omission under or concerning the Lease, (iii) any modifications, renewals, extensions or amendments of the Lease (except as set forth below), (iv) any dealings or transactions or matter or thing occurring between Landlord and Tenant, (v) any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting Tenant or its successors or assigns, (vi) the release or discharge of Tenant from the performance or observance of any of the terms, covenants or conditions of law, by reason of any of the events described in the foregoing clause (v) hereof, or otherwise, (vii) any change in relationship between Guarantor and Tenant, (viii) the default or failure of Guarantor to perform any of its obligations set forth in this Guaranty, (ix) any action which Landlord may take or fail to take against Tenant by reason of any waiver of, or failure to enforce, any of the rights or remedies reserved to Landlord in the Lease, or otherwise, (x) any failure or refusal of Landlord to relet the Premises or any part or parts thereof in the event that Landlord shall obtain possession of the Premises after Tenant's insolvency or default except as required under the Lease, (xi) intentionally omitted, (xii) any alterations, repairs, replacements and/or decoration in the Premises as Landlord, in Landlord's reasonable judgment, considers advisable and necessary for the purpose of re-letting the Premises, and (xiii) any other circumstance or condition that may result in a discharge, limitation or reduction of liability of a surety or guarantor. Not later than twenty (20) after the request of Landlord up to twice per calendar year, Guarantor will execute an estoppel certificate in a form requested by Landlord (A) confirming Guarantor's obligations under this Guaranty, (B) acknowledging that this Guaranty has not been modified (or, if so, identifying all modifications) and is in full force and effect, and (C) confirming that Guarantor has no claims or defenses under this Guaranty or otherwise with respect to the full performance and satisfaction of all of the terms, provisions, agreements and obligations of this Guaranty. A failure to issue an estoppel certificate in the requested form shall constitute a default by Tenant under the Lease. Such estoppel certificate will be certified to Landlord and such other parties as are designated by Landlord.

(b) Guarantor hereby waives notice of the acceptance of this Guaranty and presentment and demand for payment, notice of nonpayment, notice of dishonor, protest, notice of protest, nonperformance, nonobservance and any other notice or demand to which Guarantor might otherwise be entitled. Guarantor hereby waives trial by jury of any and all issues arising in any action or proceeding between the parties, upon, under or in connection with this Guaranty or of any of its provisions, directly or indirectly, or any and all negotiations in connection therewith. To the extent permitted by law, Guarantor hereby waives and releases Landlord from all claims, rights and defenses, if any, relating to title VII (the Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15U.S.C. §1601 et seq.) and any successor act and related regulations. Guarantor's obligations hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, and shall not be subject to, and Guarantor hereby irrevocably waives, any defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of Tenant's obligations under the Lease or of any of Guarantor's obligations hereunder, or otherwise.

4. The obligations guaranteed by Guarantor pursuant to this Guaranty include all terms, conditions, covenants and obligations to be performed and observed by Tenant during and/or with respect to the initial Term of the Lease, which is the period beginning on the "Commencement Date" and ending on the Termination Date as set forth in Section 1.3 of the Abstract of Lease and Section 3.1 of the Lease, the Extended Term, if any, and any month-to-month tenancy created after the expiration or termination of the Lease. This is a continuing guaranty and Guarantor's obligations hereunder shall survive the expiration of the initial Term and/or any expiration or termination of the Lease and shall continue until all obligations of Guarantor hereunder have been paid and satisfied in full. In the event that the Lease is modified, renewed or extended, or the Premises expanded or contracted, in any respect by agreement between Landlord and Tenant pursuant to an option granted in the Lease, or in the event that Tenant holds over beyond the Term of the Lease, or otherwise, then the obligations hereunder of Guarantor shall extend to the full and faithful performance and observance of all of the covenants, terms and conditions of the Lease and of any such modification, renewal, extension, expansion, contraction and/or hold over. Guarantor intends that Guarantor shall remain liable hereunder as a principal until the full, final and unavoidable performance of all of liabilities and obligations hereunder, notwithstanding any fact, act, event or occurrence which might otherwise operate as a legal or equitable discharge of a surety or guarantor. Notwithstanding the foregoing, if this Lease is

assigned by Tenant, Guarantor shall not be liable for any increased obligations resulting from any amendment of the Lease thereafter unless Guarantor is a party to such amendments.

5. In addition to the amounts specified pursuant to Paragraph 1 hereof, Guarantor shall pay to Landlord any and all costs incurred by Landlord in enforcing this Guaranty, including court costs and reasonable attorneys' fees and costs (collectively, "Enforcement Costs").

6. This Guaranty shall inure to the benefit of and may be enforced by Landlord and its successors and assigns and any assignee of Landlord's interest in the Lease (including Landlord's mortgagee), and shall be binding upon Guarantor and its successors and assigns. No assignment by Guarantor shall affect or reduce its obligations hereunder, and all such obligations shall continue as though no such assignment had been made. All obligations and liabilities of Guarantor pursuant to this Guaranty shall be binding upon their successors, heirs, personal representatives, and assigns.

7. This Guaranty may not be changed or terminated orally, but only by a written instrument signed by the party against whom enforcement of any change or termination is sought.

8. Any notice required hereunder to be sent to Guarantor shall be sufficiently given by mailing by certified or registered mail, postage prepaid, to the address above.

9. If Landlord shall be obligated by any bankruptcy, insolvency or other legal proceedings to repay to Guarantor or to Tenant, or to any trustee, receiver or other representative of any of them, any amounts previously paid by Guarantor pursuant to this Guaranty, this Guaranty shall be deemed reinstated to the extent of that repayment made by Landlord as though such original amount was never paid. Landlord shall not be required to litigate or otherwise dispute its obligation to make such repayments if, in good faith and on the advice of counsel, Landlord believes that such obligation exists. Nothing herein contained is intended or shall be construed to give to Guarantor any right of subrogation under the Lease or any right to participate in any way therein or in Landlord's right, title and interest in the Lease. Notwithstanding any payments made under this Guaranty, all rights of subrogation and participation are expressly subrogated by Guarantor to Landlord's rights hereunder.

10. No delay on the part of Landlord in exercising any right, power or privilege under this Guaranty, nor any failure to exercise the same, shall operate as a waiver of, or otherwise affect, any right, power or privilege of Landlord under this Guaranty, nor shall any single or partial exercise thereof preclude the further exercise of, or the exercise of any other, right, power or privilege of Landlord under this Guaranty.

11. The validity and enforcement of this Guaranty shall be governed by and construed in accordance with the internal laws of the State in which the Premises (as defined in the Lease) are located without regard to principles of conflicts of laws, and such laws shall apply in any action or proceeding arising out of or under this Guaranty.

12. All remedies afforded to Landlord by reason of this Guaranty are separate and cumulative remedies and it is agreed that no one remedy, whether exercised by Landlord or not, shall be deemed to be exclusion of any other remedy available to Landlord and shall not limit or prejudice any other legal or equitable remedy which Landlord may have.

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

14. Guarantor hereby irrevocably:

(a) submits to the jurisdiction of the state courts of the state in which the Shopping Center is located and to the jurisdiction of the United States District Court in which the Shopping Center is located, for the purposes of each and every suit, action or other proceeding arising out of or based upon this Guaranty or the subject

matter hereof brought by landlord, it being expressly understood and agreed that this consent to jurisdiction shall be self-operative and no further instrument or action, other than service of process in one of the manners specified in this Guaranty or as otherwise permitted by law, shall be necessary in order to confer jurisdiction upon Guarantor in any such court; and

(b) waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding brought in any such court, any claim that Guarantor is not subject personally to the jurisdiction of the above named courts, that Guarantor's property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court, and further agrees to waive, to the fullest extent permitted under applicable law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which Landlord or its successors or assigns are entitled pursuant to the final judgment of any court having jurisdiction; and

(c) consents to service of process by certified or registered mail at Guarantor's address as set forth herein, or in any other manner permitted by law, service in the foregoing manner to be deemed, in every respect, effective service of process upon Guarantor and be taken and held to be valid personal service upon, and personal delivery to, Guarantor. Guarantor agrees that Guarantor's submission to jurisdiction and consent to service of process by mail is made for the express benefit of Landlord.

The headings of sections or paragraphs in this Guaranty are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof. As used in this Guaranty, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable where the context so requires. If this Guaranty is executed by more than one person or entity, then references to "Guarantor" herein shall be deemed to refer to each such person or entity, and the liability of each such person or entity shall be joint and several, and the release by Landlord of any of them shall not release or affect in any manner the obligations of any other of them, and this Guaranty shall not be revoked, discharged or impaired as to any such persons or entities by reason of the death or incapacity or insolvency of any other of them. All payments to be made hereunder shall be made in currency and coin of the United States of America which is legal tender for public and private debts at the time of payment. This Guaranty constitutes the entire agreement between Guarantor and Landlord with respect to the subject matter hereof and supersedes all prior such agreements and understandings, both written and oral. If this Guaranty is executed in several counterparts, each of those counterparts shall be deemed an original, and all of them together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty as of the day and year first above written.

**GUARANTOR:**

SD-Missouri, LLC, a Delaware limited liability company

By: Yaron Goldstein

Name: Yaron Goldstein

Its: Manager

Date: 09/26/17

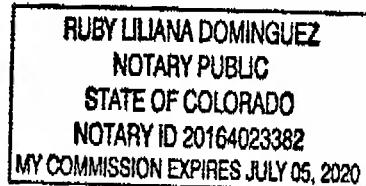
STATE OF Colorado )  
                          ) ss  
COUNTY OF Denver )

I, Ruby Liliana Dominguez a Notary Public, in and for the County and State aforesaid, do hereby certify that Yaron P. Goldman, the manager of SD-Missouri, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Yaron, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her free and voluntary act and deed and as the free and voluntary act and deed of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21 day of September, 20 19

My Commission Expires: July 05, 2020

Notary Public: Ruby Dominguez



**Exhibit C-1**

The Rea Farms Lease

LEASE AGREEMENT

BETWEEN

RFR, LLC, AS LANDLORD,

AND

RTHT INVESTMENTS, LLC, AS TENANT

NOVEMBER 15, 2017

**TABLE OF CONTENTS**

	Page
<b>ARTICLE 1 FUNDAMENTAL LEASE PROVISIONS.....</b>	1
1.1 <b>Landlord .....</b>	1
1.2 <b>Tenant.....</b>	1
1.3 <b>Tenant's Trade Name.....</b>	1
1.4 <b>Premises .....</b>	1
1.5 <b>Lease Term.....</b>	1
1.6 <b>Effective Date.....</b>	1
1.7 <b>Intentionally Omitted .....</b>	1
1.8 <b>Target Delivery Date.....</b>	1
1.9 <b>Expiration Date .....</b>	1
1.10 <b>Rent Commencement Date.....</b>	1
1.11 <b>Minimum Annual Rent .....</b>	1
1.12 <b>Percentage Rent.....</b>	2
1.13 <b>Additional Rent .....</b>	2
1.14 <b>Permitted Use .....</b>	2
1.15 <b>Security Deposit .....</b>	2
1.16 <b>Intentionally Omitted .....</b>	2
1.17 <b>Addresses for Notices .....</b>	<b>Error! Bookmark not defined.</b>
<b>ARTICLE 2 PREMISES.....</b>	3
2.1 <b>Condition.....</b>	3
2.2 <b>Delay in Delivery .....</b>	3
2.3 <b>Reserved Easement .....</b>	4
2.4 <b>Right to Enter .....</b>	4
<b>ARTICLE 3 LEASE TERM .....</b>	4
3.1 <b>Duration; Extension Options.....</b>	4
3.2 <b>Surrender of the Premises .....</b>	5
3.3 <b>Holding Over.....</b>	5
<b>ARTICLE 4 RENT.....</b>	5
4.1 <b>Rent Commencement Date.....</b>	5
4.2 <b>Minimum Annual Rent .....</b>	5
4.3 <b>Percentage Rent.....</b>	5
4.4 <b>Additional Rent .....</b>	7
4.5 <b>Proration of Rent for Partial Months.....</b>	9
4.6 <b>Landlord's Right to Offset .....</b>	9
4.7 <b>Failure to Pay Rent When Due.....</b>	9
4.8 <b>Address for Payments .....</b>	9

<b>ARTICLE 5 TAX AND INSURANCE EXPENSES.....</b>	<b>9</b>
<b>ARTICLE 6 USE .....</b>	<b>10</b>
6.1    Permitted Use.....	10
6.2    Duties and Prohibited Conduct .....	10
6.3    Exclusive Rights of Tenant .....	11
6.4    Hazardous Materials.....	12
<b>ARTICLE 7 TENANT'S OPERATING COVENANTS.....</b>	<b>13</b>
7.1    Operating Covenants.....	13
7.2    Operating Days and Hours .....	14
<b>ARTICLE 8 IMPROVEMENTS.....</b>	<b>14</b>
8.1    Landlord's Work .....	14
8.2    Initial Construction of the Premises.....	14
8.3    Exterior Signage.....	14
8.4    Subsequent Improvements .....	14
8.5    Mechanics' Liens. .....	14
8.6    Title to Improvements.....	15
<b>ARTICLE 9 REPAIRS; MAINTENANCE .....</b>	<b>15</b>
9.1    Tenant's Obligations .....	15
9.2    Landlord's Obligations.....	16
9.3    Performance of Tenant's Work by Landlord .....	16
9.4    Service Contracts .....	16
<b>ARTICLE 10 UTILITIES AND AIR CONDITIONING .....</b>	<b>16</b>
10.1    Utilities.....	16
10.2    Utilities Charge .....	17
10.3    Calculation of Utilities Charge.....	17
10.4    Air Conditioning System.....	17
<b>ARTICLE 11 COMMON AREA.....</b>	<b>17</b>
11.1    Tenant's License to Use .....	17
11.2    Operation and Maintenance of Common Area.....	17
11.3    Common Area Expenses .....	17
11.4    Extended Hours Services .....	18
11.5    Control of Common Area.....	18
11.6    Security Officers .....	19
11.7    Rules and Regulations.....	19
11.8    Parking Rules .....	19
<b>ARTICLE 12 INSURANCE OBLIGATIONS .....</b>	<b>19</b>
12.1    Tenant's Insurance Obligations.....	19
12.2    Tenant's Policy Requirements .....	20
12.3    Landlord's Insurance Obligations .....	20
12.4    Mutual Waivers of Rights .....	20

<b>ARTICLE 13 INDEMNITY .....</b>	<b>20</b>
13.1 <b>Indemnities.....</b>	<b>20</b>
13.2 <b>Indemnification Scope and Survival .....</b>	<b>21</b>
<b>ARTICLE 14 OCCUPANCY TRANSACTIONS .....</b>	<b>21</b>
14.1 <b>Restrictions.....</b>	<b>21</b>
14.2 <b>Condition Precedent .....</b>	<b>21</b>
14.3 <b>Procedures .....</b>	<b>22</b>
14.4 <b>Response by Landlord; Documentation .....</b>	<b>22</b>
14.5 <b>Consideration to Landlord.....</b>	<b>22</b>
14.6 <b>Intentionally Omitted .....</b>	<b>22</b>
14.7 <b>Nullity .....</b>	<b>22</b>
<b>ARTICLE 15 DEFAULTS BY TENANT; LANDLORD'S REMEDIES.....</b>	<b>22</b>
15.1 <b>Events of Default.....</b>	<b>22</b>
15.2 <b>Notices.....</b>	<b>23</b>
15.3 <b>Landlord's Rights and Remedies .....</b>	<b>23</b>
15.4 <b>Landlord's Damages .....</b>	<b>24</b>
15.5 <b>Personal Property .....</b>	<b>25</b>
15.6 <b>Waiver of Rights of Redemption .....</b>	<b>26</b>
<b>ARTICLE 16 DEFAULTS BY LANDLORD; TENANT'S REMEDIES.....</b>	<b>26</b>
16.1 <b>Default by Landlord .....</b>	<b>26</b>
16.2 <b>Notice to Mortgagees .....</b>	<b>26</b>
16.3 <b>Limitations on Remedies Against Landlord .....</b>	<b>26</b>
16.4 <b>Landlord's Exemption From Liability .....</b>	<b>27</b>
<b>ARTICLE 17 RECONSTRUCTION .....</b>	<b>27</b>
17.1 <b>Insured Casualty.....</b>	<b>27</b>
17.2 <b>Uninsured Casualty .....</b>	<b>27</b>
17.3 <b>Construction Provisions .....</b>	<b>27</b>
17.4 <b>Release of Liability .....</b>	<b>28</b>
17.5 <b>Abatement of Rent .....</b>	<b>28</b>
17.6 <b>Major Destruction .....</b>	<b>28</b>
<b>ARTICLE 18 EMINENT DOMAIN.....</b>	<b>28</b>
18.1 <b>Total Taking .....</b>	<b>28</b>
18.2 <b>Partial Taking; Right to Terminate.....</b>	<b>28</b>
18.3 <b>Reconstruction .....</b>	<b>28</b>
18.4 <b>Award .....</b>	<b>29</b>
<b>ARTICLE 19 SUBORDINATION; ATTORNMENT; ESTOPPEL .....</b>	<b>29</b>
19.1 <b>Subordination to Mortgage.....</b>	<b>29</b>
19.2 <b>Attornment .....</b>	<b>29</b>
19.3 <b>Estoppel Certificate .....</b>	<b>29</b>

<b>ARTICLE 20 QUIET ENJOYMENT .....</b>	<b>30</b>
<b>ARTICLE 21 CONSENTS .....</b>	<b>30</b>
<b>ARTICLE 22 NOTICES .....</b>	<b>30</b>
<b>ARTICLE 23 ATTORNEYS' FEES.....</b>	<b>31</b>
<b>ARTICLE 24 GENERAL PROVISIONS .....</b>	<b>31</b>
24.1    Binding Effect .....	31
24.2    Right to Lease .....	31
24.3    Retail Development Configuration .....	31
24.4    Claims by Brokers.....	31
24.5    Exhibits .....	32
24.6    Entire Agreement; Amendment .....	32
24.7    Force Majeure .....	32
24.8    Venue .....	32
24.9    Bankruptcy .....	32
24.10    No Presumption.....	32
24.11    No Waiver .....	32
24.12    Nondiscrimination.....	33
24.13    Parties.....	33
24.14    Real Estate Investment Trust.....	33
24.15    Relationship of the Parties.....	33
24.16    Sale or Mortgage by Landlord .....	33
24.17    Severability .....	33
24.18    Time of Essence .....	33
24.19    Waiver of Trial by Jury .....	34
24.20    Warranty of Authority.....	34
24.21    Survival of Obligations .....	34
24.22    Rights of Light, View or Air .....	34
24.23    Recordation; Confidentiality .....	34
24.24    Counterparts .....	34
24.25    Effect of Covenants and Agreements and other Matters of Record; Consent.....	35
24.26    Section Headings; Defined Terms.....	35
<b>ARTICLE 25 SECURITY DEPOSIT .....</b>	<b>35</b>
25.1    Payment.....	35
25.2    Application.....	35
<b>ARTICLE 26 FRANCHISOR RIDER.....</b>	<b>35</b>
26.1    Incorporation .....	35

SCHEDULE OF EXHIBITS

- A-1 - The Retail Development
- A-2 - The Premises
- A-3 - The Protected Area
- B - Defined Terms
- C - Provisions Relating to the Design and Construction of Tenant's Premises
- D - Rules and Regulations
- E - Estoppel Certificate
- F - Provisions Governing Construction Allowance
- G - Subordination, Non-Disturbance and Attornment Agreement
- H - Landlord's Cold Dark Shell
- I - Signage Program
- J - Prohibited Uses
- K - Exclusive Uses
- L - Form of Guaranty
- M - Franchisor Rider

## LEASE AGREEMENT

In consideration of the rents and covenants hereinafter set forth, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises upon the terms and conditions of this Lease Agreement (this "Lease") entered into and dated as of November 15, 2017.

### ARTICLE 1 FUNDAMENTAL LEASE PROVISIONS

**1.1 Landlord:** RFR, LLC, a North Carolina limited liability company

**1.2 Tenant:** RTHT Investments, LLC, a Delaware limited liability company

**1.3 Tenant's Trade Name:** Fuzzy's Taco Shop (Section 6.1)

**1.4 Premises:** That certain space known as Building D, Space 8 in the Retail Development containing approximately 4,220 rentable square feet of Floor Area. The Premises are in the approximate location shown on the Retail Site Plan attached hereto as Exhibit A-2. (Section 2.1)

**1.5 Lease Term:** Beginning with the Rent Commencement Date and ending ten years after the Rent Commencement Date, with three five-year optional extension terms as described in Section 3.1. (Section 3.1)

**1.6 Effective Date:** November 15, 2017 (Section 3.1)

**1.7 Intentionally Omitted**

**1.8 Target Delivery Date:** June 1, 2018. If Landlord fails to deliver possession of the Premises, with Landlord's Work substantially complete, to Tenant by the Target Delivery Date for any reason other than delays caused by Tenant or Tenant's employees, agents, contractors or subcontractors (collectively, "Tenant Delay Factors"; each a "Tenant Delay Factor"), the "Delivery Date" shall be the date on which Landlord delivers possession of the Premises, with Landlord's Work substantially complete, to Tenant. If Landlord fails to deliver possession of the Premises, with Landlord's Work substantially complete, to Tenant by the Target Delivery Date as a result of or partially as a result of one or more Tenant Delay Factors, the "Delivery Date" shall be the date on which Landlord would have delivered possession of the Premises, with Landlord's Work substantially complete, to Tenant in the absence of such Tenant Delay Factor(s). (Section 3.2)

**1.9 Expiration Date:** Ten years after the Rent Commencement Date, as such Expiration Date may be extended pursuant to Section 3.1. (Section 3.1)

**1.10 Rent Commencement Date:** The earlier to occur of (i) the date Tenant first opens for business in the Premises or (ii) 150 days following the Delivery Date. (Section 4.1)

**1.11 Minimum Annual Rent:** Minimum Annual Rent during the Lease Term shall be as follows: (Section 4.2)

YEAR	RENT/SF	ANNUAL	MONTHLY
1	\$34.00	\$143,480.00	\$11,956.67
2	\$34.85	\$147,067.00	\$12,255.58
3	\$35.72	\$150,743.68	\$12,561.97
4	\$36.61	\$154,512.27	\$12,876.02
5	\$37.53	\$158,375.07	\$13,197.92
6	\$38.47	\$162,334.45	\$13,527.87
7	\$39.43	\$166,392.81	\$13,866.07
8	\$40.42	\$170,552.63	\$14,212.72
9	\$41.43	\$174,816.45	\$14,568.04
10	\$42.46	\$179,186.86	\$14,932.24

Minimum Annual Rent shall be paid in accordance with the provisions of Section 4.2 hereof.

**1.12 Percentage Rent:** 5% of Gross Sales in excess of the Breakpoint. (Section 4.3)

**1.13 Additional Rent:** Tenant shall pay as Additional Rent, without setoff, deduction or demand, all other amounts due from Tenant under, and in the manner set forth in, this Lease, unless otherwise specifically set forth in this Lease. Tenant's share of the shared expenses constituting Additional Rent pursuant to Article 5, Article 10, and Article 11 (collectively, the "Operating Costs") is estimated to initially be \$6.00 per square foot of the Premises.

**1.14 Permitted Use:** The operation of a fast-casual Tex-Mex restaurant, with full bar, specializing in tacos, burritos, quesadillas and serving breakfast, lunch and dinner, with a menu similar to the majority of Fuzzy's Taco Shop locations, and no other use without Landlord's prior written consent, which consent may be granted or withheld in Landlord's sole and absolute discretion. (Section 6.1)

**1.15 Security Deposit:** \$0.00. (Article 25)

**1.16 Intentionally Omitted** (Section Error!  
Reference source  
not found.)

**1.17 Addresses for Notices:**

To Landlord: RFR, LLC  
c/o Lincoln Harris  
4725 Piedmont Row Drive, Suite 800  
Charlotte, NC 28210  
Telephone: (704) 714-7657  
Attn: Gregory A. Currie  
Email: [greg.currie@lincolnharris.com](mailto:greg.currie@lincolnharris.com)

and to: McGuireWoods LLP  
201 North Tryon St., Suite 3000  
Charlotte, NC 28202  
Telephone: (704) 343-2145  
Attn: Ryan P. Thompson, Esq.  
Email: [rpthompson@mcguirewoods.com](mailto:rpthompson@mcguirewoods.com)

To Tenant: RTHT Investments, LLC  
131 East Lincoln Avenue, Suite C  
Fort Collins, CO 80524  
Telephone: (970) 449-5386  
Attention: Yaron Goldman  
Email: [YGoldman@sd-holdings.com](mailto:YGoldman@sd-holdings.com)

and to: K&L Gates LLP  
214 North Tryon Street, 47<sup>th</sup> Floor  
Charlotte, North Carolina 28202  
Telephone: (704) 331-7410  
Attention: Emily B. Reynolds, Esq.  
Email: [emily.reynolds@klgates.com](mailto:emily.reynolds@klgates.com)

The provisions of this Article 1 summarize certain terms of this Lease that are more fully described in the balance of this Lease. In the event of a conflict between the provisions of this Article 1 and the balance of this Lease, the latter shall control. Capitalized terms used in this Lease shall have the meanings set forth or cross-referenced in Exhibit B attached hereto or otherwise defined in the body of this Lease. The defined terms set forth in Exhibit B attached hereto are incorporated herein.

## ARTICLE 2 PREMISES

**2.1 Condition.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, at the rental and upon the covenants and conditions hereinafter set forth, the space referred to herein as the “Premises” and identified on the Retail Site Plan attached hereto as Exhibit A-2, subject to modification by Landlord pursuant to Exhibit C; provided, however, said space shall not be deemed to include such conduits, facilities, and structures as may be located in the Premises for the common use and benefit of Landlord and other tenants and occupants in the Retail Development. The Premises shall be constructed in accordance with Exhibit C attached hereto and incorporated herein by reference. Landlord will use its good faith efforts to substantially complete Landlord’s Work (as defined in Exhibit C hereto) and deliver possession of the Premises to Tenant by the Target Delivery Date. Within 30 days after the Premises are substantially complete in accordance with Exhibit C hereto, Tenant’s architect, at Tenant’s expense, may recalculate the Floor Area of the Premises. In the event such calculation shows a deviation of more than 1% from the Floor Area calculation set forth in the definition of Premises in Section 1.4 and in the event Landlord accepts the calculation, then Section 1.4 shall be amended so as to reflect the recalculated Floor Area of the Premises, and the Minimum Annual Rent specified in Section 1.11 and any Additional Rent which is based on Floor Area shall be adjusted proportionately in accordance with such change.

**2.2 Delay in Delivery.** If Landlord cannot deliver possession of the Premises, with Landlord’s Work substantially complete, to Tenant not later than the Target Delivery Date for any reason, Landlord shall not be subject to any liability therefor. Such failure of Landlord to deliver possession of the Premises, with Landlord’s Work substantially complete, to Tenant not later than the Target Delivery Date shall not affect the validity of this Lease or the obligations of Tenant hereunder. Notwithstanding any term or provision herein to the contrary, if Landlord is unable to deliver possession of the Premises, with Landlord’s

Work substantially complete, to Tenant on or before September 1, 2018, for any reason except for a Tenant Delay Factor or a matter of Force Majeure, then, as Tenant's sole and exclusive remedy, Tenant shall be entitled to receive a rent credit of one day of Minimum Annual Rent for each day of delay. If Landlord remains unable to deliver possession of the Premises, with Landlord's Work substantially complete, to Tenant on or before December 1, 2018, for any reason except for a Tenant Delay Factor or a matter of Force Majeure (in which events Tenant shall not be entitled to terminate this Lease), then Landlord or Tenant may terminate this Lease by written notice to the other party, delivered prior to delivery of possession of the Premises with Landlord's Work substantially complete, in which event both Landlord and Tenant shall be released from any liability or obligation under this Lease, except as otherwise specifically provided herein or, if this Lease is not so terminated, then this Lease shall continue in full force and effect and Tenant shall continue to receive said rent credit until Landlord delivers possession of the Premises to Tenant, up to a maximum of 180 days after the Target Delivery Date. If Landlord's failure to deliver possession of the Premises, with Landlord's Work substantially complete, to Tenant by any of the dates described above is wholly or partially the result of a Tenant Delay Factor(s) or a matter(s) of Force Majeure, then the related date referenced above shall be extended for a number of days equal to the number of days by which any delay in Landlord's delivery of possession of the Premises to Tenant pursuant to the terms hereof was caused by such Tenant Delay Factor(s) or such matter(s) of Force Majeure.

**2.3 Reserved Easement.** Landlord shall have the right during the Lease Term to install or relocate conduits, pipes, ducts and related facilities comprising the Air Conditioning System and permitting the conveyance of Utilities in and through the space above the ceiling in the Premises at no expense to Tenant. If Landlord desires to relocate any such conduits, pipes, ducts or related facilities, Tenant shall have the right to approve such relocation, which approval shall not be unreasonably withheld. Landlord further reserves the right to use up to 1% of the Floor Area in the Premises as Landlord may designate at any time to accommodate items serving other tenants or resulting from the remodeling or expansion of the Retail Development, including, without limitation, columns, shafts, ducts and pipes, provided such portion is located adjacent to an interior wall other than the front (*i.e.*, the main entrance) of the Premises. Landlord shall use commercially reasonable efforts to ensure that Landlord's exercise of the rights provided in this Section 2.3 does not materially and adversely affect Tenant's use of the Premises.

**2.4 Right to Enter.** Landlord and/or its authorized representatives shall have the right to enter the Premises at all reasonable times for the purpose of showing the Premises to prospective purchasers or lenders. Tenant additionally shall permit Landlord, or its authorized representatives, to enter the Premises at all times during usual business hours to inspect the Premises, to perform its duties under this Lease, and to perform any work therein (a) that may be necessary to comply with Legal Requirements, (b) that Landlord may deem necessary to prevent waste or deterioration of the Premises or the Retail Development, and (c) that Landlord may deem necessary in connection with the expansion, reduction, remodeling or renovation of any portion of the Retail Development. Landlord shall use commercially reasonable efforts to ensure that Landlord's exercise of the rights provided in this Section 2.4 does not materially and adversely affect Tenant's use of the Premises.

### ARTICLE 3 LEASE TERM

**3.1 Duration; Extension Options.** This Lease shall become fully effective and binding as of the Effective Date. The "Lease Term" means that period commencing on the Rent Commencement Date and continuing through the Expiration Date, unless sooner terminated as provided in this Lease or by law and unless extended as provided in this Section 3.1.

If this Lease is still in full force and effect, if Tenant is not then in default under this Lease, and if Tenant is then in occupancy of the Premises and operating its business therein as contemplated in this Lease, Tenant shall be entitled to extend the Lease Term (and the Expiration Date set forth in Section 1.9 herein) for three

consecutive 5-year periods. Tenant must give Landlord written notice (as herein provided for giving notices) of Tenant's election to extend the Lease Term pursuant to this Section 3.1 at least 180 days prior to the expiration of the then-current Lease Term. All of the terms of this Lease shall remain the same during the extension period except the Minimum Annual Rent. The Minimum Annual Rent for each Lease Year of the extension period shall be subject to the 2.5% compound annual increase reflected in the chart shown in Section Error! Reference source not found. If Tenant fails to timely exercise its first option to extend the Lease Term, the second option to extend the Lease Term shall automatically terminate and shall be null and void. With regard to any Lease Term extension that is properly and timely exercised by Tenant pursuant to this Section 3.1, all references in this Lease to "Lease Term" and "Expiration Date" shall be deemed and construed to include such extension of the Lease Term. Provided, however, in no event shall the Lease Term, including the extension option under this Section 3.1, exceed a period of 25 years beyond the Rent Commencement Date. Notwithstanding the foregoing, if Tenant is in default under this Lease at the time that Tenant must give Landlord notice under this paragraph, the deadline for the giving of such notice shall be stayed until the earlier of (a) Tenant's cure of the default, (b) expiration of the applicable notice and cure period, or (c) the date that is 60 days prior to the expiration of the then-current Lease Term.

**3.2 Surrender of the Premises.** At the Expiration Date or earlier termination of this Lease, Tenant shall remove all of its Personal Property from the Premises, repair any damage caused by such removal, and surrender possession of the Premises to Landlord in broom clean condition and good state of repair, except ordinary wear and tear, damage or destruction covered by Article 17, and any repair Landlord is obligated to perform pursuant to this Lease.

**3.3 Holding Over.** If Tenant remains in possession of the Premises or any part thereof after the expiration or earlier termination of the Lease Term, whether with or without Landlord's acquiescence, Tenant shall be deemed only a tenant at will and there shall be no renewal of this Lease or extension of the Lease Term without a written agreement signed by both parties specifying such renewal or extension. The "monthly" Minimum Annual Rent payable by Tenant during any such tenancy at will period shall be 150% of the monthly installments of Minimum Annual Rent payable immediately prior to such expiration plus all Additional Rent and other sums due hereunder. Tenant also shall remain liable to Landlord for any and all damages, direct and consequential, suffered by Landlord as a result of any holdover without Landlord's unequivocal written acquiescence.

## ARTICLE 4 RENT

**4.1 Rent Commencement Date.** Tenant's obligation to pay Minimum Annual Rent and Additional Rent shall commence on the Rent Commencement Date.

**4.2 Minimum Annual Rent.** Tenant shall pay Minimum Annual Rent each year during the Lease Term in 12 equal monthly installments. Installments of Minimum Annual Rent shall be paid by Tenant, in advance, on the first day of each calendar month, without setoff, deduction, prior notice or demand, except as may otherwise be specifically set forth in this Lease. All references in this Lease to "Minimum Annual Rent" shall be deemed and construed to include the periodic adjustments to Minimum Annual Rent provided for in Section 1.11 herein.

**4.3 Percentage Rent.**

**4.3.1 In General.** Tenant shall pay Percentage Rent for each partial or full calendar year of the Lease Term from the Rent Commencement Date through the Expiration Date inclusive, in a sum equal to 5% of all Gross Sales in excess of the Breakpoint for such partial or full calendar year. Percentage Rent due for each calendar year shall be payable commencing on the 20<sup>th</sup> day of the calendar quarter immediately

following the first quarter of such calendar year in which the aggregate amount of Gross Sales for such calendar year exceeds the Breakpoint and thereafter on the 20<sup>th</sup> day of each succeeding quarter during the remainder of such calendar year on all additional Gross Sales. In the event that any calendar year within the Lease Term contains less than 12 full calendar months, the Breakpoint shall be proportionately decreased for any such partial calendar year by multiplying the applicable Breakpoint by a fraction, the numerator of which is the number of days in such partial calendar year and the denominator of which is 365.

The total Percentage Rent due and payable for each calendar year during the Lease Term shall be computed based on Tenant's annual statement of Gross Sales for that year and if Tenant paid an amount greater than the actual Percentage Rent payable, the amount of such overpayment shall be credited against Tenant's next required payment of Percentage Rent (or promptly refunded to Tenant if no further Percentage Rent is payable hereunder); if Tenant paid an amount less than the required Percentage Rent, then Tenant shall pay such difference to Landlord together with Tenant's annual statement of Gross Sales for said calendar year.

**4.3.2 Reporting of Gross Sales.** Tenant agrees to furnish to Landlord a statement of Gross Sales within 15 days after the close of each calendar quarter during the Lease Term, and an annual statement of Gross Sales, including a monthly breakdown of Gross Sales, within 45 days after the close of each calendar year during the Lease Term and any partial calendar year at the end of the Lease Term. Such statements shall itemize all elements of Gross Sales and Gross Sales Adjustments and shall be certified as true and correct by a Responsible Officer of Tenant. The receipt by Landlord of any statement or any payment of Percentage Rent for any period shall not bind Landlord as to the correctness of such statement or payment. Upon request, Tenant agrees to furnish to Landlord a copy of Tenant's state and local sales and use tax returns. Tenant shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions using a cash register or computer system that cumulatively numbers and records all receipts. Tenant and its subtenants, licensees and concessionaires shall keep (i) full and accurate books of account and records in accordance with the accounting principles used by Tenant on the date hereof, consistently applied, including, without limitation, a sales journal, general ledger and all bank account statements showing deposits of Gross Sales revenue and (ii) detailed original records of all Gross Sales Adjustments. Such books, receipts and records shall be kept by Tenant for a period of three years after the close of each calendar year or partial calendar year and shall be available for inspection and audit by Landlord and its representatives at the Premises at all times during regular business hours with five business days' notice. Any corrections or adjustments to Gross Sales previously reported by Tenant which will result in a refund to Tenant must be reported to Landlord within the one year period following the end of the calendar year or partial calendar year in which such Gross Sales were made. Any corrections or adjustments to Gross Sales previously reported by Tenant which will result in a refund to Tenant must be reported to Landlord within the one year period following the end of the calendar year or partial calendar year in which such Gross Sales were made. If it shall be determined as a result of an audit or otherwise that there has been a deficiency in the payment of Percentage Rent, then Landlord shall provide a copy of such audit to Tenant, and such deficiency shall become immediately due and payable with interest at the Interest Rate from the date when said payment was due. In addition, (i) if Tenant understates Gross Sales by more than 3% and if Landlord is entitled

to any additional Percentage Rent as a result of such understatement, (ii) if an audit shows that Tenant has failed to maintain the books of account and records as required, or (iii) if Tenant fails to appear for and/or cooperate with Landlord's audit representative and, as a result, Landlord is unable to verify the accuracy of Tenant's statement, then Tenant shall pay to Landlord all reasonable costs and expenses incurred by Landlord in conducting such audit and collecting any underpayment. If Tenant disputes the results of Landlord's audit, Tenant shall so advise Landlord within 10 business days after receipt of the associated audit report from Landlord and the parties shall work together in good faith to resolve such dispute. If the parties are unable to resolve such dispute, the parties shall engage and equally share the cost of an independent third-party accountant, whose determination of the applicable Gross Sales shall be final.

**4.3.3 New Locations.** Tenant covenants and agrees that, during the Lease Term, neither Tenant nor any parent, subsidiary or other affiliate of Tenant or of any of the principals of Tenant shall, directly or indirectly, operate or own, under Tenant's Trade Name or otherwise, any other restaurant serving primarily Tex-Mex or Mexican food within a radius of two miles from the Retail Development. However, without limiting Landlord's remedies for a breach by Tenant of the covenant in the immediately preceding sentence, if, during the Lease Term, Tenant or any parent, subsidiary or other affiliate of Tenant or of any of the principals of Tenant, directly or indirectly, operates or owns a restaurant under Tenant's Trade Name or another restaurant serving primarily Tex-Mex or Mexican food within a radius of two miles from the Retail Development, Tenant shall include the Gross Sales of such other business in the Gross Sales made from the Premises for the purpose of computing the Percentage Rent due hereunder. In such case, Tenant will provide Landlord with a statement of Tenant's Gross Sales, in accordance with the provisions of Section 4.3.2 for each such additional business operated within said radius during the Lease Term by Tenant or any parent, subsidiary or other affiliate of Tenant or of any of the principals of Tenant.

**4.3.4 Confidentiality.** Landlord covenants and agrees with Tenant that Landlord will keep and treat as strictly confidential all information and data obtained from Tenant's reports of Gross Sales. Landlord shall not disclose such information or disseminate copies or excerpts of all or any portion of Tenant's reports of Gross Sales except (i) to lending institutions from which Landlord has, or in good faith intends to seek, financing, (ii) to a prospective transferee of Landlord's interest in the Retail Development (or any portion thereof), (iii) in connection with litigation between Landlord and Tenant arising hereunder, (iv) in compliance with subpoenas or judicial orders duly issued to Landlord, or (v) in any registration statement filed with the Securities and Exchange Commission or other similar body.

**4.3.5 Annual Basis.** Computation of Percentage Rent shall be made separately and independently for each calendar year of the Lease Term, without regard to the Gross Sales made during or rental paid for any other calendar year.

**4.4 Additional Rent.** Tenant shall pay all Additional Rent without setoff, deduction or demand in the amounts and in the manner set forth in this Lease, unless otherwise specifically set forth in this Lease.

Tenant's payments of Additional Rent pursuant to Article 5, Article 10, and Article 11 (collectively, "Operating Costs") and shall be payable in the following manner:

**4.4.1 Estimate.** Commencing with the Rent Commencement Date and continuing throughout the balance of the Lease Term, Tenant shall pay Landlord, on the first day of each calendar month, those amounts Landlord reasonably estimates to be Tenant's share of the aforementioned components of Additional Rent. Landlord may adjust such monthly estimates at the end of any calendar quarter on the basis of Landlord's experience and reasonably anticipated costs. Tenant's share of the Operating Costs is estimated to initially be \$6.00 per square foot of the Premises.

**4.4.2 Reconciliation.** Within 180 days following the end of each calendar year or property tax installment period, as applicable, Landlord shall furnish Tenant separate statements for the Operating Costs. Such statements shall cover the billing period and shall show the total of the applicable Additional Rent expenses, Tenant's share of such expenses for such billing period, and the total prior amounts paid by Tenant with respect to such period in accordance with Section 4.4.1. If Tenant's share of such Additional Rent expenses exceeds the total of Tenant's payments previously made with respect thereto, Tenant shall pay Landlord the deficiency within 10 business days after receipt of such statement. If said payments previously made by Tenant exceed Tenant's share of the specified Additional Rent expenses, such excess shall be (i) credited against the payments next due Landlord for the same Additional Rent expense or (ii) paid to Tenant within 30 days (if the Lease Term has expired). Any failure or delay by Landlord in delivering any estimated or final statement for Additional Rent shall not constitute a waiver of Landlord's right to receive the Additional Rent due from Tenant.

**4.4.3 Cap.** Notwithstanding any provision hereof to the contrary, for purposes of computing the Operating Costs for any calendar year after the Base Year, Controllable Costs payable by Tenant for such calendar year shall not exceed the Cap Amount.

For purposes of this Lease:

**“Base Year”** means the first calendar year during the Lease term in which Controllable Costs were incurred for each month thereof.

**“Controllable Costs”** means all Operating Costs exclusive of charges for security, utilities, insurance, compliance with applicable laws going into effect following the Rent Commencement Date, taxes and assessments, any charges assessed against the Premises pursuant to any covenants or owners association, and snow and ice removal.

**“Cap Amount”** means (i) with respect to the first calendar year after the Base Year, the Controllable Costs in the prior calendar year multiplied by 1.05 (the **“Max CC Increase Amount”**), and (ii) with respect to all subsequent calendar years during the Lease term, the Cap Amount for the immediately preceding calendar year plus the Max CC Increase Amount.

**4.4.4 Audit.** (a) Landlord shall maintain books and records showing Common Area Costs and Operating Expenses in accordance with its customary accounting and management practices and shall keep such records for at least one (1) year after the conclusion of the subject calendar year. After receiving an annual reconciliation statement and giving Landlord 30 days' prior written notice thereof, Tenant may, at Tenant's sole cost and expense, inspect and audit Landlord's records relating to Additional Rent for the subject period. Tenant shall notify

Landlord of its exercise of such audit right within 30 days after such reconciliation statement is delivered to Tenant or such audit right shall be waived for the applicable year.

(b) Tenant's audit or inspection shall be conducted at Landlord's primary office during customary business hours and in the presence of Landlord or its agents. Tenant acknowledges that it will not be allowed to leave with or make copies of any documents made available by Landlord for Tenant's inspection.

(c) Tenant shall promptly provide a full copy of the results of its audit or inspection to Landlord. If such inspection or audit reveals that an error was made in the Additional Rent charged to Tenant, Landlord shall refund to Tenant any overpayment or Tenant shall pay to Landlord any underpayment, as the case may be, within 30 days after notification thereof, with interest accruing at the Interest Rate from the date of such over- or under-payment.

**4.5 Proration of Rent for Partial Months.** Rent (other than Percentage Rent) payable by Tenant for any partial calendar month at the beginning or at the end of the Lease Term which is calculated on the basis of a full calendar month shall be prorated to reflect the actual number of days in said partial calendar month.

**4.6 Landlord's Right to Offset.** If any sums are payable by Landlord to Tenant pursuant to any provision of this Lease, Landlord shall have the right to first offset from such sum any amounts that are then payable by Tenant to Landlord pursuant to any provision contained in this Lease.

**4.7 Failure to Pay Rent When Due.** If Tenant fails to pay any amount of Minimum Annual Rent, Percentage Rent, or Additional Rent when due (inclusive of any notice or grace periods expressly set forth herein), such unpaid amount shall bear interest at the Interest Rate from the date such sum was due. In addition, Tenant acknowledges that the late payment by Tenant of any installment of Minimum Annual Rent, Percentage Rent or Additional Rent will cause Landlord to incur certain costs and expenses not contemplated under this Lease, the exact amount of which costs are extremely difficult or impracticable to determine. Therefore, if any such installment is not received by Landlord from Tenant when due (inclusive of any notice or grace periods expressly set forth herein), Tenant shall immediately pay to Landlord a late charge of \$300.00. Landlord and Tenant agree that such late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for its loss caused by Tenant's late payment (although such late charge shall in no way limit any other remedies available to Landlord).

**4.8 Address for Payments.** Tenant shall pay all rent and other payments due Landlord under this Lease at the address provided herein for the giving of notices to Landlord or at such other place or address as Landlord may from time to time designate to Tenant in writing.

## ARTICLE 5 TAX AND INSURANCE EXPENSES

Tenant agrees to pay to Landlord Tenant's share of (a) the amount of all taxes and similar assessments levied for any reason on the Retail Development (excluding any late payment interest or penalties or, for the avoidance of doubt, Landlord's income tax on the profits generated by the Retail Development and any franchise, excise, or transfer tax imposed upon Landlord) and costs associated with challenging such taxes and assessments and (b) the cost of the insurance carried or paid-for by Landlord covering the Retail Development, including, without limitation, the insurance described in Section 12.3 herein, in each case, whether applicable directly or indirectly pursuant to any restrictive covenant that encumbers the portion of the Retail Development of which the Premises is a part. Tenant's share of taxes,

assessments and insurance as set forth herein shall be related to the proportion of such expenses which the Floor Area of the Premises bears to the total Floor Area of all premises then existing in the Retail Development, whether or not actually occupied and open for business. Tenant shall pay such costs as part of Additional Rent in accordance with Section 4.4 herein.

Tenant shall pay before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon its business operation as well as upon its merchandise, Improvements and Personal Property. In the event such items of Tenant's property are assessed in common with property of Landlord, Landlord shall allocate such assessment between Landlord and Tenant so that Tenant shall pay only its equitable portion.

## ARTICLE 6 USE

### 6.1 Permitted Use. Tenant covenants and agrees as follows:

- 6.1.1 The Premises shall be used and wholly occupied by Tenant solely for the purposes of conducting the Permitted Use (as defined in Section 1.14 hereof), and the Premises shall not be used for any other purposes;
- 6.1.2 The business in the Premises shall operate under Tenant's Trade Name;
- 6.1.3 Tenant shall operate its business in the Premises during the Operating Hours (as defined in Section 7.2);
- 6.1.4 With respect to any food service operations (if any) in the Premises, Tenant shall obtain and maintain at all times during such operations a grade or class "A" rating by the applicable governmental agency (or such comparable rating if the rating schedule is changed); provided, however, if the sanitation rating drops below grade or class "A", Tenant shall commence immediately to regain an "A" rating and shall have up to sixty (60) days to cause the rating to be improved to grade or class "A" before Tenant shall be deemed to be in default hereunder; and
- 6.1.5 All supplies and inventory for delivery to the Premises shall be delivered at points and in accordance with directions (including, without limitation, applicable times for deliveries) designated from time to time by Landlord.

6.2 Duties and Prohibited Conduct. Tenant shall at all times comply with all Legal Requirements relative to the Premises and Tenant's activities therein. At Tenant's sole expense, Tenant shall procure, maintain and make available for Landlord's inspection from time to time any governmental license or permit required for the proper and lawful conduct of Tenant's business in the Premises. Tenant shall not use the Premises or permit the Premises to be used (a) for any purpose or in any manner that violates any Legal Requirement (b) for any of the uses or purposes set forth on Exhibit J, or (c) in violation of any of the exclusive uses in the Retail Development as set forth on Exhibit K. Additionally, Tenant shall not cause or permit any waste to occur in the Premises and shall not overload the floor, or any mechanical, electrical, plumbing or Utility systems serving the Premises. Tenant shall keep the Premises, and every part thereof, in a clean and wholesome condition, free from any objectionable noises, loud music, odors (other than normal restaurant odors), or nuisances. Additionally, Tenant shall store any food waste or other waste, refuse, garbage or trash which is subject to decay in an air-conditioned area of the Premises until 6:00 p.m. daily (after which time such items may be deposited in the Retail Development trash receptacles provided for the Premises).

**6.3 Exclusive Rights of Tenant.**

So long as (i) Tenant is open to the public and is operating in the Premises for the Permitted Use and (ii) is not in default of this Lease beyond any applicable notice and cure period, as of the Effective Date, Landlord may not thereafter lease any other space in the portion of Rea Farms shown on Exhibit A-3 hereto (the “Protected Area”) to any other tenant or occupant that operates as a restaurant that derives more than 30% of its gross sales from the sale of tacos, burritos, and/or quesadillas (the “Exclusive Use”). The Exclusive Use is not applicable to (i) any Protected Area leases entered into on or before the date of this Lease or to any new Protected Area leases with existing tenants (so long as such new leases do not materially change the uses permitted thereunder) or extensions of existing leases entered into with existing tenants or their successors or assigns (so long as such extensions do not materially change the uses permitted under the related leases) (collectively, the “Excluded Tenants”); (ii) any Protected Area leases that permit the assignment thereof or the subletting of the premises demised thereby or a change in such tenant’s permitted use without Landlord’s express written approval, except that, to the extent that the Landlord has the right under such tenant’s lease to refuse to approve the new use, Landlord shall refuse such change in use to protect the Exclusive Use granted to Tenant herein; or (iii) any parcels in the Protected Area not owned by Landlord. In addition, the Exclusive Use rights shall automatically terminate without notice to Tenant and be of no further force or effect on the date which is the earliest of (a) a change in the use of the Premises if such new use does not include any of the services specified in the definition of “Permitted Use”, (b) the effective date of any default by Tenant under this Lease beyond the expiration of any applicable notice and cure period, and (c) expiration or earlier termination of the Lease. In the event that Landlord transfers a portion of the Protected Area to a new owner, Landlord will use commercially reasonable efforts to cause the new owner of such portion to preserve and comply with the Exclusive Use for the benefit of Tenant.

In the event that Landlord leases to another tenant in the Protected Area whose use of its premises is in violation of Tenant’s Exclusive Use, if Tenant is not then in default hereunder beyond any applicable notice and cure period, Tenant shall immediately notify Landlord in writing stating with specificity the nature of the violation of this provision (a “Notice of Violation”). Within 60 days from the date of its receipt of Tenant’s Notice of Violation, Landlord shall take commercially reasonable actions to cure the activities which materially and substantially violate this provision. If Landlord fails to cure same within such 60-day period then, on the 61<sup>st</sup> day following the Notice of Violation, Tenant’s Minimum Annual Rent shall be abated by 50% for the period during which such other premises continues to operate in violation of Tenant’s Exclusive Use. In the event such Exclusive Use violation continues for a period of 12 months after the date of Tenant’s Notice of Violation, Tenant may terminate this Lease with 30 days’ prior written notice thereof to Landlord at any point until the Exclusive Use violation is cured.

Notwithstanding the foregoing or any other provision hereof to the contrary, Tenant shall have no remedy for a violation of Tenant’s Exclusive Use, including, but not limited to, the right to abate Minimum Rent, if another tenant or occupant of the Protected Area violates a provision of its lease regarding its premises, which either does not permit or specifically prohibits the use that violates Tenant’s Exclusive Use (a “Rogue Tenant”) so long as Landlord uses commercially reasonable efforts

to enforce Landlord's rights under such lease, including filing an appropriate legal action to obtain a temporary restraining order, preliminary injunction, or order resulting from an arbitration proceeding enjoining the use violation within 60 days after written request from Tenant.

**6.4 Hazardous Materials.**

**6.4.1 In General.** Tenant shall not use, generate, manufacture, produce, store, transport, treat, dispose of or permit the escape or release on, under, about or from the Premises, or any part thereof, of any Hazardous Materials. If Tenant's Permitted Use requires the use and/or storage of any Hazardous Materials on, under or about the Premises, Tenant shall provide written notice to Landlord, prior to final execution of this Lease, of the identity of such materials and Tenant's proposed plan for the use, storage and disposal thereof; such use, storage and disposal shall be subject to Landlord's approval, in Landlord's sole and absolute discretion. If Landlord approves such proposed use, storage and disposal of specific Hazardous Materials, Tenant may use and store upon the Premises only such specifically approved materials and shall comply with any conditions to such approval as Landlord may impose in its sole and absolute discretion. Landlord's permission hereunder may be withdrawn or modified at any time in Landlord's sole and absolute discretion. Tenant shall fully and promptly comply with all Hazardous Materials Laws at all times during the Lease Term, and at the expiration or earlier termination of the Lease Term, Tenant shall remove and dispose of all Hazardous Materials affecting the Premises, the Building, the Retail Development, or Rea Farms resulting from the use or occupancy thereof by Tenant or its agents, employees, suppliers, contractors, subtenants, successors and assigns. Notwithstanding the foregoing, Landlord consents to Tenant's above-ground use, storage, transport and off-site disposal of products containing small quantities of Hazardous Materials (e.g., cleaning solutions and materials), which products are of a type customarily used in the operation of first-class establishment engaged in the Permitted Use described in Section 1.14, provided that Tenant shall handle, use, store, transport and dispose of such Hazardous Materials in a safe and lawful manner and in accordance with all applicable manufacturer's recommendations and shall not allow such Hazardous Materials to contaminate the Premises, the Building, the Retail Development, or Rea Farms.

**6.4.2 Indemnity.** Tenant shall indemnify, protect, defend and hold Landlord (and its partners, joint venturers, shareholders, affiliates and property managers, and their respective officers, directors, employees and agents) and Landlord's Mortgagee harmless from and against any and all Claims to the extent arising out of, in connection with, or directly or indirectly arising out of the use, generation, manufacture, production, storage, treatment, release, disposal or transportation of Hazardous Materials by Tenant, or any successor, assignee or sublessee of Tenant, or their respective agents, contractors, employees, licensees, or invitees, on, under, about or from the Premises, the Building, the Retail Development, or Rea Farms, including, but not limited to, all foreseeable and unforeseeable costs, expenses and liabilities related to any testing, repair, cleanup, removal costs, detoxification or decontamination and the preparation and implementation of any closure, remedial action, site assessment costs or other required plans in connection therewith deemed required, necessary or advisable by Landlord or any Governmental Authority, and any foreseeable or unforeseeable consequential damages. Any defense of Landlord pursuant to the foregoing indemnity shall be by counsel

reasonably acceptable to Landlord. Neither the consent by Landlord to the use, generation, storage, release, disposal or transportation of Hazardous Materials nor Tenant's strict compliance with all Hazardous Materials Laws shall excuse Tenant from Tenant's indemnification obligations under this Section 6.4.2. The foregoing indemnity shall be in addition to and not a limitation of the other indemnification provisions of this Lease. Tenant's obligations under this Section 6.4.2 shall survive the termination or expiration of this Lease.

**6.4.3 Reporting.** Tenant shall notify Landlord in writing immediately after any of the following: (i) Tenant has knowledge, or has reasonable cause to believe, that any Hazardous Materials have been released, discharged or located on, under or about the Premises, the Building, the Retail Development, or Rea Farms, whether or not the same is in quantities that would otherwise be reportable to a public agency, (ii) Tenant receives any warning, notice of inspection, notice of violation or alleged violation, or Tenant receives notice or knowledge of any proceeding, investigation, order or enforcement action, under any Hazardous Materials Law concerning the Premises, the Building, the Retail Development, or Rea Farms, or (iii) Tenant becomes aware of any Claims made or threatened by any third party concerning the Premises, the Building, the Retail Development, or Rea Farms respecting Hazardous Materials.

**6.4.4 Confirmation of Tenant's Knowledge.** Upon request from Landlord or Landlord's Mortgagee at any time, Tenant shall promptly execute all affidavits, representations, and any other similar documents as Landlord or Landlord's Mortgagee may request concerning Tenant's actual knowledge, without investigation by Tenant, regarding the presence or absence, or the use, generation, storage, disposal or transportation of Hazardous Materials, under, about or from the Premises, the Building, the Retail Development, or Rea Farms.

## ARTICLE 7 TENANT'S OPERATING COVENANTS

**7.1 Operating Covenants.** Tenant hereby covenants to open for business for at least one business day in the Premises fully fixtured, stocked, and staffed not later than the Rent Commencement Date, subject to delays in opening for business caused by Force Majeure matters. Thereafter, Tenant may at any time discontinue operating in the Premises (such election, a "Go-Dark Event") so long as it is not then in default under this Lease (including, without limitation, provisions relating to the payment of Minimum Annual Rent, Additional Rent, and Percentage Rent hereunder). So long as Tenant is operating in the Premises, Tenant covenants to (a) operate and conduct within the Premises the business that it is permitted to operate and conduct under the provisions hereof, (b) maintain within the Premises an adequate stock of food, together with sufficient personnel and Personal Property, to service and supply the usual and ordinary requirements of its customers, and (c) keep the Premises in a neat, clean and orderly condition. Tenant shall promptly notify Landlord upon the occurrence of a Go-Dark Event. Notwithstanding the foregoing, in the event that a Go-Dark Event occurs and continues for 90 or more consecutive days (unless such Go-Dark Event was necessitated by Force Majeure, fire or other casualty, or remodeling pursuant to the terms hereof), Tenant shall not be in default under the terms of this Lease solely as a result of such Go-Dark Event, but Landlord shall have the right to recapture the Premises at any time thereafter, effective immediately upon notice to Tenant thereof. In the event that Landlord exercises its recapture right pursuant to the terms of this Section, this Lease shall terminate, except that any obligations of Tenant hereunder accruing on or prior to such date, and any provisions that by their terms survive termination of this Lease, shall survive such termination.

**7.2 Operating Days and Hours.** Commencing with the opening for business by Tenant in the Premises and for the remainder of the Lease Term, Tenant shall be open for business from 10:00 a.m. to 8:00 p.m. on Mondays through Thursdays, from 10:00 a.m. to 9:00 p.m. on Fridays and Saturdays, and from 1:00 p.m. to 6:00 p.m. on Sundays (“Operating Hours”). Notwithstanding the foregoing, Tenant may close on Easter Day, Thanksgiving Day, Christmas Day, and New Year’s Day, and may close at early on Independence Day, Christmas Eve Day, and New Year’s Eve Day.

## ARTICLE 8 IMPROVEMENTS

**8.1 Landlord’s Work.** Landlord shall commence and diligently proceed with Landlord’s Work so as to attempt to complete or substantially complete such construction in accordance with Exhibit C not later than the Target Delivery Date.

**8.2 Initial Construction of the Premises.** Landlord shall, subject to and in accordance with the provisions of Exhibit F attached hereto and incorporated herein by reference, contribute up to \$50.00 per rentable square feet of Floor Area (the “Construction Allowance”) toward the cost of constructing Tenant’s Work in the Premises. Tenant shall submit to Landlord plans and specifications for the construction of the interior of the Premises in accordance with Exhibit C hereto. From and after the Delivery Date, Tenant shall promptly commence and diligently proceed with construction so as to complete Tenant’s Work and open for business in the Premises fully fixtured, stocked, and staffed on or before the Rent Commencement Date. All of Tenant’s Personal Property must be new when installed in, or attached to, the Premises.

**8.3 Exterior Signage.** Although no freestanding sign shall be installed by Tenant within Rea Farms, Tenant shall be entitled, at Tenant’s expense and subject to applicable signage and zoning ordinances and other requirements imposed by Governmental Authorities, to install signage on the “sign band” at the front of the Premises, including Fuzzy’s Taco Shop branded signage, provided such “sign band” signage either (i) complies in all respects with Section C of Landlord’s signage criteria for the Retail Development attached hereto as Exhibit I (the “Signage Program”) or (ii) is approved by Landlord, in Landlord’s sole discretion. Approval of any other exterior signage proposed by Tenant to be installed and maintained on the Building shall be subject to Landlord’s sole and absolute discretion. Notwithstanding the foregoing, provided Tenant causes its plans for Building-mounted signage to be prepared in all respects in compliance with Section B of the Signage Program, Landlord’s approval of Tenant’s proposed Building-mounted exterior signage shall not be unreasonably withheld.

**8.4 Subsequent Improvements.** After the initial construction of the Premises, Tenant may, from time to time, at Tenant’s own expense and in accordance with Exhibit C, after giving Landlord written notice of its intentions to do so, make such Improvements to the Premises as Tenant may find necessary or convenient for its purposes so long as the value of the Premises is not thereby diminished and subject to Landlord’s approval as provided in this Section 8.4. Tenant shall not make any of the following Improvements without Landlord’s prior written consent in each instance: Improvements costing more than \$25,000.00 in the aggregate per occurrence; Improvements to the mechanical or electrical systems or to the exterior walls or roof of the Premises; the addition of any mezzanine or Improvements that increase the size of any then-existing mezzanine; and any penetration into or through the roof of the Building or the ceiling or floor of the Premises. Tenant shall reimburse Landlord for all costs and expenses (including, without limitation, any architect or engineer fees) reasonably incurred by Landlord in reviewing and approving or disapproving Tenant’s plans for Improvements. Tenant shall certify to Landlord Tenant’s actual cost of constructing its Improvements within 30 days after completing the same.

**8.5 Mechanics’ Liens.**

**8.5.1 General.** Other than Landlord's Work, if any, Tenant shall pay or cause to be paid all costs of labor, services and/or materials supplied in the prosecution of any work done in the Premises by or on behalf of Tenant or persons claiming under Tenant, and Tenant shall keep the Premises free and clear of all mechanics' liens and other liens arising out of any work done for Tenant or persons claiming under Tenant. Tenant shall promptly notify Landlord of any Claim or lien filed against the Premises or the commencement of any action affecting the title thereto.

**8.5.2 Contest of Lien.** If Tenant desires to contest the claim of any mechanics' lien, Tenant shall (i) either post a release bond issued by a responsible corporate surety as prescribed by law or furnish Landlord with adequate security for the amount of the claim plus estimated costs and interest, and (ii) promptly pay or cause to be paid any and all sums awarded to the claimant on its suit.

**8.5.3 Landlord's Right to Cure.** If Tenant fails to provide security for or satisfaction of any mechanics' lien, then Landlord, in addition to any other rights or remedies it may have under this Lease or at law or in equity, may (but shall not be obligated to) discharge said lien by (i) paying the claimant an amount sufficient to settle and discharge the claim, (ii) posting a release bond, or (iii) taking such action as Landlord shall deem appropriate, and Tenant shall pay to Landlord on demand (and as Additional Rent hereunder) all costs incurred by Landlord in settling and discharging such lien (including reasonable attorneys' fees and bond premiums).

**8.5.4 Notice of Non-Responsibility.** Landlord or its representatives shall have the right to post and keep posted on the Premises notices of non-responsibility or such other notices that Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall give Landlord at least 10 days advance written notice of its intention to commence any work that might result in a lien described in this Article 8.

**8.6 Title to Improvements.** All Improvements shall become the property of Landlord upon the expiration or earlier termination of this Lease. Landlord's reversionary interest in the Improvements shall at all times be prior and superior to any interest of any lender of Tenant or of any other entity claiming any purchase money lien or other interest in the Improvements.

## ARTICLE 9 REPAIRS; MAINTENANCE

**9.1 Tenant's Obligations.** Tenant agrees at all times from and after the Commencement Date, at its own cost and expense, to repair, maintain in good and tenantable condition and replace, as necessary, the Premises and every part thereof (except portions of the Premises specifically required to be maintained by Landlord pursuant to this Lease), including, without limitation, the storefront; the Air Conditioning System; exterior and interior glass (including plate glass); signs; locks and closing devices, window sashes, casements and frames; doors and door frames; security grilles and similar enclosures; floor coverings; any grease traps and piping exclusively serving the Premises from the point of connection to the Premises; and all items of repair, maintenance, alteration, improvement or reconstruction relative to the Premises as may be required by any Legal Requirement or the insurance underwriter(s) for the Retail Development. All replacements made by Tenant shall be of like size, kind and quality to the items replaced as they existed when originally installed and shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld or delayed. Provided, however, that in no event shall Tenant be required to make repairs necessitated by the gross negligence or willful misconduct of Landlord or anyone claiming under Landlord (as determined in a final, non-appealable ruling by a court of competent jurisdiction), because of

the failure of Landlord to perform or observe any term or condition of this Lease within a reasonable amount of time after its receipt of notification thereof from Tenant, or because of Improvements made by Landlord.

**9.2 Landlord's Obligations.** Landlord shall repair, maintain in good and tenantable condition and replace, as necessary, Common Areas (subject to and in accordance with Section 11.2), the roof, exterior walls (which may include, without limitation, painting and/or re-painting and resurfacing said exterior walls) and structural parts of the Premises, and all Utility Installations that serve the Premises on a nonexclusive basis (except where the appropriate utility company performs such duties). Provided, however, in no event shall Landlord be required to make repairs necessitated by the negligence or willful acts of Tenant or anyone claiming under Tenant, because of the failure of Tenant to perform or observe any term or condition of this Lease, or because of Improvements made by Tenant. Landlord shall be under no obligation to repair, replace or maintain the Premises or the mechanical equipment (including, without limitation, the Air Conditioning System) exclusively serving the Premises at any time, except as this Lease expressly provides. Notwithstanding anything to the contrary contained in this Lease, Landlord shall not in any way be liable to Tenant for failure to make repairs as herein specifically required of it unless Tenant has previously notified Landlord of the need for such repairs and Landlord has failed to commence and complete said repairs within a reasonable period following receipt of Tenant's notification. As used in this Article 9, "exterior walls" shall exclude (and, thus, Tenant shall be obligated to repair, maintain and replace, as necessary) storefronts, plate glass, window cases or window frames, doors or door frames, security grilles or similar enclosures. The definition of Common Area Expenses in this Lease shall include the costs incurred by Landlord for all work performed by Landlord in accordance with this Section 9.2, except as otherwise expressly provided for in this Lease.

**9.3 Performance of Tenant's Work by Landlord.** If Tenant refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Landlord and consistent with Tenant's obligations under this Lease, Landlord shall have the right, but not the obligation, upon giving Tenant reasonable notice of its election to do so, to enter the Premises and make such repairs or perform such maintenance or replacements on behalf of and for the account of Tenant. Nothing herein contained shall imply any duty of Landlord to do any work that, under any provision of this Lease, Tenant is required to do, nor shall Landlord's performance of any repairs or maintenance work on behalf of Tenant constitute a waiver of Tenant's default in failing to do the same. No exercise by Landlord of any rights herein reserved shall entitle Tenant to any compensation, damages or abatement of Rent from Landlord for any injury or inconvenience occasioned thereby. If Landlord performs any maintenance or other obligations that Tenant is required to perform under the terms of this Lease, Tenant shall, upon demand, pay to Landlord (as Additional Rent) the costs and expenses incurred by Landlord in doing the same (or shall deposit with Landlord the anticipated amounts thereof), plus Landlord's Administrative Fee.

**9.4 Service Contracts.** Tenant shall contract with a qualified air conditioning service company approved by Landlord for the quarterly maintenance and the repair and replacement, as necessary, of the Air Conditioning System. Additionally, Tenant shall contract with a qualified service company approved by Landlord for the cleaning and maintenance of grease traps in and exclusively serving the Premises, if any. Tenant shall provide Landlord with a copy of any contract required under this Section 9.4 within 10 days after the Commencement Date, together with a copy of any subsequent contracts within 10 days after their execution. The cost of all contracts which Tenant is required to maintain under this Section 9.4 shall be borne by Tenant.

## **ARTICLE 10 UTILITIES AND AIR CONDITIONING**

**10.1 Utilities.** Landlord shall make Utility Installations available to the Premises or, at Landlord's sole and absolute option, to a central distribution point outside the Premises.

**10.2 Utilities Charge.** Tenant shall pay the Utilities Charge (if applicable) in accordance with Section 4.4.

**10.3 Calculation of Utilities Charge.** The “Utilities Charge” shall be the amount charged to Tenant for any and all Utilities (if any) furnished by Landlord to the Premises for the benefit of Tenant. If not already installed to serve the Premises or forming part of Landlord’s Work, Tenant shall install, as a part of Tenant’s Work, separate meters for all Utilities serving the Premises and Tenant agrees, at its own expense, to pay to the appropriate utility company the cost of any such Utilities which are provided to the Premises and which are separately metered. If, at any time during the Lease Term, any Utilities are not separately metered to the Premises and are instead provided in common with others, then (i) Landlord shall, in a fair and equitable manner, reasonably determine Tenant’s share of the cost of the Utilities so provided, and such determination shall be used in the calculation of the Utilities Charge, and (ii) the rate used to compute the Utilities Charge shall not exceed the rate the local public utility company would have imposed had said company furnished the Utilities directly to Tenant. Provided, however, in the event a dispute arises between Landlord and Tenant relative to the determination of Tenant’s share of the cost of any Utilities that are hereafter provided by Landlord to Tenant in common with others, such dispute shall be settled by an arbitration proceeding held in Charlotte, North Carolina, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect (unless the parties mutually agree otherwise).

**10.4 Air Conditioning System.** Tenant shall have no separate Air Conditioning System charge, but Tenant shall pay the cost of all Utilities used to operate any Air Conditioning System currently installed by Landlord or hereafter installed by Tenant in, and to the extent exclusively serving, the Premises.

## ARTICLE 11 COMMON AREA

**11.1 Tenant’s License to Use.** Landlord grants to Tenant and its employees, customers and invitees a license to use the Common Area during the Lease Term, subject to the rights of Landlord, the other tenants of Landlord and the other owners and occupants of the Retail Development to use the same in common with Tenant. Without limitation of the foregoing, Tenant shall have the exclusive right to use the patio area adjacent to the Premises shown on Exhibit A-2 and, in connection therewith, hereby agrees to furnish and maintain such space as if it were a part of the Premises in accordance with the terms of this Lease (including, without limitation, the applicable provisions of Section 9.1). Tenant’s customers and invitees generally will have a nonexclusive right to use the automobile parking spaces in the Common Area, although Landlord reserves the right to designate a reasonable number of automobile parking spaces in the Common Area for the exclusive use of customers and invitees of other tenants and occupants in the Retail Development.

**11.2 Operation and Maintenance of Common Area.** Landlord shall maintain and operate (or shall cause to be maintained and operated) the Common Area at all times. Landlord shall keep (or shall cause to be kept) the Common Area in a neat, clean and orderly condition and shall repair, maintain or replace all equipment and facilities thereof as Landlord shall deem necessary. Landlord may cause any or all of the services concerning the Common Area to be provided by an independent contractor(s) or by an affiliate(s) of Landlord.

### **11.3 Common Area Expenses.**

**11.3.1 In General.** “Common Area Expenses” shall mean all expenses incurred by Landlord in connection with the use, ownership, operation, and maintenance of the Common Area, including, without limitation, all Utilities serving the Common Areas; all general maintenance, repairs and replacements deemed necessary by Landlord or as may be required by any Governmental Authority or pursuant to any

restrictive covenant that encumbers the portion of the Retail Development of which the Premises is a part; work performed by Landlord to the Common Areas in accordance with Section 9.2; resurfacing, restriping, and repair of all parking areas and parking garages; painting; cleaning; trash removal; snow and ice removal; sweeping and janitorial services; signs; holiday and seasonal decorations; fire protection systems; personnel to implement any of the foregoing services, including, if Landlord deems necessary, the cost of security officers and security systems; the Amortization of Capital Items; all on-site costs and personnel expenses of Landlord incurred in managing the Retail Development; all costs attributable to the Retail Development under the Master Declaration and the Retail Declaration; and the Administrative Fee with respect to all such expenses. Provided, however, Common Area Expenses shall not be deemed to include taxes and similar assessments and insurance premiums, which are addressed in Article 5 herein. Further, at such time as the leases (as same may be amended) of tenants leasing at least 50% of the total Floor Area of all premises then existing in the Retail Development shall contain a provision similar to this provision, Landlord may include as a part of Tenant's share of "Common Area Expenses" an amount, at Landlord's discretion, of up to \$1.00 per rentable square foot of the Floor Area in Premises per year as a marketing/promotion fee. For the avoidance of doubt, "Common Area Expenses" does not include items for which Landlord receives reimbursement (as a result of insurance proceeds or condemnation awards), salaries above the level of "property manager", or any cost related to the cost of the clean-up or remediation of Hazardous Materials located on the Retail Development on the date hereof.

**11.3.2 Calculation.** Tenant shall pay its share of Common Area Expenses in the manner provided in Section 4.4. Tenant's share of Common Area Expenses for the previous calendar quarter or year (variable costs of such Common Area Expenses being grossed up to reflect occupancy of all of the Floor Area then existing in the Retail Development) shall be the proportion of all such expenses that the Floor Area of the Premises bears to the total Floor Area of all premises then existing in the Retail Development, whether or not actually occupied and open for business.

**11.4 Extended Hours Services.** If Tenant desires to operate its business in the Premises beyond the Operating Hours, Tenant shall request Landlord's permission to do so, which request shall be subject to Landlord's approval (not to be unreasonably withheld, conditioned, or delayed), and thereafter shall notify Landlord of any changes in the times or dates of Tenant's extended hours of operation. From and after granting such approval, Landlord shall provide those extended hours services that it deems necessary, and Tenant shall reimburse Landlord for the increased costs incurred by Landlord for such extended hours services, including, without limitation, lighting, security, Utilities and Landlord's Administrative Fee with respect to all such expenses. Tenant shall pay such increased costs as part of Additional Rent in accordance with Section 4.4.

**11.5 Control of Common Area.** Landlord shall at all times have the right to determine the nature and extent of the Common Area, whether the same be surface, underground or multiple-deck, and to make such changes thereto as it shall elect, including, without limitation, the location and relocation of driveways, entrances, exits and automobile parking spaces, the direction and flow of traffic, and the designation of prohibited areas, landscaped areas and Utility Installations; provided that, after initial construction of Rea Farms is complete, Landlord shall use commercially reasonable efforts to ensure that no such determination, modification, or lease/license thereof materially and adversely decreases the parking or access available to, or visibility of, the Premises. Landlord shall at all times have the sole and exclusive control of the Common Area, including, without limitation, the right to lease space within the Common

Area to tenants for the sale and/or display of merchandise and/or services and the right to permit advertising displays, educational displays and entertainment in the Common Area, including kiosks, carts and other temporary or permanent stands. Landlord also shall have the right at any time and from time to time to exclude and restrain any person from the use or occupancy thereof. It shall be the duty of Tenant to keep all of the Common Area free and clear of any obstructions created or permitted by Tenant or resulting from Tenant's operation.

**11.6 Security Officers.** Tenant acknowledges that if Landlord provides security officers for the Common Area, Landlord does not represent, guarantee or assume responsibility that Tenant will be secure from any Claims relating to such security officers. Landlord shall have no obligation to hire, maintain or provide such services, which may be withdrawn or changed at any time with or without notice to Tenant or any other person and without liability to Landlord.

**11.7 Rules and Regulations.** Tenant shall abide by the Rules and Regulations governing the Retail Development set forth in Exhibit D attached hereto and incorporated herein by reference. Landlord shall have the right to make reasonable changes to such Rules and Regulations, or to establish additional reasonable and equitable Rules and Regulations and to adopt reasonable and equitable amendments to the same from time to time for the proper and efficient operation and/or maintenance of the Common Area, or any portion thereof, as Landlord determines, in its discretion.

**11.8 Parking Rules.** Landlord shall have the right to adopt (and modify from time to time) a nondiscriminatory, uniform policy for the parking facilities in the Common Area, subject to the provisions in Section 11.1 herein. Notwithstanding any provision to the contrary in this Lease, Landlord shall not be entitled, during the Lease Term (including any extension thereof), to charge Tenant or Tenant's agents, employees, contractors or invitees for parking within the Retail Development. As of the Effective Date, Landlord's policy with respect to the use of parking facilities by employees of tenants in the Retail Development is set forth in Exhibit D attached hereto.

## **ARTICLE 12** **INSURANCE OBLIGATIONS**

**12.1 Tenant's Insurance Obligations.** At all times from and after the Commencement Date, Tenant shall procure and maintain, at its sole cost and expense, the following policies of insurance:

**12.1.1 Liability.** Commercial general liability insurance coverage (occurrence coverage) with broad form contractual liability coverage and with coverage limits of not less than \$2,000,000.00 combined single limit, per occurrence, specifically including, if Tenant serves alcoholic beverages at the Premises, liquor liability insurance covering consumption of alcoholic beverages by customers of Tenant. Such policy shall insure Tenant's performance of the indemnity provisions of this Lease, but the amount of such insurance shall not limit Tenant's liability nor relieve Tenant of any obligation hereunder.

**12.1.2 Workers' Compensation.** Workers' compensation insurance in the amount required by the State of North Carolina for the benefit of Tenant's employees.

**12.1.3 Plate Glass.** Insurance covering the full replacement cost of all plate glass on the Premises.

**12.1.4 Equipment.** Boiler and machinery insurance on the Air Conditioning System.

**12.1.5 Tenant's Personal Property and Improvements.** Property insurance covering any peril generally included in the classification "special perils" (f/k/a "all risks") covering all (i) food and merchandise, (ii) Improvements, and (iii) Personal Property owned or leased by Tenant (or for which Tenant is legally liable) and located in the Retail Development, in an amount not less than the full replacement cost thereof. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed, unless this Lease is terminated under the provisions of Article 17.

**12.2 Tenant's Policy Requirements.** All policies of insurance provided for herein shall be issued by insurance companies that have a general policyholder's rating of not less than "A" and a financial rating equivalent to a policyholder's surplus of at least \$100,000,000.00, as rated in the most current available "Best's" Insurance Reports, and that have been admitted or qualified to do business in the State of North Carolina by the insurance commission or other highest board, body or official responsible for overseeing the insurance business in such state. Tenant's general liability policy as required in Section 12.1.1 shall contain cross-liability endorsements. All policies of insurance provided for herein (with the exception of workers' compensation insurance) shall name as "additional insureds" Landlord, Landlord's property manager, all Mortgagees of Landlord and such other individuals or entities as Landlord may from time to time reasonably designate. Certificates of all insurance required of Tenant hereunder shall be delivered to Landlord at least 10 days prior to the Commencement Date. Tenant shall provide to Landlord, at least 30 days prior to expiration, certificates of insurance to evidence any renewal or additional insurance procured by Tenant. All certificates of insurance delivered to Landlord shall contain an agreement by the company issuing said policy to give Landlord 20 days' advance written notice of any cancellation, lapse, reduction or other adverse change respecting such insurance, unless such agreement cannot be obtained at commercially reasonable rates. All commercial general liability, property damage or other casualty insurance policies shall be written as primary policies, not contributory with or secondary to coverage that Landlord may carry.

**12.3 Landlord's Insurance Obligations.** At all times from and after the Commencement Date, Landlord shall maintain (or shall cause to be maintained) in effect insurance providing protection for the following liabilities and/or risks: (a) commercial general liability for bodily injury and property damage arising from the ownership and/or operation of the Retail Development with coverage limits at least equal to those Tenant is required to maintain as provided herein, and (b) any peril generally included in the classification "special perils" (f/k/a "all risks") in the geographic area in which the Retail Development is located, covering the Retail Development exclusive of any item that Tenant or any other tenant is required to insure or any item, building or improvement that another party is required to insure, in an amount that is the greater of 80% of its full replacement cost (exclusive of the cost of excavations, foundations and footings), or such greater amount as any Mortgagee may require Landlord to maintain.

**12.4 Mutual Waivers of Rights.** Landlord (for itself and its insurer) waives any rights, including rights of subrogation, and Tenant (for itself and its insurer) waives any rights, including rights of subrogation, each may have against the other for compensation of any loss or damage occasioned to Landlord or Tenant arising from any risk generally covered by the "special perils" (f/k/a "all risks") insurance required to be carried by Landlord and Tenant. The foregoing waivers of subrogation shall be operative only for so long as available in the State of North Carolina. The foregoing waivers shall be effective whether or not the parties maintain the insurance required to be carried pursuant to this Lease.

## ARTICLE 13 INDEMNITY

**13.1 Indemnities.** Landlord and Tenant shall each indemnify and save harmless the other, as follows:

**13.1.1 Tenant's Indemnity.** Except as otherwise provided in Section 12.4 herein, Tenant indemnifies Landlord for damages proximately caused by the negligence or wrongful conduct of Tenant and Tenant's agents and employees.

**13.1.2 Landlord's Indemnity.** Except as otherwise provided in Section 12.4 herein, Landlord indemnifies Tenant for damages proximately caused by the negligence or wrongful conduct of Landlord and Landlord's agents and employees.

**13.2 Indemnification Scope and Survival.** The indemnity provisions in this Article 13 cover personal injury and property damage and shall bind the agents, servants and employees of Landlord and Tenant (as the case may be). The indemnity obligations in this Article 13 shall survive the expiration or earlier termination of this Lease.

## ARTICLE 14 OCCUPANCY TRANSACTIONS

### 14.1 Restrictions.

**14.1.1 No Encumbrances.** Tenant shall not make, consent to, or suffer any Encumbrance without the prior written consent of Landlord, which Landlord may grant or withhold in its sole and absolute discretion. For the avoidance of doubt, neither a Personal Property Financing nor entering into a franchise agreement with Tenant's franchisor shall constitute an Encumbrance.

**14.1.2 Other Occupancy Transactions.** Tenant shall not enter into or consent to an Occupancy Transaction without first obtaining Landlord's written consent, which Landlord may withhold or condition in Landlord's sole and absolute discretion. Notwithstanding the foregoing, Tenant may assign its interest in this Lease or sublease the Premises with Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, provided that (i) such assignment is in form and substance reasonably satisfactory to Landlord and (ii) Tenant remains liable under the terms of this Lease. For the avoidance of doubt, qualities of a proposed assignee that could provide a reasonable basis for Landlord withholding its consent include, but are not limited to, such assignee having (relative to Tenant) insufficient business or industry experience, poor creditworthiness, or a bad reputation. Further, Tenant may assign its interest in this Lease or sublease the Premises (with prior notice to Landlord but without Landlord's prior written consent, so long as the financial condition and creditworthiness of the Tenant and proposed transferee, in each case, will not be materially less than that of Tenant (as of the date on which this Lease was originally executed), and Tenant remains liable under the terms of this Lease) to (i) Franchisor (defined below), (ii) in association with a merger or other consolidation or division of Tenant's business, (iii) another franchisee of Franchisor having a net worth equal to or greater than Tenant, or (iv) to an entity acquiring all or substantially all of Tenant's assets (in each case, a "Permitted Transfer").

**14.2 Condition Precedent.** Tenant shall not have the right or power to enter into an Occupancy Transaction if Tenant shall be in default under any provision of this Lease beyond any applicable notice and cure period.

**14.3 Procedures.** Should Tenant desire to enter into an Occupancy Transaction, Tenant shall request Landlord's consent to (or, in the case of a Permitted Transfer, deliver notice to Landlord of) such transaction in writing at least 30 days before the proposed effective date of any such transaction. Such request shall include the following:

- 14.3.1 A detailed description of the proposed transaction, including its nature; the proposed effective date;
- 14.3.2 Copies of the associated asset purchase agreement, sublease, and/or assignment;
- 14.3.3 A description of the identity, financial condition and previous business experience of Tenant and Transferee, including, without limitation, copies of the latest income statement, balance sheet and statement of cash flow (with accompanying notes and disclosures of all material changes thereto) in audited form, if available, and certified as accurate by Tenant or Transferee, respectively, together with a statement authorizing Landlord or its designated representative(s) to investigate Tenant's and Transferee's business experience, credit and financial responsibility; and
- 14.3.4 A statement by Tenant and Transferee agreeing that it is their intention to complete the transaction if Landlord consents thereto.

**14.4 Response by Landlord; Documentation.** Within 30 days after receipt of Tenant's request for consent and all items required under Section 14.3, Landlord may (a) consent to the proposed Occupancy Transaction, (b) exercise its rights under Section Error! Reference source not found., or (c) refuse to consent to the Occupancy Transaction. Any consent by Landlord to any Occupancy Transaction shall be evidenced by an instrument prepared by Landlord and executed by Tenant and Transferee. As a condition to the completion of such transaction, Transferee shall agree in writing to assume and perform all of the terms, covenants and conditions of this Lease that are obligations of Tenant. Tenant shall remain fully liable to perform its duties under this Lease following the Occupancy Transaction. Tenant shall, on demand of Landlord, reimburse Landlord for all Landlord's reasonable costs, including attorneys' fees, incurred by Landlord in obtaining advice and preparing documentation for each requested Occupancy Transaction.

**14.5 Consideration to Landlord.** If Tenant enters into an Occupancy Transaction in the form of a sublease, the Minimum Annual Rent then payable shall be increased (if applicable) on the effective date of such transaction to the total rental or other compensation payable by the Transferee to Tenant under or in connection with such sublease. In no event, however, shall the Minimum Annual Rent, as adjusted, be less than the Minimum Annual Rent otherwise provided for under this Lease.

**14.6 Intentionally Omitted.**

**14.7 Nullity.** Any Occupancy Transaction purportedly consummated in violation of the provisions of this Article 14 shall be null and void and of no force or effect.

**ARTICLE 15**  
**DEFAULTS BY TENANT; LANDLORD'S REMEDIES**

**15.1 Events of Default.** The occurrence of any of the following shall constitute a default by Tenant and a breach of this Lease:

- 15.1.1 Failing or refusing to pay any amount of Rent when due in accordance with the provisions of this Lease; or

- 15.1.2 Conducting a going-out-of-business, liquidation or similar sale; or
- 15.1.3 Failing or refusing to perform fully and promptly any covenant or condition of this Lease, other than those specified in Section 15.1.1 and Section 15.1.2 above.

**15.2 Notices.** Following the occurrence of any of the defaults specified in Section 15.1, Landlord shall give Tenant a written notice specifying the nature of the default and demanding that Tenant either fully cure each such default within the applicable time period specified below or quit the Premises and surrender the same to Landlord:

- 15.2.1 For nonpayment of Rent, five days;
- 15.2.2 For conducting a going-out-of-business, liquidation or similar sale, three days; and
- 15.2.3 For any default other than those specified in Section 15.2.1 and Section 15.2.2 above, a reasonable period not to exceed 30 days; provided, however, if such default cannot be cured within said time period but is curable, Tenant shall be deemed to have cured such default if Tenant so notifies Landlord in writing, commences cure of the default within said time period, thereafter diligently and in good faith continues with said cure while concurrently providing Landlord with written notice at the end of every two-week period as to the progress of Tenant's cure, and actually completes said cure within a reasonable period of time (not to exceed 90 days).

To the extent permitted by applicable state law, the time periods provided in this Section 15.2 for cure of Tenant's defaults under this Lease shall be in lieu of, and not in addition to, any similar time periods prescribed by applicable state law as a condition precedent to the commencement of legal action against Tenant for possession of the Premises. Any notice given pursuant to this Section 15.2 is in lieu of any written notice required by statute or law, and Tenant waives (to the fullest extent permitted by law) the giving of any notice other than that provided for in this Section 15.2. Notwithstanding any term or provision in this Section 15.2 or elsewhere in this Lease to the contrary, with respect to Tenant's performance obligations under Section 19.1 and Section 19.3 herein, Tenant shall not be afforded any notice and cure periods beyond those explicitly provided in said Section 19.1 and Section 19.3.

**15.3 Landlord's Rights and Remedies.** Should Tenant fail to cure within the applicable time period specified in Section 15.2 any default specified in Section 15.1, Landlord may exercise any of the following rights without further notice or demand of any kind to Tenant or any other person, except as required by applicable state law:

- 15.3.1 Landlord may terminate this Lease and Tenant's right to possession of the Premises and reenter the Premises, take possession thereof and remove all persons therefrom, following which Tenant shall have no further claim thereon or hereunder;
- 15.3.2 Without terminating this Lease and the obligations of Tenant hereunder, Landlord may terminate Tenant's right to possession of the Premises and reenter the Premises and occupy the whole or any part thereof; or
- 15.3.3 Even though Landlord may have reentered the Premises without terminating this Lease, in accordance with Section 15.3.2, Landlord may elect thereafter to terminate this Lease.

Should Landlord have reentered the Premises under the provisions of Section 15.3.2, Landlord shall not be deemed to have terminated this Lease or to have accepted a surrender thereof by any such reentry, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer or eviction statutes of the State of North Carolina and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to, the serving of such notice and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease. In the event of any reentry or taking possession of the Premises as aforesaid, Landlord shall have the right, but not the obligation, to remove therefrom all or any part of the merchandise, Improvements or Personal Property located therein and to place the same in storage at a public warehouse at the expense and risk of Tenant. The rights and remedies given to Landlord in this Section 15.3 shall be additional and supplemental to all other rights or remedies which Landlord may have under laws in force when the default occurs or in equity.

**15.4 Landlord's Damages.** Should Landlord terminate this Lease or Tenant's right to possession of the Premises pursuant to the provisions of Section 15.3, Landlord may recover from Tenant, as damages, all of the following:

- 15.4.1 The worth at the time of award of any unpaid Rent that had been earned at the time of such termination;
- 15.4.2 The worth at the time of award of the amount by which the unpaid Rent that would have been earned after such termination until the time of award exceeds the greater of (i) the amount of such Rent loss Tenant proves could have been reasonably avoided or (ii) the amount of rents actually received by Landlord in connection with a lease of the Premises to a replacement tenant;
- 15.4.3 The worth at the time of award of the amount by which the unpaid Rent for the balance of the Lease Term after the time of award exceeds the greater of (i) the amount of such Rent loss Tenant proves could be reasonably avoided or (ii) the amount of rents to be received by Landlord in connection with a then-effective lease of the Premises to a replacement tenant; provided, however, that if Landlord enters into a lease of the Premises with a replacement tenant after the time of the award, then Landlord shall reimburse Tenant for base rent actually received under such replacement lease during the period commencing on the rent commencement date of such lease and ending on the termination of the Lease Term;
- 15.4.4 Any other amount necessary to compensate Landlord for all the detriment actually caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, without limitation, any costs or expenses (including reasonable attorneys' fees) incurred by Landlord in (i) retaking possession of the Premises, (ii) maintaining or preserving the Premises after such default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, (iv) reletting the Premises (including leasing commissions) and (v) enforcing Tenant's obligations under this Lease;
- 15.4.5 The amount specified in Section 5 of Exhibit E; and
- 15.4.6 At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State of North Carolina.

As used in Section 15.4.1 and Section 15.4.2, the “worth at the time of award” is computed by allowing interest at the Interest Rate. As used in Section 15.4.3, the “worth at the time of award” is computed by discounting such amount at the discount rate of the Federal Reserve Bank of Charlotte, North Carolina, at the time of award, plus 1%.

All Additional Rent shall, for the purposes of calculating any amount due under the provisions of Section 15.4.3, be computed on the basis of the average monthly amount thereof accruing during the immediately preceding 60-month period, except that, if it becomes necessary to compute such Additional Rent before the expiration of the 60-month period immediately following the Rent Commencement Date, then such Additional Rent shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

In the event that Landlord recaptures the Premises in the exercise of its remedies hereunder, Landlord shall use commercially reasonable efforts to re-let the Premises, but, for the avoidance of doubt, in no event shall Landlord be required to, *inter alia*, (i) give priority to the re-letting of the Premises over any other space in the Retail Development, (ii) contract with a party at a rental below fair market value, (iii) contract with a party represented by a broker, agent, or salesperson who requests of Landlord a commission in excess of market amounts, (iv) contract with a party who Landlord considers in its reasonable judgment as non-creditworthy, or (v) contract with a party whose use is not compatible in Landlord’s judgment with the tenant mix of the Retail Development.

Except as expressly provided in any guaranty executed on behalf of Tenant in association with this Lease, the obligations of Tenant under this Lease (including any actual or alleged breach or default by Tenant) do not constitute personal obligations of the individual partners, directors, officers, members or shareholders of Tenant or Tenant’s partners, and Landlord shall not seek recourse against the individual partners, directors, officers, members or shareholders of Tenant or against Tenant’s partners or any other persons or entities having any interest in Tenant, or any of their personal assets for satisfaction of any liability with respect to this Lease.

Except as expressly provided herein, in no event shall Tenant ever be liable pursuant to this Lease for consequential damages.

**15.5 Personal Property.** Landlord hereby agrees that any contractual or statutory lien right that Landlord has or may have in the merchandise and Personal Property of the Tenant is and will be subordinate and subject to the claim of the holder of a first-lien security interest in such assets (hereafter referred to as “Tenant’s Lender”).

Without limitation of the foregoing, in the event of Tenant’s default, Tenant shall not remove its merchandise or Personal Property from the Premises. In the event of any reentry or taking possession of the Premises by Landlord as provided in this Article 15, or in the event that Tenant’s Lender notifies Landlord that it intends to repossess the Personal Property, Landlord shall allow any merchandise or Personal Property of Tenant then located inside the Premises to remain at the Premises for a period commencing on the date that is the earlier of (i) such exercise of remedies by Landlord or (ii) Landlord’s receipt of such notice from Tenant’s Lender, and ending on the date that is the earlier of (x) 60 days after the commencement of such period or (y) Landlord’s receipt of notice from Tenant’s Lender that no further access to the Premises is required by Tenant’s Lender (the “Collateral Removal Period”). During the Collateral Removal Period, Landlord shall, subject to the satisfaction of the Collateral Removal Conditions, allow Tenant’s Lender to store the Personal Property at the Premises and/or remove the Personal Property from the Premises. For the purposes hereof, “Collateral Removal Conditions” means (a) Tenant or Tenant’s Lender has paid and is then paying to Landlord all amounts due under this Lease, and (b) Tenant’s Lender has delivered to Landlord an indemnification agreement, in form and substance reasonably satisfactory to Landlord, pursuant to which Tenant’s Lender agrees to indemnify and hold Landlord harmless from any

and all claims, damages, actions and causes of actions, and costs and expenses incurred by Landlord as a direct result of Lender's access to the Premises and the removal or use of the Personal Property therefrom, and agrees to repair any damage directly caused by entry and removal of any Personal Property.

After the expiration of the Collateral Removal Period, Landlord shall have no further obligations under this Lease, and Landlord may dispose of any remaining merchandise or Personal Property at the Premises without offset or obligation.

**15.6 Waiver of Rights of Redemption.** Tenant expressly waives any and all rights of redemption granted by or under any present or future laws if Tenant is evicted or dispossessed for any cause or if Landlord obtains possession of the Premises by reason of the violation by Tenant of any of the terms, covenants and conditions of this Lease or otherwise.

#### **ARTICLE 16 DEFAULTS BY LANDLORD; TENANT'S REMEDIES**

**16.1 Default by Landlord.** If Landlord fails to perform or observe any of the terms, covenants or conditions contained in this Lease on its part to be performed or observed within 30 days (or, in the case of an emergency, a reasonable period of time in light of the nature of such emergency) after written notice of default from Tenant or, when more than 30 days shall be required because of the nature of the default, if Landlord shall fail to proceed diligently to cure such default after written notice thereof from Tenant, said failure shall constitute a default by Landlord under this Lease. Upon a default by Landlord, after the expiration of the notice and cure periods set forth above, Tenant shall have all rights and remedies at law or in equity. Further, if such default is with respect to Landlord's repair and maintenance obligations for the Premises, after the expiration of the applicable cure period as set forth above, Tenant shall have the right to complete such repair and maintenance in a commercially reasonable manner (so long as such work is undertaken and completed in accordance with the other terms and provisions of this Lease), and Landlord shall reimburse Tenant for the actual, out-of-pocket expenses incurred by Tenant therefor.

**16.2 Notice to Mortgagees.** If the Premises, or any part thereof, or any interest of Landlord in this Lease or the Rent due hereunder are at any time subject to any Mortgage and if Tenant is given notice of the name and address of the Mortgagee, then Tenant shall give written notice of any Landlord's default to such Mortgagee, specifying the default in reasonable detail, and affording such Mortgagee a reasonable opportunity, at such Mortgagee's option, to perform on behalf of Landlord. If such Mortgagee does perform on behalf of Landlord, such default shall be deemed cured.

**16.3 Limitations on Remedies Against Landlord.** In the event Tenant makes any Claim or asserts any cause of action against Landlord under or relating to this Lease: (a) Tenant's sole and exclusive remedy shall be against the equity of Landlord in the Retail Development ("Landlord's Equity"), (b) no other real, personal or mixed property of Landlord, wherever located, shall be subject to levy on any judgment obtained against Landlord, (c) if Landlord's Equity is insufficient to satisfy any judgment, Tenant will not institute any further action, suit, Claim or demand, in law or in equity, against Landlord for or on the account of such deficiency, and (d) such neglect or failure shall not constitute consent by Landlord for Tenant to perform or observe such terms, covenants or conditions at Landlord's expense. The limitations set forth in this Section 16.3 shall be enforceable by Landlord and/or by any partner, trustee, officer, employee, agent, or property manager of Landlord. Notwithstanding anything contained in this Lease to the contrary, (i) the obligations of Landlord under this Lease (including any actual or alleged breach or default by Landlord) do not constitute personal obligations of the individual partners, directors, officers, members or shareholders of Landlord or Landlord's partners, and Tenant shall not seek recourse against the individual partners, directors, officers, members or shareholders of Landlord or against Landlord's partners or any other persons or entities having any interest in Landlord, or any of their personal assets for

satisfaction of any liability with respect to this Lease, and (ii) in no event shall Landlord ever be liable pursuant to this Lease for lost profits or consequential, speculative or punitive damages.

**16.4 Landlord's Exemption From Liability.** Landlord shall not be liable for injury to Tenant's business or loss of income therefrom or for damage that may be sustained by the person, merchandise or Personal Property of Tenant, its employees, invitees, customers, agents or contractors or any other person in or about the Premises, caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of the Utility Installations, Air Conditioning System or other components of the Premises, the Building, the Retail Development, or Rea Farms, except to the extent that such damage or loss is caused by Landlord's gross negligence or willful misconduct. Landlord makes no representations or warranties with respect to the Air Conditioning System or Utility Installations (other than those constructed by or on behalf of Landlord as part of Landlord's Work) existing as of the date hereof or in the future. Landlord shall not be liable in damages or otherwise for any discontinuance, failure or interruption of service to the Premises of Utilities or the Air Conditioning System, except to the extent of Landlord's gross negligence or willful misconduct (as determined in a final, non-appealable ruling by a court of competent jurisdiction) and Tenant shall have no right to terminate this Lease or withhold Rent because of the same. Except as expressly provided hereing, Landlord shall not be liable for any damages arising from any use, act or failure to act of any other tenant or occupant, if any, of Rea Farms.

## ARTICLE 17 RECONSTRUCTION

**17.1 Insured Casualty.** Upon the occurrence of an Insured Casualty to the Premises, Landlord shall commence (or shall cause to be commenced) Reconstruction of Landlord's Work within 90 days after such occurrence (provided neither party has terminated this Lease pursuant to this Article 17) and prosecute the same diligently to completion, and Tenant shall commence Reconstruction of Tenant's Work promptly upon completion of Landlord's Work and shall diligently prosecute the same to completion no later than 150 days after the completion of Landlord's Work. In the event of a Major Destruction of the Premises (whether an Insured Casualty or an Uninsured Casualty) during the last two (2) years of the Lease Term, Landlord and Tenant each shall have the option to terminate this Lease on written notice to the other of exercise thereof within 30 days after such occurrence.

**17.2 Uninsured Casualty.** Upon the occurrence of an Uninsured Casualty to the Premises, Landlord shall have the right to elect, and shall within 60 days following the date of such damage give Tenant written notice of Landlord's election, either to commence Reconstruction of Landlord's Work and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect (subject to any applicable abatement specified in Section 17.5), or not to perform such Reconstruction of Landlord's Work, in which event this Lease shall cease and terminate not later than 60 days after Landlord's notice of its election to terminate. In the event Landlord elects to complete the Reconstruction of Landlord's Work pursuant to this Section 17.2, Tenant shall commence Reconstruction of Tenant's Work promptly upon completion of Landlord's Work and shall diligently prosecute the same to completion no later than 150 days after the completion of Landlord's Work.

**17.3 Construction Provisions.** Reconstruction shall substantially conform to the provisions of Exhibit C and shall cover Landlord's Work and Tenant's Work. Landlord shall reconstruct the Premises only to the extent of Landlord's Work; Tenant, at its sole cost and expense, shall reconstruct Tenant's Work and shall replace its merchandise, Improvements and Personal Property. Provided, however, in the event of an Insured Casualty and presuming this Lease is not terminated in accordance with any provision in this Article 17, Landlord shall make available to Tenant insurance proceeds remaining after full payment for the costs of Reconstruction of Landlord's Work to apply toward the costs of Reconstruction of Tenant's Work.

**17.4 Release of Liability.** In the event of the termination of this Lease under any of the provisions of this Article 17, both Landlord and Tenant shall be released from any liability or obligation under this Lease, except as otherwise provided for in this Lease, arising after the date of termination.

**17.5 Abatement of Rent.** In the event of Reconstruction of the Premises, the Minimum Annual Rent payable by Tenant shall be abated proportionately in accordance with the degree to which Tenant's use of the Premises is impaired, commencing from the date of destruction and continuing during the period of such Reconstruction provided above. Tenant shall continue the operation of its business in the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay Percentage Rent and Additional Rent shall remain in full force and effect during the period of Reconstruction. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises, the Building, Tenant's Personal Property, or any inconvenience or annoyance occasioned by such damage, Reconstruction or replacement.

**17.6 Major Destruction.** Notwithstanding any of the foregoing provisions of this Article 17, should there be a Major Destruction of the Retail Development at any time after the Effective Date, Landlord shall have the right to terminate this Lease on written notice to Tenant within 30 days after such destruction.

## **ARTICLE 18 EMINENT DOMAIN**

**18.1 Total Taking.** If the entire Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority or under threat of and in lieu of condemnation (hereinafter, "taken" or "taking"), this Lease shall terminate as of the date of such taking, and Landlord and Tenant shall have no further liability or obligation, except as otherwise provided for in this Lease, arising under this Lease after such date.

**18.2 Partial Taking; Right to Terminate.** If more than 25% of the Floor Area of the Premises is taken, or if by reason of any taking, regardless of the amount so taken, the remainder of the Premises is not one undivided space or is rendered unusable for the Permitted Use, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate the portion of the Premises taken, upon giving notice of such election within 30 days after receipt by Tenant from Landlord of written notice that said Premises have been or will be so taken. In addition, if such a significant portion of the Retail Development or Common Area is taken that, in Landlord's reasonable opinion, substantial Reconstruction is required on the remaining portion, Landlord shall have the right to terminate this Lease upon 30 days' written notice to Tenant. In the event of such termination, both Landlord and Tenant shall be released from any liability or obligation under this Lease, except as otherwise provided for in this Lease, arising after the date of termination. Landlord and Tenant shall, immediately after learning of any taking, give notice thereof to each other.

**18.3 Reconstruction.** If this Lease is not terminated pursuant to Section 18.2 above, then Tenant shall continue to occupy that portion of the Premises not taken and the parties shall proceed as follows: (a) as soon as reasonably possible, Landlord shall restore (or shall cause to be restored) the Premises remaining to a complete unit of like quality and character as existed prior to such appropriation or taking to the extent of the condemnation award actually received by Landlord for the Premises, and (b) the Minimum Annual Rent provided for in Section 1.11 and Additional Rent shall be reduced on an equitable basis, taking into account the relative values of the portion taken as compared to the portion remaining. Tenant waives any statutory rights of termination that may arise because of any partial taking of the Premises.

**18.4 Award.** Landlord shall be entitled to the entire condemnation award for any taking of the Premises, the Building, or the Retail Development, or any part thereof. Tenant's right to receive any amounts separately awarded to Tenant directly from the condemning authority for the taking of its merchandise, Personal Property, relocation expenses and/or interests in other than the real property taken shall not be affected in any manner by the provisions of this Article 18, provided Tenant's award does not reduce or affect Landlord's award.

## **ARTICLE 19** **SUBORDINATION; ATTORNMENT; ESTOPPEL**

**19.1 Subordination to Mortgage.** This Lease and all of Tenant's rights hereunder are and shall be subject and subordinate to all currently existing and future Mortgages affecting the Premises. Within 10 business days after the receipt of a request from Landlord or any Mortgagee, Tenant shall confirm such subordination by executing a recordable subordination agreement in form and content reasonably satisfactory to Tenant, Landlord, and Landlord's Mortgagee. Provided, however, as a condition to Tenant's obligation to execute and deliver any such subordination agreement, the applicable Mortgagee must agree that this Lease shall not be divested by foreclosure or other default proceedings thereunder so long as Tenant shall not be in default under the terms of this Lease beyond any applicable cure period set forth herein. Tenant shall, within 10 business days after written request therefor, execute and deliver such documents as are requested by the Mortgagee to confirm such subordination, subject to the foregoing limitation. Tenant acknowledges that any Mortgagee has the right to subordinate at any time its interest in this Lease and the leasehold estate to that of Tenant, without Tenant's consent.

**19.2 Attornment.** If Landlord sells, transfers, or conveys its interest in the Premises or this Lease, or if the same is foreclosed judicially or nonjudicially, or otherwise acquired, by a Mortgagee, upon the request of Landlord or Landlord's successor, Tenant shall attorn to said successor, provided said successor accepts the Premises subject to this Lease and assumes Landlord's obligations under this Lease; provided further that such successor shall not be (a) liable for any act or omission of any previous landlord under the Lease, except to the extent continuing and capable of being cured by such party; (b) subject to any offsets or defenses which Tenant may have against any previous landlord under the Lease; (c) bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any previous landlord; (d) obligated to make any payment to Tenant which any previous landlord was required to make before Lender succeeded to the landlord's interest; (e) accountable for any monies deposited with any previous landlord (including security deposits), except to the extent such monies are actually received by Lender; (f) bound by any amendment or modification of the Lease or any waiver of any term of the Lease made without Lender's written consent; (g) bound by any surrender or termination of the Lease made without Lender's written consent (unless effected unilaterally by Tenant pursuant to the express terms of the Lease); (h) obligated to complete any improvement or construction on the Property or to pay or reimburse Tenant for any tenant improvement allowance, construction allowance or leasing commissions; (i) liable for any default of any previous landlord under the Lease; or (j) bound by any provision in the Lease granting Tenant a purchase option or first right of refusal or offer with regard to the Property. There is attached to this Lease as Exhibit G a form of the Subordination, Non-Disturbance and Attornment Agreement which Tenant agrees is satisfactory and acceptable to implement the provisions of Section 19.1 herein and this Section 19.2, although Landlord reserves the right to use different agreement forms (in lieu of the agreement form attached hereto as Exhibit G), with such reasonable changes as may be obtained by Landlord or Tenant in connection with each such party's negotiation thereof, at the request of a potential mortgagee or purchaser.

**19.3 Estoppel Certificate.** Within 10 business days after request from Landlord, Tenant shall execute and deliver to Landlord an Estoppel Certificate (to be prepared by Landlord and delivered to Tenant) with appropriate facts concerning the status of this Lease and Tenant's occupancy, and with any exceptions thereto noted in writing by Tenant. Tenant's failure to execute and deliver the Estoppel

Certificate within said 10 business day period shall be deemed to make conclusive and binding upon Tenant in favor of Landlord and any potential Mortgagee or transferee the statements contained in such Estoppel Certificate without exception. Tenant hereby agrees that the form of Estoppel Certificate attached to this Lease as Exhibit E is satisfactory and acceptable to Tenant and that Tenant shall execute, in accordance with this Section 19.3, the Estoppel Certificate upon the request of Landlord, although Landlord reserves the right to use different estoppel certificate forms (in lieu of the form attached hereto as Exhibit E), with such reasonable changes as may be obtained by Landlord or Tenant in connection with each such party's negotiation thereof, at the request of a potential mortgagee or purchaser.

## ARTICLE 20 QUIET ENJOYMENT

Landlord agrees that Tenant, upon paying the Rent and performing the terms, covenants and conditions of this Lease and subject to the terms and conditions of this Lease, may quietly have, hold and enjoy the Premises from and after Landlord's delivery of the Premises to Tenant and until the end of the Lease Term, subject, however, to any Mortgage to which this Lease is or shall become subordinate.

## ARTICLE 21 CONSENTS

Wherever in this Lease consent, approval or permission (collectively referred to in this Article 21 as "consent") is required, such consent shall be given in writing and shall not be unreasonably withheld or delayed, unless otherwise expressly provided. Landlord shall not be deemed to have withheld its consent unreasonably where Landlord's right to give its consent is conditioned on Landlord obtaining the consent of any other person, entity, agency or Governmental Authority and such other person, entity, agency or Governmental Authority withholds or fails to give its consent. If Landlord fails to give any consent that a court later holds Landlord was required to give under the terms of this Lease, Tenant shall be entitled solely to specific performance and such other remedies as may be specifically reserved to Tenant under this Lease, but in no event shall Landlord be responsible for monetary damages (including incidental and consequential damages) for such failure to give consent.

## ARTICLE 22 NOTICES

Wherever in this Lease it shall be required or permitted that any notice, request, report, communication or demand be given, served or transmitted by either party to this Lease to or on the other, such notice or demand shall be in writing and shall be personally delivered or forwarded by registered or certified mail, return receipt requested, or by nationally recognized courier service providing written confirmation of delivery, to the addresses of the parties specified in Section Error! Reference source not found.. Notice shall be deemed to have been given or served on the delivery date indicated by the United States Postal Service or courier service on the return receipt or on the date such delivery is refused or marked "undeliverable," unless Tenant or Landlord (as the case may be) is served personally, in which event the date of personal delivery shall be deemed the effective date of notice. Either party may change its address by providing written notice as specified herein; provided, however, all addresses provided must be the actual street address of a residence or business establishment. The foregoing method of service shall be exclusive, and Tenant and Landlord waive, to the fullest extent permitted under law, the right to any other method of service required by any statute or law now or hereafter in force. Whenever multiple notices are sent or multiple methods of transmitting any notice are utilized, any time period that commences upon the giving or deemed giving of such notice shall commence upon the earliest date such delivery is effectuated, and such time shall not be extended by operation of law or otherwise because of any later delivery of the same notice.

## ARTICLE 23 ATTORNEYS' FEES

If either Landlord or Tenant institutes any action or proceeding (including any alternative dispute resolution proceedings) against the other relating to the provisions of this Lease or any default hereunder, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable expenses of attorneys' fees and all costs and disbursements incurred therein by the prevailing party, including, without limitation, any such fees, costs or disbursements incurred on any appeal from such action or proceeding. The prevailing party shall recover all such fees, costs or disbursements as costs taxable by the court in the action or proceeding itself without the necessity for a cross-action by the prevailing party. In addition to the foregoing, Tenant shall pay all expenses incurred by Landlord (including, without limitation, reasonable attorneys' fees) in connection with: (i) any petition for relief under the Bankruptcy Code filed by or against Tenant and any related proceeding, and/or (ii) any assignment of this Lease to any assignee of Tenant pursuant to the Bankruptcy Code.

## ARTICLE 24 GENERAL PROVISIONS

**24.1 Binding Effect.** The parties hereto agree that all the provisions of this Lease are to be construed as covenants and agreements and, except as otherwise specified, that said provisions shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

**24.2 Right to Lease.** Subject to the express terms hereof, Landlord shall have the absolute right to lease or permit the use or occupancy of space in the Retail Development as Landlord shall determine in its sole and absolute judgment. Tenant does not rely on the fact, nor does Landlord represent, that there shall be any specific occupants or minimum occupancy level of space in the Retail Development at any time.

**24.3 Retail Development Configuration.** Tenant acknowledges that Exhibit A is for the purposes of convenience only and that Landlord reserves the right at any time to expand, reduce, remove, demolish, change, renovate or construct any existing or new improvements at the Retail Development, although such rights of Landlord relative to the Premises are subject to and governed by the terms of this Lease.

**24.4 Claims by Brokers.** Tenant warrants that all negotiations with respect to this Lease (including, without limitation, preliminary consideration of the Premises, relevant economics and final Lease provisions) were accomplished without the aid, intervention or employment of any broker or finder, of any kind other than The Providence Group (the "Broker") which shall be paid by Landlord pursuant to a separate agreement between Landlord and the Broker. Tenant shall indemnify, protect, defend and hold Landlord (and its partners, joint venturers, affiliates, shareholders and property managers, and their respective officers, directors, employees and agents) harmless from and against any and all Claims arising out of or in connection with any Claims made by any person claiming to be a broker or finder with regard to this Lease as a result of the activities or agreements of Tenant, including, without limitation, Claims for commissions and all costs of enforcing this indemnity against Tenant, other than such Claims asserted by the Broker. Landlord shall indemnify, protect, defend and hold Tenant (and its partners, joint venturers, affiliates, shareholders and property managers, and their respective officers, directors, employees and agents) harmless from and against any and all Claims arising out of or in connection with any Claims made by any person claiming to be a broker or finder with regard to this Lease as a result of the activities or agreements of Landlord, including, without limitation, Claims for commissions and all costs of enforcing this indemnity against Landlord and including payment of a commission to the Broker.

**24.5 Exhibits.** All exhibits attached hereto are incorporated herein and made a part of this Lease by reference as if fully set forth herein.

**24.6 Entire Agreement; Amendment.** There are no oral or written agreements or representations between the parties hereto affecting this Lease not contained herein. This Lease supersedes and cancels any and all previous negotiations, arrangements, representations, brochures, displays, projections, estimates, agreements and understandings, if any, made by, to, or between Landlord and Tenant and their respective agents and employees with respect to the subject matter thereof, and none shall be used to interpret, construe, supplement or contradict this Lease. This Lease, and all amendments thereto, shall be considered to be the only agreement between the parties hereto and their representatives and agents relating to the subject matter hereof. To be effective and binding on Landlord and Tenant, any amendment to the provisions of this Lease must be in writing and executed by both parties in the same manner as this Lease itself.

**24.7 Force Majeure.** The occurrence of any of the following events (individually or collectively, "Force Majeure") shall excuse such obligations of Landlord or Tenant as are thereby rendered impossible or reasonably impracticable for so long as such event continues or for a period equal to the delay in the critical path of completing the performance of the impaired obligation, as the case may be: strikes, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes therefor, governmental restrictions, regulations or controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform. Notwithstanding the foregoing, the occurrence of such events shall not excuse Tenant's obligations to pay Rent or any other monetary sum hereunder or excuse such obligations as this Lease may otherwise impose on the party to obey, remedy or avoid such event.

**24.8 Venue.** The laws of the State of North Carolina shall govern the validity, performance and enforcement of this Lease. Tenant consents to personal jurisdiction and venue in the Superior Court in Mecklenburg County, North Carolina.

**24.9 Bankruptcy.** The Federal Bankruptcy Code shall govern with respect to this Lease and in no event shall any provision of this Lease be deemed to be a waiver by either party of its rights under the Federal Bankruptcy Code.

**24.10 No Presumption.** Although the provisions of this Lease were drafted primarily by Landlord, the parties hereto agree that such fact shall not create any presumption, construction or implication favoring the position of either Landlord or Tenant. The parties agree that any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, construction or implication, including, without limitation, any implication that the parties intended thereby to state the opposite of the deleted language. The captions of the Articles and Sections of this Lease are for convenience only, are not operative parts of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

**24.11 No Waiver.** The waiver by Landlord or Tenant of any breach of any term, covenant or condition contained in this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach thereof or of any other term, covenant or condition contained in this Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant. Landlord's subsequent acceptance of partial Rent or performance by Tenant shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease or of any right of Landlord to a forfeiture of this Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of Landlord's acceptance. No

term, covenant or condition of this Lease shall be deemed to have been waived by Landlord or Tenant unless such waiver is in writing and executed by such party.

**24.12 Nondiscrimination.** Landlord and Tenant covenant for themselves, their heirs, executors, administrators, successors and assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, marital status, national origin, ancestry, age or physical handicap or in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased, and Tenant and any person claiming under or through Tenant shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, subtenants, licensees, vendees or customers in the Premises.

**24.13 Parties.** If two (2) or more persons or corporations execute this Lease as Tenant, the word "Tenant" as used in this Lease shall refer to all such persons or corporations, and the liability of such persons or corporations for compliance with and performance of all the terms, covenants and conditions of this Lease shall be joint and several. The masculine pronoun used herein shall include the feminine or the neuter, as the case may be, and the use of the singular shall include the plural.

**24.14 Real Estate Investment Trust.** During the Lease Term or any extension thereof, should a real estate investment trust become Landlord hereunder, all provisions of this Lease shall remain in full force and effect except as modified by this Section 24.14. If Landlord in good faith determines that its status as a real estate investment trust under the provisions of the Internal Revenue Code of 1986, as heretofore or hereafter amended, will be jeopardized because of any provision of this Lease, Landlord may request reasonable amendments to this Lease and Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that such amendments do not (a) increase the monetary obligations of Tenant pursuant to this Lease or (b) in any other manner materially and adversely affect Tenant's interest in the Premises.

**24.15 Relationship of the Parties.** Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, principal-agent, or employer-employee relationship between Landlord and any other person or entity (including, without limitation, Tenant) or as causing Landlord to be responsible in any way for the debts or obligations of such other person or entity.

**24.16 Sale or Mortgage by Landlord.** If Landlord at any time, sells, conveys, transfers or otherwise divests itself or is divested of its interest (a "transfer") in the Premises, other than a transfer for security purposes only, Landlord shall be relieved of all obligations and liabilities accruing hereunder after the effective date of said transfer, provided that any security deposit or other funds of Tenant then being held by Landlord are delivered to Landlord's successor (and failing such delivery, Landlord's continuing liability hereunder after the effective date of such transfer shall be limited to the amount of such money not so delivered). The obligations to be performed by Landlord hereunder shall be binding on Landlord's successors and assigns only during their respective periods of ownership.

**24.17 Severability.** If any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease, and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

**24.18 Time of Essence.** Time is of the essence in the performance of all covenants and conditions of this Lease.

**24.19 Waiver of Trial by Jury.** Landlord and Tenant hereby waive any and all rights to a trial by jury in any action, proceeding or counterclaim (including any claim for injury or damage and any emergency and other statutory remedy in respect thereof) brought by either against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, and/or Tenant's use or occupancy of the Premises.

**24.20 Warranty of Authority.** If Tenant is a corporation, limited liability company, partnership or other business entity, the person or persons executing this Lease on behalf of Tenant represent, covenant and warrant to Landlord as of the date Tenant executes and delivers this Lease and continuing throughout the Term of this Lease that: (a) Tenant is a duly organized, in good standing and qualified to do business in the State of North Carolina, (b) Tenant has paid all applicable taxes, (c) Tenant will file when due all forms, reports, fees and other documents necessary to comply with applicable laws, and (d) the signatories signing on behalf of Tenant have the requisite authority to bind Tenant pursuant to Tenant's organizational documents. Concurrently with Tenant's execution and delivery of this Lease to Landlord and/or at any time during the Term within 10 days of Landlord's request, Tenant shall provide to Landlord a copy of any documents reasonably requested by Landlord evidencing such organization, qualification and authority.

**24.21 Survival of Obligations.** Notwithstanding any term or provision in this Lease to the contrary, any liability or obligation of Landlord or Tenant arising during or accruing with respect to the Lease Term shall survive the expiration or earlier termination of this Lease, including, without limitation, obligations and liabilities relating to (i) Rent payments, (ii) the condition of the Premises, and (iii) indemnification obligations in this Lease.

**24.22 Rights of Light, View or Air.** This Lease does not grant any rights to light, view or air over adjacent property, and any diminution or shutting off of light, view or air by any structure that may be erected adjacent to the Building shall not affect this Lease or impose any obligation or liability upon Landlord.

**24.23 Recordation; Confidentiality.** Tenant agrees not to record this Lease but may record a memorandum of this Lease, in form and substance satisfactory to Landlord, at Tenant's sole cost and expense (including, without limitation, payment of any recording fees, taxes or other costs and expenses). Tenant further agrees that upon the expiration or earlier termination of this Lease, Tenant, at its sole cost and expense as provided above, shall promptly thereafter cause to be recorded in the official records of the County in which the Premises is located, a termination of memorandum of lease (or similar document) in form and substance reasonably acceptable to Landlord evidencing that Tenant has no further right, title and interest in and to this Lease, such obligation to survive the expiration or earlier termination of this Lease. Without limitation of the foregoing, Tenant hereby appoints Landlord as its attorney-in-fact, upon termination of the Lease, to execute and record any instruments necessary to cancel the memorandum on record.

Tenant agrees that Tenant and Tenant's employees, agents, contractors and subcontractors shall keep confidential and shall not disclose the terms of this Lease to any party without Landlord's written consent (excluding Tenant's financing parties, attorneys, accountants, other advisors, and potential purchasers, or as otherwise required by law).

**24.24 Counterparts.** This Lease may be executed in two or more counterparts and shall be deemed to have become effective when and only when one or more of such counterparts shall have been signed by or on behalf of each of the parties hereto (although it shall not be necessary that any single counterpart be signed by or on behalf of each of the parties hereto, and all such counterparts shall be deemed to constitute but one and the same instrument) and shall have been delivered by each of the parties to the other.

**24.25 Effect of Covenants and Agreements and other Matters of Record; Consent.** This Lease is and will remain subject to matters of record pertaining to the Retail Development including, without limitation, the Master Declaration and the Retail Declaration. In particular, the parties hereto acknowledge that certain expenses and other components of Additional Rent may be affected by cost-sharing arrangements detailed in the Retail Declaration, the Master Declaration, and/or the Condo Declaration. Without limitation of the foregoing, Tenant acknowledges that, in any event with respect to which Landlord has a consent, approval, or other similar right, Landlord's consent or approval may be influenced or directed by its agreements with parties to such matters of record.

**24.26 Section Headings; Defined Terms.** Section headings in this Lease are for convenience only and are not to be construed as part of this Lease or in any way limiting or applying the provisions hereof. Defined terms, where used in this Lease, are intended to serve as stand-ins for the concepts by which they are herein defined, and are not to be construed as having independent meaning or to affect the application of the provisions of this Lease in any way.

## **ARTICLE 25 SECURITY DEPOSIT**

**25.1 Payment.** Tenant shall pay Landlord the sum, if any, specified in Section 1.15 as "Security Deposit" as security for the faithful performance by Tenant of all of its obligations under this Lease. Landlord shall not be liable for interest on the Security Deposit and shall not be required to hold the Security Deposit in a segregated account.

**25.2 Application.** If any of the Rent herein reserved or any other sum payable by Tenant to Landlord hereunder shall be overdue and unpaid or paid by Landlord on behalf of Tenant or if Tenant shall fail to perform any of its other obligations under this Lease, then Landlord may, at its option and without prejudice to any other remedy which Landlord may have on account thereof, appropriate and apply all or a portion of any Security Deposit then in its possession to compensate Landlord for Minimum Annual Rent, Additional Rent, and all loss or damage sustained by Landlord, and Tenant shall forthwith restore said Security Deposit to the original sum deposited. Should Tenant comply with all of said obligations and promptly pay all the Rent when due and all other sums payable by Tenant to Landlord, any remaining Security Deposit shall be refunded in full to Tenant at the expiration or earlier termination of the Lease Term.

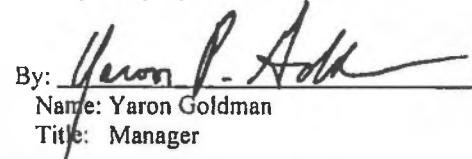
## **ARTICLE 26 FRANCHISOR RIDER**

**26.1 Incorporation.** Tenant's franchisor (the "Franchisor") has requested, and Landlord and Tenant have agreed, that Landlord and Tenant execute a Franchisor Rider, in substantially the form attached hereto as Exhibit M (the "Franchisor Rider"), in connection with the execution of this Lease. To the extent of any conflict between the Franchisor Rider and the terms hereof, the Franchisor Rider shall control.

IN WITNESS WHEREOF, the parties have caused this Lease to be duly executed and sealed pursuant to authority duly given as of the day and year first above written.

TENANT

RTHT INVESTMENTS, LLC, a Delaware limited liability company

By:  [SEAL]  
Name: Yaron Goldman  
Title: Manager

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

LANDLORD

RFR, LLC, a North Carolina limited liability company

By: Harris Advisory Group, LLC, a North Carolina  
limited liability company, its Manager

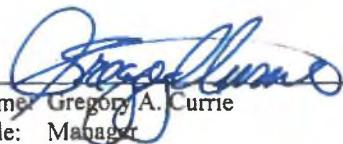
By:  [SEAL]  
Name: Gregory A. Currie  
Title: Manager

EXHIBIT A-1

RETAIL DEVELOPMENT

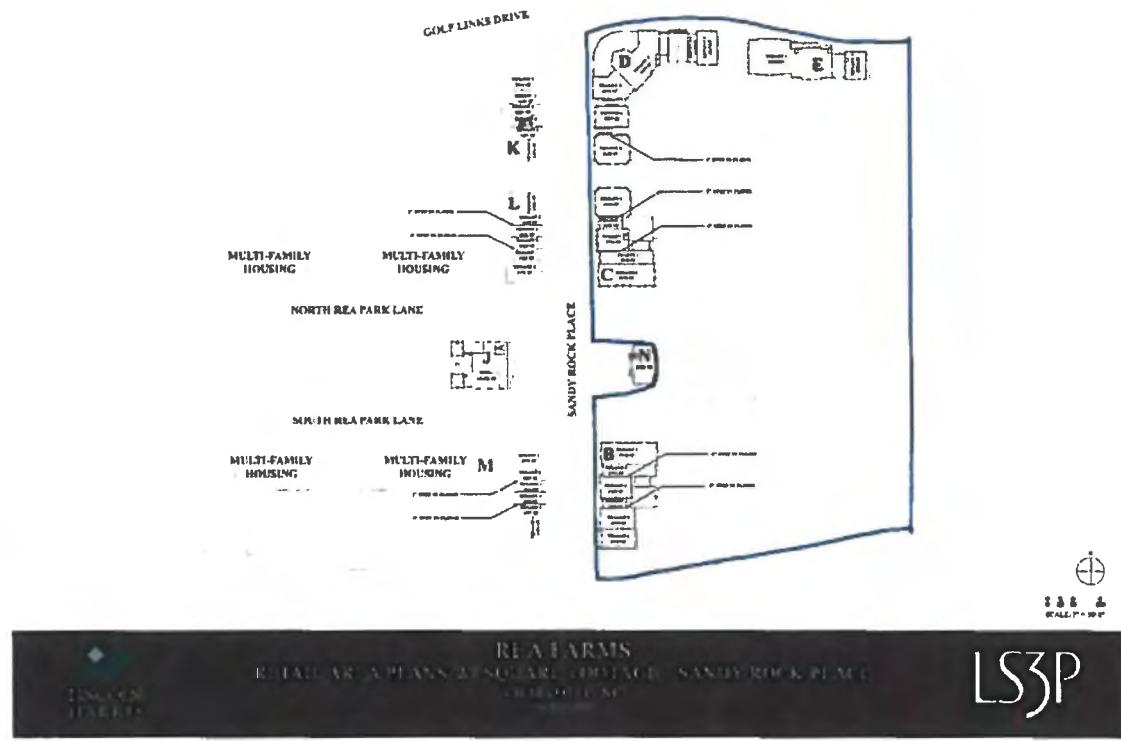


EXHIBIT A-2

THE BUILDING AND THE PREMISES

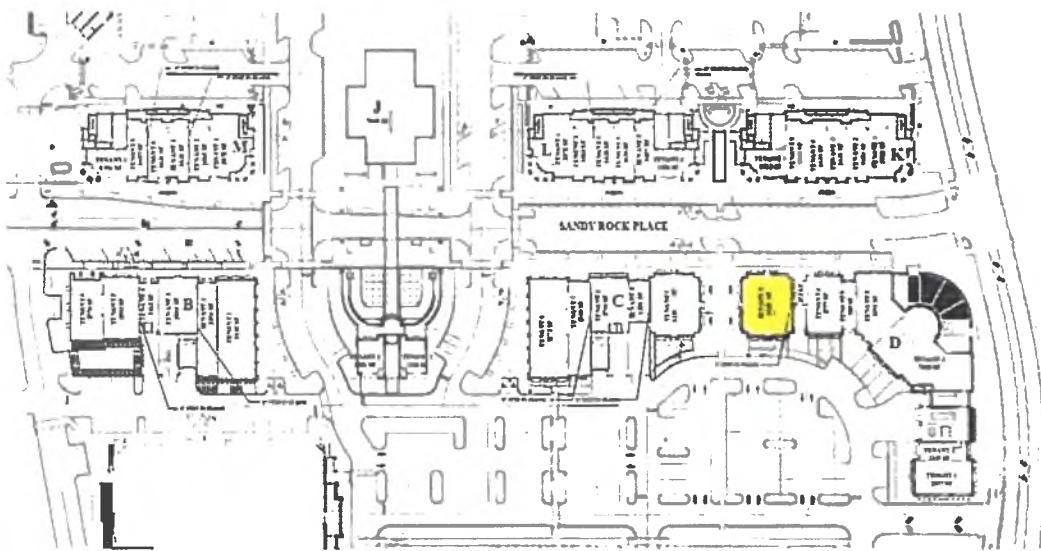
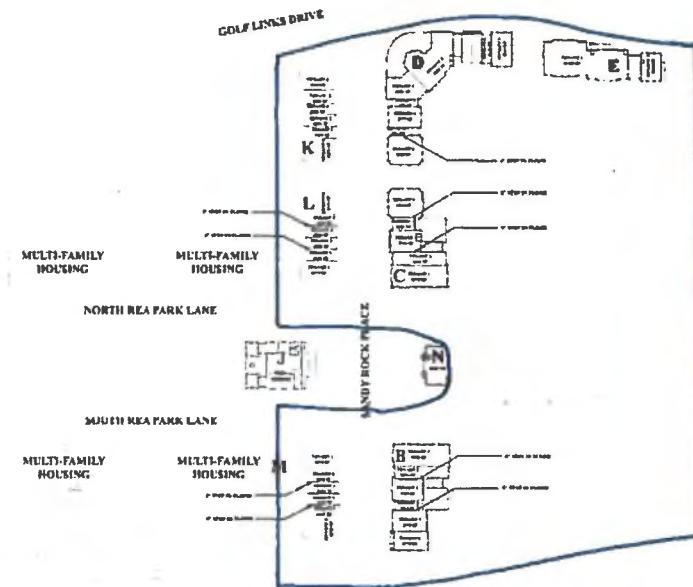


EXHIBIT A-3

THE PROTECTED AREA



LS3P

REAFARMS  
DETACHMENT PLANS W/ SPLIT COTTAGE - SANDY ROCK PLACE



**EXHIBIT B**

**DEFINED TERMS**

Unless otherwise indicated, all references to Articles and Sections in this Exhibit B shall be deemed to refer to Articles and Sections in the Lease.

**“Additional Rent”** means all sums of money required to be paid by Tenant under the Lease, with the exception of Minimum Annual Rent.

**“Administrative Fee”** means an amount equal to 15% of the amount of expenses or other amounts with respect to which the Administrative Fee is payable as set forth in particular Articles and Sections of the Lease.

**“Air Conditioning System”** means the air conditioning system serving the Premises exclusively, including all pipes, ducts, machinery, fans, coolers, chillers, condensers and other equipment used in connection therewith.

**“Amortization of Capital Items”** shall mean the amortization of any capital item (and, at Landlord’s election, any non-capital item(s) otherwise constituting a part of Common Area Expenses pursuant to the provisions of Section 11.3.1) costing \$10,000.00 or more with a useful life (as determined in accordance with generally accepted accounting principles) in excess of five years. Amortization shall be, in lieu of the full cost of such item, over said useful life and shall include an interest factor based on the Interest Rate.

**“Breakpoint”** means, for any specific period, the amount obtained by dividing the Minimum Annual Rent payable during such period by 5%.

**“Building”** means the building that contains the Premises.

**“Change of Control”** means the transfer by sale, assignment, death, incompetency, mortgage, deed of trust, trust, operation of law, or otherwise of any shares, voting rights or ownership interests which will result in a change in the identity of the person or persons exercising, or who may exercise, effective control of Tenant, unless such change results from the trading of shares listed on a recognized public stock exchange and such trading is not for the purpose of acquiring effective control of Tenant. If Tenant is a private corporation whose stock becomes publicly held, the transfers of such stock from private to public ownership shall not be deemed a Change of Control.

**“Claims”** means any claim, demand, investigation, proceeding, action, suit, judgment, award, fine, lien, loss, damage, expense, charge or cost of any kind or character and liability (including reasonable attorneys’ fees and court costs).

**“Commencement Date”** means the earlier to occur of (i) the date Landlord tenders possession of the Premises to Tenant or Tenant’s agent with Landlord’s Work substantially completed, but no earlier than the Target Delivery Date, or (ii) the date Tenant or Tenant’s agent occupies the Premises for any purpose.

**“Common Area”** means all improved and unimproved areas within the boundaries of the Retail Development which are now or hereafter (including additional land acquired by Landlord) made available for the general use, convenience and benefit of Landlord and other persons entitled to occupy any portion of the Retail Development and/or their customers, patrons, employees and invitees, which may include, without limitation, automobile parking areas and structures, floors, ceilings, roofs, driveways, sidewalks, curbs and landscaped areas, and such public transportation facilities and landscaped areas as are contiguous with and benefit the Retail Development, together with off-site easements (and improvements thereon)

which provide access, parking rights, Utility services or storm water drainage for the benefit of the Retail Development.

**“Common Area Expenses”** is defined in Section 11.3.

**“Condo Declaration”** means any Declaration of Condominium or similar document or instrument recorded with respect to the respective rights and obligations of the owners of condominium spaces in Building K, Building L, and/or Building M.

**“Construction Allowance”** means that amount, if any, payable by Landlord in accordance with Section 8.2 in the Lease and Exhibit F attached to the Lease relative to Tenant’s Work.

**“Effective Date”** means that date set forth in Section 1.6

**“Encumbrance”** means any conditional, contingent or deferred assignment, sublease or conveyance voluntarily made by Tenant of some or all of Tenant’s interests, rights or duties in the Lease or the Premises, including Tenant’s right to use, occupy or possess the Premises, in whole or in part, including, without limitation, any mortgage, deed of trust, pledge, hypothecation, lien, franchise, license, concession or other security arrangement.

**“Estoppel Certificate”** means a document stipulation substantially in the form of Exhibit E.

**“Expiration Date”** means that date set forth in Section 1.9.

**“Floor Area”** means the square footage of the Premises described in Section 1.4 (or, where applicable, of all premises located in a building or buildings of the Retail Development) without deduction for the width of or space occupied by air conditioning units that exclusively serve and are located within the Premises and/or by columns, sprinkler risers, roof drains, structural braces, expansion joints and/or shear walls, measured from the exterior surface of building walls (and extensions thereof, in the case of openings), from the exterior surface of Perimeter Demising Partitions, from the center line of Interior Demising Partitions or vertical neutral strips and from any Lease Line, all of which form the perimeter of the Premises.

**“Governmental Authority”** means any federal, state, county, city or local governmental board, body or agency having jurisdiction over the Premises, the Building, the Retail Development, or Rea Farms, or any part thereof.

**“Gross Sales”** means the gross selling price of all merchandise (including, without limitation, all food and beverages), gift or merchandise certificates and/or services sold in or from the Premises of Tenant, its subtenants, licensees and concessionaires, whether for cash or on credit and whether made by store personnel or by approved vending or gaming machines, including all such revenues from catering conducted by Tenant through the Premises and all insurance proceeds from business interruption insurance or any similar coverage, as adjusted to exclude Gross Sales Adjustments. Gross Sales shall not include any government imposed taxes upon the sale of merchandise or services which are collected separately from the selling price and paid directly to the taxing authority. All sales originating at the Premises shall be considered Gross Sales, even though bookkeeping and payment of the account may be transferred to another place for collection and even though actual filling and/or delivery of the merchandise may be made from a place other than the Premises. Each sale upon installments, if any, or credit shall be treated as a sale for the full sale price at the time of sale.

**“Gross Sales Adjustments”** means the following items, but only to the extent previously reported as Gross Sales: the selling price of all merchandise and products returned by customers and accepted for full credit or the amount of discounts made thereon; sums and credits received in the settlement of Claims for loss or

damage to merchandise or products; the price allowed on merchandise or products traded in by customers for credit or the amount of credit for discounts and allowances made in lieu of acceptance thereof, receipts from vending machines installed solely for Tenant's employees; sales of fixtures, equipment or property which are not stock in trade; tips to Tenant's employees; and donations of food or other merchandise to non-profit charitable and religious institutions.

**"Hazardous Materials"** means any chemical, compound, material, substance or other matter that: (a) is defined as a hazardous substance, hazardous material or waste, or toxic substance under any Hazardous Materials Law, (b) is regulated, controlled or governed by any Hazardous Materials Law or other Legal Requirement, (c) is petroleum or a petroleum product, or (d) is asbestos, formaldehyde, a radioactive material, drug, bacteria, virus, or other injurious or potentially injurious material (by itself or in combination with other materials).

**"Hazardous Materials Laws"** means any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, the Building, the Retail Development, or Rea Farms, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, any other Legal Requirement concerning hazardous or toxic substances, and any amendments to the foregoing.

**"Improvements"** means all permanent and nonstructural fixtures, installations, alterations, replacements, additions, changes and/or improvements to the Premises.

**"Insured Casualty"** means damage or destruction the repair of which is fully covered by insurance proceeds received by or made available to Landlord pursuant to any insurance policy required to be carried by Landlord under the terms of the Lease.

**"Interest Rate"** means 2% above the annualized rate of interest publicly announced from time to time by Citibank, N.A. (or its successors) in New York, New York, as its "prime rate," and such interest shall be computed on the basis of monthly compounding with actual days elapsed compared to a 360-day year.

**"Interior Demising Partitions"** means partitions separating the Premises from the premises of adjacent tenants.

**"Landlord"** is defined in Section 1.1.

**"Landlord's Work"** is defined in Exhibit C.

**"Lease Line"** means any imaginary or defined line which separates the Premises from all areas of the Retail Development other than the premises of adjacent tenants and occupants.

**"Lease Term"** is defined in Section 3.1.

**"Lease Year"** means each year during the Lease Term commencing on the Rent Commencement Date (and on each anniversary thereof) and ending at the expiration of 12 months thereafter.

**"Legal Requirement"** means, to the extent applicable, (i) any law, statute, ordinance, regulation, rule, requirement, order, court decision or procedural requirement of any Governmental Authority, (ii) the rules and regulations of the applicable governmental insurance authority or any similar body, and (iii) the requirements of any Mortgagee. References herein to "law" or "lawful" include Legal Requirements or the full and strict compliance with Legal Requirements, as applicable.

**“Master Declaration”** means the Master Declaration of Covenants, Conditions, Easements and Restrictions for Rea Farms dated November 4, 2015 by Rea Farms Development, LLC, recorded in Book 30396, Page 757 of the Mecklenburg County Register of Deeds, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

**“Major Destruction”** means destruction (whether or not an Insured Casualty) to an extent of more than one-third of the full replacement cost of the Premises, the Building or the Retail Development, as the case may be, as of the date of destruction, or destruction to the Building or the Retail Development that results in the termination of the leases of tenants therein representing more than one-third of the Floor Area thereof.

**“Minimum Annual Rent”** means the rental payable by Tenant for the use and occupancy of the Premises and is more specifically set forth in Section 1.11.

**“Mortgage”** means any mortgage, deed of trust, assignment, security agreement, conditional sale contract or other encumbrance or hypothecation of any of Landlord’s interest in the real and personal property comprising the Retail Development and/or the Building, including an assignment or encumbrance of Landlord’s interest in the Lease and the rents and profits derived therefrom. “Mortgage” shall also include any ground lease or similar instrument whereby Landlord holds a leasehold interest in the Retail Development or any part thereof.

**“Mortgagee”** means the holder, beneficiary or assignee of any Mortgage, or any lessor under any ground lease or similar instrument.

**“Occupancy Transaction”** means any Transfer, Encumbrance, Change of Control, or other arrangement whereby the identity of the person or persons using, occupying or possessing the Premises changes or may change, whether such change be of an immediate, deferred, conditional, exclusive, nonexclusive, permanent or temporary nature. For the avoidance of doubt (i) a Personal Property Financing shall not constitute an Occupancy Transaction and (ii) entering into a franchise agreement with Tenant’s franchisor shall not, in and of itself, constitute an Occupancy Transaction.

**“Percentage Rent”** means the rental payable by Tenant as set forth in Section 1.12 and pursuant to Section 4.3.

**“Perimeter Demising Partitions”** means partitions separating the Premises from all other areas of the Building and the Retail Development.

**“Permitted Use”** means the permitted use of the Premises as set forth in Section 1.14 and in Section 6.1.

**“Personal Property”** means trade fixtures, furniture, furnishings, signs and other personal property not permanently affixed to the Premises. As used herein, the term “trade fixtures” shall not include any permanently affixed items or equipment (such as without limitation plumbing fixtures, HVAC equipment, kitchen hoods and walk-in coolers), carpeting, floor coverings, attached shelving/cabinetry, lighting fixtures (other than freestanding lamps), wall coverings, or similar Tenant improvements which shall remain on the Premises at the expiration or earlier termination of this Lease unless otherwise requested by Landlord in writing.

**“Personal Property Financing”** means any financing transaction entered into by Tenant with respect to its Personal Property.

**“Premises”** means the space described in Section 1.4 from the top of the floor to the underside of the structure above and exclusive of such conduits, facilities, Personal Property, and structures as may be located in the Premises for the common use and benefit of Landlord and other tenants and occupants.

**“Rea Farms”** means the mixed-use development commonly known as “Rea Farms” in the City of Charlotte, County of Mecklenburg, State of North Carolina

**“Reconstruction”** means repair, reconstruction and restoration of the Premises, the Building and/or the Retail Development, as the case may be.

**“Rent”** means all amounts of Minimum Annual Rent and Additional Rent required to be paid by Tenant under the Lease.

**“Rent Commencement Date”** means that date set forth in Section 1.10.

**“Responsible Officer”** of Tenant shall mean all individuals doing business as Tenant, an individual general partner if Tenant is a partnership, a responsible officer of Tenant if Tenant is a corporation, or a responsible officer of any corporate general partner of Tenant if Tenant is a partnership with one or more corporate partners.

**“Retail Declaration”** means the Declaration of Covenants, Conditions and Restrictions dated January 19, 2017 by and among Rea Farms Construction, LLC, CVR Associates LLLP, and Harris Teeter, LLC, recorded in Book 31510, Page 846 of the Mecklenburg County Register of Deeds.

**“Retail Development”** means that portion of the retail space at Rea Farms that is shown on Exhibit A-1, as the same may from time to time be expanded, reduced, altered, reconstructed or otherwise changed. Notwithstanding the foregoing, in no event shall “Retail Development” be deemed to include any spaces therein devoted to multifamily residential use pursuant to the Master Declaration.

**“Security Deposit”** means the amount, if any, specifically set forth in Section 1.15.

**“Signage Package”** means (i) the tenant design materials and (ii) technical drawings setting forth specific criteria for Tenant’s signage to be installed on the exterior of the Premises, as either may be amended from time to time. The Signage Package shall provide for architectural, construction, mechanical and Utilities standards, specifications and criteria established by Landlord, from time to time, for signage within the Retail Development.

**“Target Delivery Date”** means that date set forth in Section 1.8.

**“Tenant’s Plans”** means calculations, designs and drawings which pertain to Tenant’s Work.

**“Tenant’s Trade Name”** means the name set forth in Section 1.3.

**“Tenant’s Work”** is defined in Exhibit C and the Tenant’s Plans.

**“Transfer”** means any voluntary, unconditional and present (i) assignment of some or all of Tenant’s interests, rights and duties in the Lease and the Premises, including Tenant’s right to use, occupy and possess the Premises, or (ii) sublease of Tenant’s right to use, occupy and possess the Premises, in whole or in part.

**“Transferee”** means the proposed assignee, sublessee, mortgagee, beneficiary, pledgee or other recipient of Tenant’s interests, rights or duties in the Lease or the Premises in an Occupancy Transaction.

**“Uninsured Casualty”** means damage or destruction resulting from any flood, earthquake, act of war, nuclear reaction, nuclear radiation or radioactive contamination, or any other casualty of any kind or nature whatsoever that is not an Insured Casualty.

**“Utilities”** means the services of sewage removal, delivery of water, electricity, natural gas (if permitted by Landlord) and telephone service provided to the Premises and otherwise for Tenant’s benefit.

**“Utilities Charge”** is defined in Section 10.3.

**“Utility Installations”** means any and all systems, machinery, facilities, installations, supply lines, transformers, pipes, conduits, ducts, penetrations, components, facilities and all other equipment used in or in connection with the Retail Development for the generation or supply of Utilities.

**EXHIBIT C**

**PROVISIONS RELATING TO THE DESIGN AND CONSTRUCTION OF TENANT'S PREMISES**

**I. DESCRIPTION OF LANDLORD'S WORK**

**A. General**

“Landlord's Work” shall mean and refer to “Landlord's Cold Dark Shell”, as more particularly described on Exhibit H, and the Utility Installations and exterior site work, as the Utility Installations and the exterior site work are described below in this Section I. The specifications for Landlord's Cold Dark Shell are set forth on Exhibit H, and such specifications shall be applicable under this Exhibit C and this Lease, except to the extent of any contrary provisions in this Exhibit C, in which case the contrary provisions in this Exhibit C shall control. Landlord's Cold Dark Shell shall be designed and constructed in accordance with the building code in effect in Charlotte, North Carolina, as of the time of the construction of the Building (the “Building Code”) and all other applicable Legal Requirements. As to all building materials and equipment that Landlord is obligated to supply as part of Landlord's Work, Landlord shall be entitled to select the manufacturer thereof. Although Landlord and Landlord's architect will confer with Tenant and Tenant's architect to coordinate Tenant's interior needs and requirements for the Premises, Landlord ultimately has the discretion to make all decisions regarding the design and construction of the shell and exterior of the Building.

**B. Utility Installations**

Utilities shall be made available by Landlord as and to the extent provided in Landlord's Work. Except as otherwise provided in Landlord's Work, Tenant shall be responsible for any Utilities work required within the Premises, including, without limitation, any electrical and telephone lines and other work from the interior tenant panel for such services, light fixtures, transformers, disconnect switches, receptacles, distribution within the Premises, as required, additional conduit(s) from the central distribution point, and temporary power for Tenant's construction.

**C. Exterior Site Work**

Sidewalks adjacent to the Premises shall be constructed of concrete or such other suitable material as Landlord shall select. Exterior fire hydrants shall be installed as required by the Building Code. Additionally, Landlord shall cause all exterior site work associated with the Building to be completed in accordance with the requirements of all applicable Governmental Authorities.

**D. Construction Issues**

From the commencement until the completion of Landlord's Work, Landlord shall not be liable for any claim, demand, damage, loss, expense or cost of Tenant arising from Landlord's Work, except as may be specifically provided in the Lease.

**E. Storefront**

Deviations or variances from the existing storefront will not be permitted without the prior written consent of Landlord, and the cost of any such deviation or variance shall be borne by Tenant.

**F. Condition of Premises**

Except as otherwise provided in this Exhibit C and except as specifically set forth on Exhibit H or otherwise in this Lease, Tenant hereby agrees that (i) Tenant accepts the Premises in "AS IS" condition, and (ii) Tenant acknowledges that Landlord shall have no obligation to upfit or renovate the Premises in conjunction with or as a condition to Tenant's occupancy and use thereof.

**G. Awnings**

Exterior awnings shall be selected and provided by Landlord, at Landlord's sole cost and expense (not to exceed \$80.00 per linear foot).

**II. TENANT'S WORK**

**A. General**

"Tenant's Work" shall mean and refer to Tenant's exterior signage, if any, all of the interior Premises improvements described in this Section II and any other items to be permanently affixed to the Premises which are necessary to construct and complete construction of the Premises for Tenant's use thereof and which are not part of Landlord's Work.

**B. Preparation and Submission of Tenant's Plans**

Prior to preparing Tenant's Plans, Tenant's architect and engineer(s) shall, at Tenant's cost, thoroughly familiarize themselves with, and verify by physical inspection, the accuracy of the Premises, the Signage Package, this Exhibit C, the Building Code and all existing job conditions. Tenant's Plans shall be prepared with full knowledge of and in compliance with the Signage Package, this Exhibit C and all city, county, state and federal ordinances, rules and regulations relating thereto, including, without limitation, all energy conservation and handicap access requirements, if applicable. Tenant's architect and engineer(s) shall be fully qualified and licensed to prepare the drawings required in this Section II.B and Section II.C herein.

**C. Review and Approval of Tenant's Plans**

1. Within 30 days after the Effective Date, Landlord shall provide Tenant with Landlord's plans for Landlord's Work. Within 60 days after receipt of Landlord's plans, Tenant shall submit to Landlord (i) such color renderings, photographs, and other materials as Landlord may reasonably request for the purpose of evaluating Tenant's proposed flooring and wall coverings for the Premises, (ii) one set of interior fixture layout drawings for the Premises, and (iii) one hard copy and one electronic copy of fully detailed and dimensioned ¼-inch scale construction drawings prepared at Tenant's expense by Tenant's architect, who shall be licensed in the State of North Carolina. The aforementioned construction drawings shall include the following: (a) plan views of the storefront, floor areas, and reflected ceiling; elevations of the storefront and interiors; sections through the storefront and partitions, and along the longitudinal axis; door, finish and color schedules; and final design drawings for signage to be attached to the exterior of the Building; (b) electrical drawings prepared by an electrical engineer, who shall be licensed in the State of North Carolina, including circuitry plans, panel schedules, riser diagrams, load calculations, and all calculations and forms required by applicable statutes and codes; and (c) mechanical drawings prepared by a mechanical engineer licensed in the State of North Carolina, including heating, ventilating and air conditioning design calculations, an equipment schedule and specifications, the design for the air distribution duct work system, smoke exhaust system, exhaust fan(s), plumbing fixtures and piping specifications, and all calculations and completed forms required by applicable statutes and codes, including the Building Code.

2. Tenant's Plans are subject to the approval of Landlord and Landlord's architect. Landlord shall, within 15 days of the date on which Landlord receives Tenant's Plans, provide Tenant with any comments or objections to same. If Landlord has any objections to Tenant's Plan, it shall advise Tenant thereof in sufficient detail to allow Landlord to respond to such objections, and Tenant shall, within 10 days of receipt of Landlord's objections, revise Tenant's Plans and re-submit them to Landlord. Landlord shall respond within 15 days of its receipt of any re-submission of Tenant's Plans.

3. The process described in paragraph 2 above shall continue until the earlier of (i) Landlord's approval of the working drawings described therein in their entirety or (ii) the date that is six months from the Effective Date. In the event Tenant's Plans are not approved by Landlord and Landlord's architect, for any reason whatsoever, within six months after the Effective Date, Landlord and Landlord's architect shall have no further obligation to review and approve Tenant's Plans and Landlord shall have the right to terminate the Lease by so notifying Tenant in writing. Similarly, in the event Tenant's Plans are not approved by Landlord and Landlord's architect, for any reason whatsoever, within six months after the Effective Date, and provided that Tenant has complied with all provisions of this Exhibit C, Tenant shall have the right to terminate the Lease by so notifying Landlord in writing.

4. The review and approval of Tenant's Plans by Landlord and Landlord's architect shall in no event create any responsibility or liability on the part of Landlord or Landlord's architect for their completeness, design sufficiency, or compliance with any and all laws, regulations, codes, ordinances and other governmental regulations and shall not relieve Tenant of Tenant's responsibility to verify such compliance and all job conditions, including, without limitation, dimensions, locations and clearances.

5. Any proposed subsequent changes, modifications or alterations to Tenant's Plans (after Tenant's Plans are approved by Landlord and Landlord's architect) requested by Tenant must be reviewed and approved in advance by Landlord and Landlord's architect, and Tenant shall pay any additional costs and expenses incurred by Landlord in connection with such review and consideration, including any additional fees charged by Landlord's architect. Landlord shall have the right to demand that Tenant pay such costs and expenses in advance of Landlord's processing any such request.

6. All work to be performed by or on behalf of Tenant shall at all times be in compliance with all laws, regulations, codes, ordinances and other governmental regulations relating thereto, and Tenant's Plans, and Landlord and its agents shall have an ongoing right to independently confirm the same.

#### **D. Building Permit for Premises**

Landlord's representative may, at Landlord's option, assist Tenant in obtaining a building permit for the construction of Tenant's Work by coordinating Tenant's submission of Tenant's Plans to the applicable governing agencies. The fact that Landlord or Landlord's representative may assist Tenant in such manner shall not relieve Tenant of the responsibility for obtaining the building permit for the construction of Tenant's Work. If any such governing agency shall reject Tenant's Plans and thereby prevent the issuance of a building permit, Tenant shall promptly make all necessary corrections required by said agency. Upon said agency's approval of Tenant's Plans and permit application, Tenant or Tenant's contractor shall retrieve the building permit from said agency. Tenant shall pay for all building department plan review and permit fees required to obtain such building permit. Tenant also shall apply for and obtain all approvals and permits relative to the Premises from the local health department, as required.

#### **E. Construction Issues**

1. The fact that Tenant may enter into possession of the Premises prior to delivery of the Premises by Landlord to Tenant for the purpose of installing Personal Property shall not be deemed an

acceptance by Tenant of possession of the Premises, but in such event Tenant shall defend and indemnify Landlord from any Claims, as provided in Section 13.1.1 of this Lease.

2. Tenant agrees, at its own expense (subject to reimbursement from the Construction Allowance, as applicable, pursuant to the terms of the Lease), to construct Tenant's Work diligently and continuously to completion. Tenant shall construct Tenant's Work in a first-class, professional manner and in accordance with generally accepted construction and engineering practices, subject to Landlord's approval (to be exercised in Landlord's reasonable judgment). Tenant's Work shall be completed in accordance with the approved Tenant's Plans and in compliance with all city, county, state and federal ordinances, rules and regulations relating thereto, including the Building Code. In the event that the Premises (excluding Landlord's Work) have not been constructed in accordance with said approved Tenant's Plans and in compliance with all city, county, state and federal ordinances, rules and regulations relating thereto (in the reasonable judgment of Landlord), then Tenant shall not be permitted to open the Premises for business until the Premises do so comply, and Tenant shall not be excused from the performance of all other obligations of Tenant under the Lease.

3. Tenant shall carry and maintain insurance in accordance with Article 12 in the Lease.

4. Tenant shall deliver a digital copy of the certificate of occupancy for the Premises to Landlord prior to Tenant's opening for business.

5. During the performance of Tenant's Work or subsequent Improvements in accordance with Article 8 of this Lease, Tenant shall be responsible for the removal from the Retail Development on a daily basis of all trash, construction debris and surplus construction materials, or at Landlord's option, the placement on a daily basis of such trash, debris and materials in receptacles designated by Landlord.

6. Any delays in the completion of the Premises caused by Tenant's contractor shall not relieve Tenant of any obligations of Tenant under the Lease.

7. Any and all work performed by Tenant or Tenant's contractor or subcontractors shall be performed in a manner so as to avoid any labor dispute which results in a stoppage or impairment of work, deliveries or any other service in the Retail Development. If there shall be any such stoppage or impairment as a result of any such labor dispute, Tenant shall immediately undertake such action as may be necessary to eliminate such dispute or potential dispute, including, without limitation, (a) removing all disputants from the job site until such time as the labor dispute no longer exists, (b) seeking a temporary restraining order and other injunctive relief with regard to illegal union activities or a breach of contract between Tenant and Tenant's contractor, and (c) filing appropriate unfair labor practice charges.

### **III. TENANT'S USE OF A CONTRACTOR**

#### **A. Contractor Selection**

The contractor selected by Tenant for the construction of Tenant's Work must be bondable and must meet all licensing and insurance requirements established by the city, county and state in which the Retail Development is located. Additionally, Landlord shall have approved of Tenant's proposed contractor before Tenant enters into a construction contract ("Tenant's Construction Contract") with such party, and such party's subcontractors (including, without limitation, subcontractors providing electrical, mechanical, plumbing, or fire safety services), provided that no such approval shall not be unreasonably withheld. Tenant shall provide Landlord with a true and complete copy of Tenant's Construction Contract prior to commencement of Tenant's Work.

**B. Special Conditions**

Tenant shall incorporate into Tenant's Construction Contract the following items as "Special Conditions," and Landlord shall be specified in Tenant's Construction Contract as a third-party beneficiary relative to such obligations of Tenant's contractor:

1. Prior to commencement of Tenant's Work, Tenant's contractor shall provide Landlord with a construction schedule in "bar graph" form indicating the intended completion dates of all phases of Tenant's Work.

2. Tenant's contractor shall diligently perform Tenant's Work and shall cooperate with Landlord so that Tenant's Work and Landlord's completion of the shell and exterior of the Building or other portion of the Retail Development shall not be impeded or delayed.

3. Tenant's contractor shall be responsible for the repair, replacement or clean-up of any damage caused by Tenant's contractor to any other contractor's work in any area of the Building or the Retail Development.

4. Tenant's contractor shall store all construction materials and shall contain all operations within the Premises and such other space or area (if any) within the Retail Development as Landlord may specifically designate from time to time. Should Tenant be assigned space outside of the Premises, Tenant shall move to such other space as Landlord shall designate from time to time to avoid interference or delays with other work. All trash, construction debris and surplus construction materials shall be promptly removed from the Premises and handled in accordance with the provisions of Section II.E.5 above.

5. Tenant's contractor shall provide written notice to Landlord or Landlord's project manager of any work to be done on weekends or other than normal job hours, and Tenant agrees to pay all costs associated therewith.

6. Tenant and Tenant's contractor shall comply with all applicable laws, codes, rules and regulations governing the performance of Tenant's Work, including the Building Code.

7. Prior to commencement of construction, Tenant's contractor shall submit to Landlord evidence of insurance coverages in accordance with the reasonable requirements of Landlord.

8. Tenant's contractor and subcontractors shall not post signs on any part of the Retail Development or the Premises.

9. If required by Landlord's lender and prior to the commencement of Tenant's Work, Tenant shall obtain, or shall cause its contractor to obtain, a "performance bond" covering the faithful performance of Tenant's Construction Contract. The performance bond shall be in an amount equal to 100% of the full amount of Tenant's Construction Contract, conditioned on the contractor's faithful performance of Tenant's Construction Contract. Said performance bond shall name Landlord and Tenant as co-obligees, shall be given by a sufficient surety which is satisfactory to Landlord, and shall be in such form as Landlord shall approve, in Landlord's sole discretion.

**EXHIBIT D**

**RULES AND REGULATIONS**

Tenant covenants with and for the benefit of Landlord:

1. To give to Landlord prompt written notice of any significant accident, fire or damage occurring on or to the Premises.
2. To use reasonable efforts to schedule no deliveries of goods between 4:00 p.m. and 7:00 p.m. Monday through Friday or between 9:00 a.m. and Noon on Saturday, and to load and unload goods only in such areas and through such entrances as may be designated for such purposes by Landlord and to prohibit all trucks and trailers which have moved upon the Retail Development or Rea Farms on account of Tenant's conduct of business from remaining overnight in any portion of the Retail Development or Rea Farms.
3. To keep the Premises sufficiently heated to prevent freezing of water in pipes and fixtures.
4. Not to burn, place or permit any rubbish or merchandise in the outside areas adjoining the Premises, except as provided herein. Tenant shall deposit its trash only in the Retail Development trash receptacles and shall participate in and comply with any procedures established for the collection, sorting, separation, and recycling of waste products, garbage, refuse and trash.
5. To keep the Premises clean, sanitary and free from offensive odors and from insects, vermin and other pests.
6. To park Tenant's vehicles and to require Tenant's employees, contractors, subcontractors, and concessionaires to park their vehicles only in those portions of the parking area designated for that purpose by Landlord.
7. To keep its storefront windows in the Premises dressed and illuminated and its exterior and interior signs and lights continuously well lighted at a minimum from 11:00 a.m. to 10:00 p.m.
8. To conduct its business in the Premises in a diligent and dignified manner, to refrain from using any sales promotion device or practice that would tend to mislead or deceive the public or detract from the reputation of the Retail Development, to refrain from installing video or other electronic games in the Premises and keep the Premises in first class condition in accordance with the highest standards of operation of similar businesses. Tenant shall not hold any going out of business, moving or liquidation sales or promotions in the Premises.
9. To comply with any and all reasonable rules and regulations of Landlord in connection with the Premises which are in effect at the time of the execution of the Lease or which may be from time to time promulgated by Landlord in its reasonable discretion, provided such rules and regulations are in writing and are not in conflict with the terms and conditions of the Lease.
10. To install such fire extinguisher and other safety equipment as applicable law may require.
11. Except as may otherwise be provided in Section 8.3 in the Lease, Tenant shall not place, affix or maintain any signs, advertising placards, names, insignia, trademarks, descriptive material or any other similar item or items outside, on or within twenty-four (24) inches of the storefront of Tenant's Premises, the glass panes and supports of the Premises windows, or any window, door, roof or exterior boundary of the Premises, except such signs as Landlord shall approve in writing.

12. Tenant shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area of the Retail Development or Rea Farms or cause any handbills or other advertising devices to be distributed in the Retail Development or Rea Farms.

13. Tenant shall not display or sell merchandise, or place portable signs, devices or any other objects in the Common Area and Tenant shall not solicit or distribute materials in any manner in the Common Area, without Landlord's prior written approval, which may be granted or withheld in Landlord's sole discretion.

14. Tenant shall not erect an aerial or antenna on the roof or exterior walls of the Premises.

EXHIBIT E

ESTOPPEL CERTIFICATE

Date: \_\_\_\_\_, 201 \_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned ("Tenant") has entered into that certain Lease Agreement dated \_\_\_\_\_, 201 \_\_\_\_ (the "Lease"), with RFR, LLC, a North Carolina limited liability company ("Landlord") for the leasing of certain Premises at the Retail Development portion of the mixed-use development commonly known as Rea Farms in Charlotte, North Carolina (the real property on which such Retail Development is located being sometimes referred to herein as the "Property").

This Estoppel Certificate is given by Tenant to Landlord and to \_\_\_\_\_ ("Lender"), as of the date hereof, with the understanding that Lender and its counsel will rely on this Estoppel Certificate in connection with the continued performance of Lender's obligations relative to the mortgage loan previously made or to be made by Lender to Landlord (the "Loan") which Loan is or will be secured by, *inter alia*, a mortgage or deed of trust recorded against the Property.

In accordance with the terms of the Lease, Tenant ratifies the Lease and represents and warrants that:

- (1) The undersigned has accepted the Premises (which consists of approximately \_\_\_\_\_ rentable square feet) and entered into occupancy of the Premises described in said Lease on \_\_\_\_\_, 201 \_\_\_\_;
- (2) The undersigned is [not] presently open and conducting business with the public in the Premises;
- (3) The current Minimum Annual Rent in the annual amount of \$ \_\_\_\_\_ was payable from \_\_\_\_\_, 201 \_\_\_\_;
- (4) Said Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (except by agreement/s] dated \_\_\_\_\_);
- (5) The same represents the entire agreement between the parties as to the subject matter of the Lease;
- (6) The Lease Term expires on \_\_\_\_\_ 20 \_\_\_\_;
- (7) *[Landlord agreed to provide Tenant with a Construction Allowance (as defined in the Lease) of \$ \_\_\_\_\_, of which \$ \_\_\_\_\_ remains due and payable to Tenant.]* All required contributions by Landlord to Tenant *[other than the Construction Allowance]* have been received, except \_\_\_\_\_;
- (8) As of the date hereof, to Tenant's knowledge, there are no existing defenses, offsets, counterclaims or deductions against rental that the undersigned has against the enforcement of said Lease by Landlord;

(9) No rental has been paid more than one month in advance and no security (other than a security deposit in the amount of \$ \_\_\_\_\_) has been deposited with Landlord. Tenant hereby agrees not to pay rent more than one month in advance at any time (except as and to the extent such payments may be required by the terms of the Lease);

(10) The Minimum Annual Rent has been paid through the monthly installment of \_\_\_\_\_ paid for the month of \_\_\_\_\_, 20\_\_\_\_;

(11) Pursuant to the Lease, Tenant's current percentage share of operating expenses/common area charges is \_\_\_\_\_ %, which is currently being paid on an estimated basis in advance at the rate of \$ \_\_\_\_\_ per month; Tenant's current percentage share of real estate taxes is \_\_\_\_\_ %, which is currently being paid to Landlord on an estimated basis in advance at the rate of \$ \_\_\_\_\_ per month; Tenant's current percentage share of insurance premiums is \_\_\_\_\_ %, which is currently being paid to Landlord on an estimated basis in advance at the rate of \$ \_\_\_\_\_ per month; and Tenant is obligated to pay Percentage Rent equal to \_\_\_\_\_ % of annual gross sales in excess of \$ \_\_\_\_\_;

(12) Tenant does not have any right or option to renew or extend the term of the Lease or to expand into any additional space or to terminate the Lease in whole or in part prior to the expiration of the term [except for \_\_\_\_\_];

(13) All work required to be performed by Landlord on behalf of Tenant has been fully completed and Tenant is satisfied with all such work done; and all tenant improvements, if any, required to be installed by Landlord in the Premises have been completed by Landlord in accordance with plans and specifications approved by Tenant; and as of the date hereof Tenant is not aware of any defect in the Premises [except for \_\_\_\_\_];

(14) Except as set forth in this paragraph: Landlord has satisfied all commitments made to induce Tenant to enter into the Lease, other than \_\_\_\_\_; there are no offsets or credits against rentals payable under the Lease; no free periods of rent or other concessions have been granted to Tenant, other than \_\_\_\_\_; Landlord is not reimbursing Tenant or paying Tenant's rent obligations under any other lease; and Tenant has not advanced any funds for or on behalf of Landlord for which Tenant has a right of deduction from, or set off against, future rent payments;

(15) Except as expressly set forth in the Lease, Landlord has no obligations to repair or maintain the Premises;

(16) All obligations of Landlord under the Lease have been performed, and no event has occurred and no condition exists that, with the giving of notice or lapse of time or both, would constitute a default by Landlord under the Lease [except for \_\_\_\_\_];

(17) Tenant is not in any respect in default under the Lease and has not assigned, transferred or hypothecated the Lease or any interest therein or subleased all or any portion of the Premises except as stated herein. Tenant is not insolvent and is able to pay its debts as they mature. Tenant has not declared bankruptcy or filed a petition seeking to take advantage of any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, Tenant has no present intentions of doing so, and no such proceeding has been commenced against Tenant seeking such relief, and Tenant has no knowledge that any such proceeding is threatened;

- (18) Tenant does not have any right or option to purchase all or any part of the Property, except for \_\_\_\_\_;
- (19) The term "Lender," as used herein, includes any successor or assign of the named Lender; and
- (20) The person executing this Estoppel Certificate is authorized by Tenant to do so and execution hereof is the binding act of Tenant enforceable against Tenant.

Very truly yours,

TENANT:

a \_\_\_\_\_

By: \_\_\_\_\_ [SEAL]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT F**

**PROVISIONS GOVERNING CONSTRUCTION ALLOWANCE**

Notwithstanding anything to the contrary contained in Exhibit C, Landlord agrees to contribute the Construction Allowance toward the cost of Tenant's Work (not to include, however, the costs of Tenant's Personal Property and architect fees). The agreements of Landlord and Tenant regarding the Construction Allowance are as follows:

1. In the event the cost of Tenant's Work exceeds the Construction Allowance, such excess amount shall be borne solely by Tenant.
2. The request for a disbursement of the Construction Allowance shall be accompanied by the Supporting Documents (as defined herein), and, provided that such accompanying Supporting Documents satisfy the terms hereof, Landlord shall disburse the Construction Allowance within 30 days thereof. The obligation of Landlord to make such disbursement of the Construction Allowance is subject to the condition precedent that, on the date of such disbursement, no event has occurred and is continuing which constitutes (or with the lapse of time without being cured will constitute) a default of Tenant under the Lease. After disbursement of the Construction Allowance (or any portion thereof) by Landlord to Tenant, Tenant shall be solely responsible for disbursement to Tenant's contractor, subcontractors and material suppliers of payments for the cost of Tenant's Work. As used herein, the term "Supporting Documents" shall mean all of the following:
  - (a) a copy of the permanent certificate of occupancy for the Premises issued by the appropriate Governmental Authority adequate to support occupancy of the Premises;
  - (b) a written certification reasonably satisfactory to Landlord, signed by a Responsible Officer of Tenant, certifying (i) that Tenant has opened for business in the Premises, (ii) an itemized statement of the final, actual costs and expenses incurred by Tenant with respect to the work performed and the materials provided in connection with Tenant's Work, together with a true and complete copy of all relevant invoices from subcontractors to Tenant's contractor and from Tenant's contractor to Tenant therefor, and (iii) that all such costs and expenses either have been or will be (with payment of the disbursement of the Construction Allowance) paid in full prior to delinquency;
  - (c) an affidavit signed by Tenant's contractor affirming that all subcontractors, laborers, artisans, mechanics and material suppliers engaged in or supplying labor or materials for Tenant's Work have been or will be (with payment of the disbursement of the Construction Allowance) paid in full prior to delinquency, with the exception only of labor and materials supplied to complete "punch list" items;
  - (d) a waiver of liens with respect to the Premises, the Building and the Retail Development executed by Tenant's contractor and, if obtainable on the condition that they not be delivered and released except upon payment to Tenant's contractor, a waiver of liens executed by all subcontractors, laborers, artisans, mechanics and material suppliers engaged in or supplying labor or materials for Tenant's Work; provided, however, if a claim of lien or a lien has been filed by any such subcontractor, laborer, artisan, mechanic or material supplier, Tenant shall obtain an unconditional waiver of such lien before Landlord shall be obligated to disburse the Construction Allowance;

- (e) a written certification by Tenant's architect to the effect that all of Tenant's Work has been completed substantially (*i.e.*, subject only to the completion of "punch list" items) in accordance with the approved Tenant's Plans and applicable Legal Requirements;
- (f) a complete set of "as built" plans for Tenant's Work;
- (g) an executed, original Tenant's Estoppel Certificate signed by Tenant substantially in the form of Exhibit E attached to the Lease; and
- (h) such other documents or statements as may be required by any Governmental Authority or as may be reasonably required by Landlord or Landlord's insurer or lender, including AIA documents G702 and G703 or their equivalents.

3. Tenant acknowledges that Landlord's damages arising from Tenant's failure to remove or bond off any mechanics' liens which may be filed against the Premises, the Building and/or the Retail Development as a result of Tenant's Work are extremely difficult and impractical to fix. Therefore, in the event a mechanics' lien is filed against the Premises, the Building and/or the Retail Development as a result of Tenant's Work and Tenant either has not removed such lien or has not bonded off such lien within 30 days after written notice from Landlord, Tenant shall, in addition to any other remedies available to Landlord, pay a per diem amount of \$1,000.00 until such lien is removed or bonded off as compensation to Landlord for the damages arising from Tenant's failure to remove or bond off such lien.

4. The cost of any additional work performed by Landlord, at Tenant's request, for the benefit of Tenant, as well as any Rent owing under the Lease shall be deducted from the Construction Allowance before said Construction Allowance is paid to Tenant.

5. Should Landlord terminate the Lease pursuant to an event of default by Tenant under the Lease, Tenant shall pay to Landlord (in addition to any other applicable damages) the unamortized costs of the Construction Allowance, amortized on a straight-line basis over the Lease Term (not including any possible extensions of the Lease Term pursuant to Section 3.1 in the Lease).

**EXHIBIT G**

Recording Requested by  
and when Recorded return to:

Attention: \_\_\_\_\_  
Loan No.: \_\_\_\_\_

**SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

Tenant's Trade Name:

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF THE SECURITY DOCUMENTS (DEFINED BELOW).**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") is made as of \_\_, 20 \_\_, by and between \_\_\_\_\_ ("Tenant"), and \_\_\_\_\_, as Trustee for the registered holders of \_\_\_\_\_ ("Lender").

**RECITALS**

- A. \_\_\_\_\_ ("Owner") is the owner of the land and improvements commonly known as compromising all or a part of the Property located in a certain [shopping center/office building/warehouse/industrial park/hotel] known as \_\_\_\_\_ located in \_\_\_\_\_ and more particularly described in Exhibit A attached hereto and made a part hereof (such [shopping center/office building/ warehouse/ industrial park/hotel], and more specifically described in Exhibit A attached hereto ("Property").
- B. Tenant is the lessee under a lease dated \_\_\_\_\_, 20 \_\_, executed by Owner (or its predecessor in interest), as landlord, and Tenant, as tenant (as the same may have been amended, the "Lease"), covering certain premises (the "Premises")
- C. Lender is the current holder of a mortgage loan (the "Loan") previously made to Owner, evidenced by a note (the "Note") and secured by, among other things: (a) a first mortgage, deed of trust or deed to secure debt encumbering the Property (the "Mortgage"); and (b) a first priority assignment of leases and rents on the Property (the "Assignment of Leases and Rents") contained in the Mortgage or in a separate document. The Mortgage and the Assignment of Leases and Rents are collectively referred to as the "Security Documents." The Note, the Security Documents and all other documents executed in connection with the Loan are collectively referred to as the "Loan Documents."

- D. Tenant has requested Lender's agreement that if Lender forecloses the Mortgage or otherwise exercises Lender's remedies under the Security Documents, Lender will not disturb Tenant's right to quiet possession of the Premises under the terms of the Lease.
- E. Lender is willing to so agree on the terms and conditions provided in this Agreement, including, without limitation, Tenant's agreement to subordinate the Lease and attorn to Lender as provided herein.

NOW, THEREFORE, for mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **SUBORDINATION.** The Lease is and shall remain unconditionally subject and subordinate to (a) the liens or charges imposed by the Security Documents, (b) all currently outstanding or future advances secured by the Security Documents, and (c) all renewals, amendments, modifications, consolidations, replacements and extensions of the Security Documents. The subordination described herein is intended by the parties to have the same force and effect as if the Security Documents and such renewals, modifications, consolidations, replacements and extensions of the Security Documents had been executed, acknowledged, delivered and recorded prior to the Lease and any amendments or modifications thereof.
2. **NON-DISTURBANCE.** If Lender exercises any of its rights under the Security Documents, including any right of entry on the Property pursuant to the Mortgage or upon a foreclosure of or deed in lieu of foreclosure of the Mortgage, Lender shall not disturb Tenant's right of quiet possession of the Premises under the terms of the Lease, so long as Tenant is not in default under this Agreement or, beyond any applicable grace period, under the Lease.
3. **ATTORNMENT.** Notwithstanding anything to the contrary contained in the Lease, should title to the Premises and the landlord's interest in the Lease be transferred to Lender or any other person or entity by foreclosure of or deed in-lieu of foreclosure of the Mortgage, upon assumption of landlord's obligations under the Lease (except as provided in Section 4 below) by such party, Tenant shall, for the benefit of Lender or such other person or entity, effective immediately and automatically upon the occurrence of any such transfer, attorn to Lender or such other person or entity as landlord under the Lease and shall be bound under all provisions of the Lease including, but not limited to, the obligation to pay all rent required to be paid by Tenant pursuant to the terms of the Lease, for the remainder of the Lease term.
4. **PROTECTION OF LENDER.** If Lender succeeds to the interest of landlord under the Lease, Lender shall not be:
  - (a) liable for any act or omission of any previous landlord under the Lease, except to the extent continuing and capable of being cured by such party;
  - (b) subject to any offsets or defenses which Tenant may have against any previous landlord under the Lease;
  - (c) bound by any payment of rent or additional rent which Tenant might have paid for more than one month in advance of the due date under the Lease to any previous landlord;
  - (d) obligated to make any payment to Tenant which any previous landlord was required to make before Lender succeeded to the landlord's interest;
  - (e) accountable for any monies deposited with any previous landlord (including security deposits), except to the extent such monies are actually received by Lender;

(f) bound by any amendment or modification of the Lease or any waiver of any term of the Lease made without Lender's written consent;

(g) bound by any surrender or termination of the Lease made without Lender's written consent (unless effected unilaterally by Tenant pursuant to the express terms of the Lease);

(h) obligated to complete any improvement or construction on the Property or to pay or reimburse Tenant for any tenant improvement allowance, construction allowance or leasing commissions;

(i) liable for any default of any previous landlord under the Lease; or

(j) bound by any provision in the Lease granting Tenant a purchase option or first right of refusal or offer with regard to the Property. Furthermore, notwithstanding anything to the contrary contained in this Agreement or the Lease, upon any such succession, the Lease shall be deemed to have been automatically amended to provide that Lender's obligations and liabilities under the Lease shall be limited solely to Lender's interest, if any, in the Property, and the proceeds from any sale or disposition of the Property by Lender (collectively, "Lender's Interest") and, following such succession, Tenant shall look exclusively to Lender's Interest for the payment or discharge of any obligations of Lender under the Lease.

**5. LENDER'S RIGHT TO CURE.** Tenant shall deliver to Lender a copy of any notice of any default(s) by landlord under the Lease in the same manner as, and whenever, Tenant shall give any such notice to Owner, and no such notice shall be deemed given to Owner unless and until a copy of such notice shall have been so delivered to Lender. Lender shall have the right to remedy, or cause to be remedied, any default by Owner under the Lease, and, for such purpose Tenant grants Lender such additional period of time as may be reasonable to enable Lender to remedy, or cause to be remedied, any such default in addition to the period given to Owner for remedying, or causing to be remedied, any such default. Tenant shall accept performance by Lender of any covenant or condition to be performed by Owner under the Lease with the same force and effect as though performed by Owner. No default by Landlord under the Lease shall exist or shall be deemed to exist (a) so long as Lender, in good faith, shall have commenced to cure such default within the above-referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to Force Majeure, or (b) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by Lender, so long as Lender, in good faith, shall have notified Tenant that Lender intends to institute enforcement proceedings under the Security Documents, and, thereafter, so long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. Lender shall have the right, without notice to Tenant or Tenant's consent, to foreclose the Mortgage or to accept a deed in lieu of foreclosure of the Mortgage or otherwise realize upon the Mortgage or to exercise any other remedies under the Security Documents or state law.

**6. ASSIGNMENT OF LEASES AND RENTS.** Tenant consents to the Assignment of Leases and Rents and acknowledges Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignment or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing or unless Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the fee owner of the Premises. Upon Tenant's receipt of a written notice from Lender of a default by Owner under the Loan, Tenant shall thereafter, if requested by Lender, pay rent to Lender in accordance with the terms of the Lease. Lender's delivery of such notice to Tenant, or Tenant's compliance therewith, shall not be deemed to (a) cause Lender to succeed to or assume any obligations or responsibilities of Owner under the Lease or (b) relieve Owner of any of its obligations under the Lease.

**7. INSURANCE PROCEEDS AND CONDEMNATION AWARDS.** Notwithstanding anything to the contrary contained in this Agreement or the Lease, the terms of the Loan Documents shall continue to

govern with respect to the disposition of any insurance proceeds or condemnation awards, and any obligations of Owner to restore the Property following a casualty or condemnation shall, insofar as they apply to Lender, be limited to the amount of any insurance proceeds or condemnation awards received by Lender after the deduction of all costs and expenses incurred in obtaining such proceeds or awards. Following the foreclosure or deed in lieu of foreclosure of the Mortgage, the provisions of this section shall remain in full force and effect unless and until fee title to the Premises becomes vested in a person or entity other than (a) the holder of the Loan at the time of such foreclosure or deed in lieu of foreclosure or (b) a parent, subsidiary or affiliate of such holder.

8. **ASSIGNMENT OF LEASE BY TENANT.** Tenant shall not assign any right or interest of Tenant under the Lease, (except for an assignment that is permitted under the Lease without Owner's consent), without Lender's prior written consent.

9. **MISCELLANEOUS.**

9.1 **Heirs, Successors and Assigns.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, trustees and agents, as well as any single purpose entity established by Lender to take title to the Property by reason of such foreclosure or deed in lieu of foreclosure. The terms "Tenant" and "Owner" as used herein include any successor or assign of the named Tenant and Owner herein, respectively; provided, however, that such reference to Tenant's or Owner's successors and assigns shall not be construed as Lender's consent to any assignment or other transfer by Tenant or Owner.

9.2 **Addresses; Request for Notice.** All notices and other communications that are required or permitted to be given to a party under this Agreement shall be in writing and shall be sent to such party, either by personal delivery, by overnight delivery service, by certified first class mail, return receipt requested, or by facsimile transmission, to the address or facsimile number below. All such notices and communications shall be effective upon receipt of such delivery or facsimile transmission. The addresses and facsimile numbers of the parties shall be:

If to Tenant:

If to Lender:

provided, however, any party shall have the right to change its address for notice hereunder by the giving of written notice thereof to the other party in the manner set forth in this Agreement.

9.3 **Entire Agreement.** This Agreement constitutes the entire agreement between Lender and Tenant with regard to the subordination of the Lease to the Security Documents and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement, and shall supersede and cancel, but only insofar as would affect the priority between the Security Documents and the Lease, any prior agreements as to such subordination, including, without limitation, those provisions, if any, contained in the Lease which provide for the subordination of the Lease to a deed or deeds of trust, a mortgage or mortgages, a deed or deeds to secure debt or a trust indenture or trust indentures.

9.4 **Disbursements.** Lender, in making disbursements of any funds pursuant to the Loan Documents, is under no obligation to, nor has Lender represented that it will, monitor or control the application of such funds by the recipient and any application of such funds for purposes other than those provided for in the Loan Documents shall not defeat this agreement to subordinate in whole or in part.

9.5 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

9.6 **Section Headings.** Section headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.

9.7 **Attorneys' Fees.** If any legal action, suit or proceeding is commenced between Tenant and Lender regarding their respective rights and obligations under this Agreement, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein, the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

9.8 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.

9.9 **Termination; Amendment.** Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

9.10 **Governing Law.** This Agreement and any claim, controversy or dispute arising under or related to or in connection with this Agreement, the relationship of the parties or the interpretation and enforcement of the rights and duties of the parties shall be governed by the law of the state where the Property is located, without regard to any conflicts of law principles.

9.11 **Authority.** Tenant and all persons executing this Agreement on behalf of Tenant jointly and severally represent and warrant to Lender that such persons are authorized by Tenant to do so and that such execution hereof is the binding act of Tenant enforceable against Tenant.

9.12 **Form of Agreement.** Owner and Tenant acknowledge that \_\_\_\_\_ enters into numerous agreements of this type on a regular basis, both in its own capacity and as a commercial mortgage servicer on behalf of other lenders, and that the specific provisions contained in any agreement of this type entered into by \_\_\_\_\_ will vary depending on numerous transaction-specific factors, including, without limitation, the borrowers, loan documents, tenants, leases, servicers, servicing agreements and property and market conditions involved in the transaction. Accordingly, Owner and Tenant further acknowledge that the specific provisions contained in this Agreement will not necessarily be acceptable to \_\_\_\_\_ in connection with any other transaction.

**IT IS RECOMMENDED THAT, PRIOR TO EXECUTING THIS AGREEMENT, THE PARTIES CONSULT WITH THEIR ATTORNEYS WITH RESPECT HERETO.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**LENDER:**

[\_\_\_\_], a [\_\_\_\_]

By: \_\_\_\_\_ [SEAL]  
Name:  
Title:

STATE OF NORTH CAROLINA )  
                                 ) SS.  
COUNTY OF MECKLENBURG )

On \_\_\_\_\_, 20\_\_\_\_, personally appeared the above named \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_ and acknowledged the foregoing to be the free act and deed of said \_\_\_\_\_, before me.

\_\_\_\_\_  
Notary Public

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

**TENANT:**

[\_\_\_\_], a [\_\_\_\_]

By: \_\_\_\_\_ [SEAL]  
Name:  
Title:

STATE OF NORTH CAROLINA )  
                                 ) SS.  
COUNTY OF MECKLENBURG )

On \_\_\_\_\_, 20\_\_\_\_, personally appeared the above named \_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_ and acknowledged the foregoing to be the free act and deed of said \_\_\_\_\_, before me.

\_\_\_\_\_  
Notary Public

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

The undersigned Owner hereby consents to the foregoing Agreement and confirms the facts stated in the foregoing Agreement and the acknowledgement contained in Section 9.12 of the foregoing Agreement.

OWNER:

RFR, LLC, a North Carolina limited liability company

By: **HARRIS ADVISORY GROUP, LLC**, a  
North Carolina liability company, its Manager

By: \_\_\_\_\_ [SEAL]  
Name: Gregory A. Currie  
Title: Manager

STATE OF NORTH CAROLINA )

) SS.

COUNTY OF MECKLENBURG )

On \_\_\_\_\_, 20\_\_\_\_, personally appeared the above named  
\_\_\_\_\_, the \_\_\_\_\_, of \_\_\_\_\_ and acknowledged  
the foregoing to be the free act and deed of said \_\_\_\_\_, before me.

\_\_\_\_\_  
Notary Public

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

**EXHIBIT A  
TO SNDA**

**(Description of Property)**

EXHIBIT A to SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT dated as of \_\_\_\_\_, executed by \_\_\_\_\_, as "Tenant", and \_\_\_\_\_ "Lender."

All that certain land located in the County of \_\_\_\_\_, State of \_\_\_\_\_, described as follows:

**EXHIBIT H**

**LANDLORD'S COLD DARK SHELL**

Tenant agrees to cooperate with Landlord in the preparation and adoption of Tenant's Plans as set forth in Exhibit C. Tenant shall not commence any work in the Premises until Landlord has approved Tenant's Plans. Tenant agrees to accept possession of the Premises as of the Delivery Date and to proceed with due diligence to perform the work described in the Tenant's Plans and to install its fixtures and equipment in the Premises. By occupying the Premises, Tenant shall be deemed to have acknowledged that the Landlord has complied with all of its covenants and obligations with respect to the construction of the Premises, except for defects in Landlord's Work that are latent at the time the Premises are occupied. In the event of any dispute concerning work performed or required to be performed in the Premises by Landlord or Tenant, the matter in dispute shall be submitted to Landlord's architect for determination and such architect's certificate with respect thereto shall be binding on Landlord and Tenant.

**DESCRIPTION OF LANDLORD'S WORK**

In addition to the Landlord's Work set forth on Exhibit C, Landlord's Work shall be done in accordance with the specification set forth below, shall be limited to the work set forth below and shall exclude all other work on the Premises or elsewhere.

**A. Concrete Slab on Grade:**

1. 1' 6" ribbon concrete slab with hard troweled finish along building footprint perimeter and demising walls

**B. Partitions:**

1. Partitions between adjacent Shop Spaces shall be built of 6" metal stud at 24" o.c. and one (1) layer of 5/8" gypsum wallboard on each side, taped, mudded, and sanded to the roof deck structure. Sound attenuation batts will be installed in interior partitions separating Shops.

**C. Doors**

1. Front Entrance Door – Two (2) aluminum storefront doors per Shop Space, with closer, threshold, weather-stripping, and latch-bolt lock with push/pull handle, in accordance with Landlord's standard specifications for the Retail Development.
2. Security – Provide and install temporary security cylinder guard.
3. Rear Exit Door – One (1) insulated hollow metal door.
4. Patio Door – One (1) side entrance door to patio to match the front doors.

**D. Plumbing**

1. 1-1/2" water supply line stubbed inside Shop Space.
2. 4" sewer line stubbed inside Shop Space.
3. Grease waster line stubbed inside Shop Space, as provided in Landlord's final plans

**E. HVAC**

No HVAC Provided

F. Electrical

1. Meter blank with conduit and string to Premises.
2. Electrical capacity, as set forth in this Lease, for 600-amp panel to the Premises.

G. Telephone

1. Backboard – Provide and install a telephone backboard near the Rear Exit Door, with one (1) 1" conduit with pull string for future telephone service.

H. Fire Suppression

1. To be provided at Landlord's expense, if required by code.

I. Grease Interceptor

1. Landlord to install a code-compliant, exterior grease trap for Tenant's use.

**EXHIBIT I**

**SIGNAGE PROGRAM**

**[TO BE PROVIDED SEPARATELY]**

**EXHIBIT J**

**PROHIBITED USES**

- (a) (i) motor vehicle service, (ii) motor vehicle repairs, including without limitation any body and fender repair work, (iii) car wash, (iv) car rental, or (v) the sale of any automobile, truck, boat, trailer or other motor vehicle or recreational vehicle that is not entirely conducted inside of a building (i.e., a showroom located within a retail premises if there is no external parking for vehicles for sale);
- (b) a billiards parlor or pool hall, a game parlor, or a venture whose primary business is operation of video or arcade games;
- (c) adult entertainment, adult book or video store, or massage parlor (provided, however, such restriction shall not apply to a Massage Envy or similar operation);
- (d) any gym, entertainment, recreational facility, health spa, or health or fitness club/gym/studio as a primary use (by way of example only and not limited to, LA Fitness, 24 Hour Fitness, Snap Fitness, Curves, Orange Theory);
- (e) Yoga or Pilate's studio/gym or facility as a primary use (by way of example only and not limited to, CorePower Yoga);
- (f) warehouse or industrial use;
- (g) self-storage facility excluding conditioned storage which shall be permitted;
- (h) any use with a drive-through on a Parcel abutting the LTF Parcel other than (A) a coffee shop (for example, Starbuck's or Caribou Coffee), (B) banking facilities, (C) cleaners or pharmacies (such as CVS or Walgreen's);
- (i) fast food restaurant with drive-through (e.g. McDonald's) on abutting properties to the LTF Parcel;
- (j) establishment for the sale of guns or other firearms as its primary business excluding sporting goods stores which shall be permitted;
- (k) tattoo or piercing parlor;
- (l) so-called "head shops," which are defined as facilities primarily used for selling products intended to assist, aid, or used in conjunction with the consumption of illegal drugs (including, without limitation, marijuana);
- (m) any fire, explosion or other damaging or dangerous hazard (excluding cleaning supplies), including the storage, display, or sale of explosives or fireworks as a primary business;
- (n) any distillation (other than so-called micro-brewing of beer), refining, smelting, agriculture or mining operations;
- (o) any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising; provided, however, that, notwithstanding the foregoing, pet stores and veterinarians shall be permitted;
- (p) any drilling for and/or removal of subsurface substances except in the normal course of development;

- (q) any dumping of garbage or refuse, other than in enclosed receptacles intended for such purpose;
- (r) any cemetery, funeral home, morgue, mortuary or similar service establishment;
- (s) any fire sale, bankruptcy sale (including any so-called "going out of business sale," unless pursuant to a court order) or auction operation;
- (t) any second-hand or used goods store, thrift store, or flea market;
- (u) warehousing or storage facilities of any kind unless incidental to another use permitted on the subject property except for conditioned storage which shall be permitted;
- (v) an onsite dry cleaning service whereby the dry-cleaning and any other cleaning processes are performed (pick-up and drop-off only facilities shall be permitted);
- (w) a restaurant or similar business, including the sale of "home replacement meals" constituting a significant portion of the business of a restaurant such as a Boston Market, Chicken Out, Dean & DeLuca, Sheetz, or Wawa, or where customers prepare their own meals for off-premises consumption such as Dream Dinners, Super Suppers, or similar operations;
- (x) Dollar Tree, Family Dollar, or similar discount operations;
- (y) a skating rink, betting agency, bingo parlor, or bowling alley;
- (z) a kiosk, or otherwise conducting sales by merchants utilizing vehicles or booths;
- (aa) a theater (movie or live acting);
- (bb) carnivals, fairs, or shows;
- (cc) any other hazardous or illegal use.

**EXHIBIT K**

**EXCLUSIVE USES**

1. Operate a food supermarket or department, grocery store or department, or dairy store or department; provided however that this Clause 1 shall not prohibit the operation of an ice cream shop.
2. Sell seafood, meat, cheese and other delicatessen items by weight or quantity; provided however, Landlord may allow a delicatessen restaurant to operate elsewhere in the Retail Development if the only items the delicatessen restaurant sells for off-premises consumption are sandwiches and other menu items are also served to on-premises customers.
3. Sell bakery items, except that a bagel or doughnut shop such as Panera Bread and Au Bon Pain, as well as a bakery operating within and as an incidental part of a typical restaurant operation shall be permitted.
4. Sell flowers or operate as a florist or flower shop.
5. Operate a pharmacy; provided however, one CVS, Rite Aid, Walgreens or other similar national drug store shall be permitted to operate within the Retail Development so long as such drug store does not devote more than 3,000 square feet of floor area in the aggregate (including the adjacent aisle space) to the sale of food typically sold in grocery stores for off-premises consumption such as canned or packaged food items, beverages or dairy products.
6. Sale of food or beverages (including alcoholic beverages, beer and wine) for off-premises consumption; provided however, Landlord may allow the sale of food and beverage items that:
  - (i) Are intended for consumption in the Retail Development;
  - (ii) Constitute only an incidental part (5% or less of gross sales from the applicable space) of the occupant's primary business; or
  - (iii) Are prepared take-out items sold in the normal operation of a restaurant, delivery or catering business (including pizza, Chinese or Mexican restaurants selling take-out food, but not including "home replacement meals" constituting a significant portion of the business of a restaurant such as a Boston Market, Chicken Out, Dean & DeLuca or similar operation).
7. Sell, as its primary business, vitamins, supplements, or related nutritional products.
8. Operate, as its primary business, a juice bar or smoothie bar engaging in the sale of fresh-made healthy juices and smoothies.
9. Sell, as its primary business, frozen yogurt or ice cream.
10. Operate, as its primary business, as a nail salon.
11. Offer, as its primary business, eyebrow threading or other eyebrow or eyelash services.

12. Operate, as its primary business, a “fast casual” or “quick serve” restaurant, the primary menu item of which is hamburgers.
13. Derive 30% or more of its revenue from the sale of barbecue.
14. Both (i) derive 30% or more of its revenue from the sale of pizza and (ii) offer both dine-in and take-out or delivery options; for the avoidance of doubt, this clause will not operate to prevent the operation of pizza restaurants, such as Papa John’s, that do not violate both subclauses above.

**EXHIBIT L**

**FRANCHISOR RIDER**

**FUZZY'S TACO SHOP®  
FRANCHISE AGREEMENT**

**LEASE RIDER**

**THIS RIDER** (this "Rider") is incorporated into the body of the lease to which this rider is attached, dated \_\_\_\_\_ (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Lease") between \_\_\_\_\_, having its principal offices at \_\_\_\_\_ ("Landlord"), and \_\_\_\_\_, having its principal offices at \_\_\_\_\_ ("Tenant"), for that certain real property premises located at \_\_\_\_\_ (the "Premises"). The provisions hereof shall be cumulative of those set forth in the Lease, but to the extent of any conflict between any provisions of this Rider and the provisions of the Lease, this Rider shall govern and control.

1. **Acknowledgement of Franchise Relationship.** Landlord acknowledges that Tenant intends to operate as a FUZZY'S TACO SHOP® franchise restaurant at the Premises (the "Franchised Business"), and consents to such use for the term of the Lease, including any extensions. Landlord further acknowledges and agrees that that Tenant's rights to operate the Franchised Business is solely pursuant to a franchise agreement ("Franchise Agreement") between Tenant and Fuzzy's Taco Opportunities, LLC ("Franchisor"). Tenant's operations at the Premises are independently owned and operated. Landlord acknowledges that Tenant and any guarantor of Tenant's obligations under the Lease alone are responsible for all obligations under the Lease unless and until Franchisor or another franchisee succeeds to the interest of Tenant in and to the Lease, whether by assignment, merger, or otherwise.
2. **Collateral Assignment of Lease.** Landlord hereby consents, without payment of a fee and without the need for further Landlord consent, to (i) the collateral assignment of Tenant's interest in the Lease to Franchisor to secure Tenant's obligations to Franchisor under the Franchise Agreement, and/or (ii) Franchisor's succeeding to Tenant's interest in the Lease as a result of (x) Franchisor's exercise of rights or remedies under the Franchise Agreement or such collateral assignment.
3. **Intentionally Omitted.**
4. **Franchisor Not a Guarantor.** Landlord acknowledges and agrees that notwithstanding any terms or conditions contained in this Rider or any other agreement, unless Franchisor executed and delivers a guaranty of the Lease, Franchisor shall in no way be construed as a guarantor or surety of Tenant's obligations under the Lease.
5. **Notice and Cure Rights to Franchisor.** Prior to exercising any remedies hereunder (except in the event of imminent danger to the Premises), Landlord shall give Franchisor written notice of any default by Tenant, and commencing on receipt thereof by Franchisor, Franchisor shall have fifteen (15) additional days to the established cure period as is given to Tenant under the Lease for such default to cure such defaults. Notwithstanding the foregoing, Landlord shall not be required to provide to Franchisor notice of monetary defaults more than twice in any 12-month period. Landlord agrees to accept cure tendered by Franchisor (during the applicable cure period, if any) as if the same was tendered by Tenant, but Franchisor has no obligation to cure such default.
6. **Non-disturbance from Mortgage Lenders.** Tenant shall not be required to execute a document subordinating the Lease to any mortgage, deed of trust, deed to secure debt or similar encumbrance on the Premises unless such document includes an agreement of the related lender not to disturb Tenant's rights under the Lease or Tenant's possession of the Premises unless Tenant is in default of its obligations hereunder or under the Lease beyond the applicable grace or cure period, if any, provided therein or herein.
7. **Franchisor Right to Enter.** Landlord acknowledges and agrees that Franchisor or its designee may enter the Premises to inspect the Premises and the Franchised Business' operations, to manage the Tenant's business on

Tenant's behalf under certain circumstances (to-wit: Tenant's failure to timely cure its default of the Franchise Agreement, and while Franchisor evaluates its right to purchase Tenant's rights in the location), or to remove any signage or similar branding material. If Franchisor enters the Premises for any such purposes, it will do so without assuming any liability under the Lease, other than for the acts and omissions of Franchisor or its agents committed while at the Premises.

8. Amendments. Tenant agrees with Franchisor that it will not amend this Rider or the Lease without the prior written consent of Franchisor, not to be unreasonably withheld, conditioned, or delayed.

9. Intentionally omitted.

10. Severability. If any provision of this Rider or any part thereof is declared invalid by any court of competent jurisdiction, such act shall not affect the validity of this Rider and the remainder of this Rider shall remain in full force and effect according to the terms of the remaining provisions.

11. Remedies. The rights and remedies created herein shall be deemed cumulative and no one such right or remedy shall be exclusive at law or in equity of the rights and remedies which Franchisor may have under this or any other agreement to which Franchisor and Tenant are parties.

12. Execution. This Rider may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement with the Lease. This Rider and all other documents related to this Rider may be executed by manual or electronic signature. Either party may rely on the receipt of a document executed or delivered electronically.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound, have executed this Lease Rider to be effective as of the effective time of the Lease.

\_\_\_\_\_  
a \_\_\_\_\_ ("Tenant")

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(name)  
(title)

\_\_\_\_\_  
a \_\_\_\_\_ ("Landlord")

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(name)  
(title)

\_\_\_\_\_  
a \_\_\_\_\_ ("Franchisor")

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(name)  
(title)

**Exhibit C-2**

Assignment and Assumption of Interest in the Rea Farms Lease



June 10, 2018

131 E. Lincoln Ave. Suite C  
Fort Collins, CO 80524  
Phone 970-449-5386  
Fax 970-449-5389

RFR, LLC  
c/o Lincoln Harris  
4725 Piedmont Row Drive, Suite 800  
Charlotte, North Carolina 28210  
Attn: Gregory A. Currie

**RE: Assignment and Assumption of Lease, defined below**

Dear Landlord:

In accordance with Sections 14.1.2 and 14.3 of that certain Lease Agreement dated November 15, 2017 (the “Lease”) by and between RFR, LLC, a North Carolina limited liability company (“Landlord”), and RTHT Investments, LLC, a Delaware limited liability company (the “Assignor”), I am writing to notify you that Assignor has assigned its interest in the Lease to SD Restaurant Group LLC, a Delaware limited liability company (“Assignee”), effective July \_\_, 2018.

Assignee is controlled by Yaron Goldman (who also controls Assignor), is another franchisee of Fuzzy’s Taco Opportunities, LLC and has a net worth equal to or greater than Assignor; therefore, such assignment is permitted under the Lease without consent from Landlord. The purpose for such assignment is to consolidate all Fuzzy’s Taco leases in which Mr. Goldman currently is involved in a single entity.

A copy of the Assignment and Assumption of Interest in Lease between Assignor and Assignee and associated financial documentation for SD Restaurant Group LLC are enclosed for your reference.

Sincerely,

A handwritten signature in black ink, appearing to read "Yaron Goldman".

CEO

RTHT Investments LLC, SD Restaurant Group LLC

Enclosure: Income Statement, Balance Sheet

ASSIGNMENT AND ASSUMPTION  
OF INTEREST IN LEASE AGREEMENT  
("ASSIGNMENT")

For good and valuable consideration, the receipt of which is hereby acknowledged, **RTHT Investments, LLC**, a Delaware limited liability company ("Assignor"), does hereby assign to **SD Restaurant Group, LLC**, a Delaware limited liability company ("Assignee"), as of July 10, 2018 (the "Effective Date"), all of Assignor's right, title and interest in and under that certain Shopping Center Lease Agreement dated November 15, 2017, by and between **RFR, LLC**, a North Carolina limited liability company ("Landlord") and Assignor, as Tenant, regarding the premises described as Building D, Space 8 containing approximately 4,220 square feet of Floor Area (the "Premises") in Rea Farms located in Charlotte, Mecklenburg County, North Carolina, including any and all addendums, amendments, extensions and modifications thereto (the "Lease"), a copy of which is attached hereto as Exhibit "A" and made a part hereof by this reference.

Assignor warrants and represents to Assignee that: (1) the Lease is in full force and effect; (2) the Lease has not been modified, changed, altered, amended and/or assigned except as shown by the Lease attached hereto; (3) Assignor is not in default under the Lease; (4) Assignor has full and lawful authority to assign the Lease and (5) Assignor has no knowledge of any defaults or breaches by Landlord or of any defense or offsets against Landlord to the enforcement of the Lease.

By execution hereof, Assignee hereby assumes the Lease and all existing obligations thereunder as of the Effective Date and shall perform and observe all of the covenants, terms, promises, agreements and conditions therein contained on Assignor's part to be performed and observed, including the prompt payment of all rental payments for the full term hereof. Assignee shall indemnify, defend and hold Assignor harmless from any and all liability arising under the Lease from and after the Effective Date.

Nothing in this Assignment shall be deemed to waive or modify any of the provisions of the Lease, except as otherwise expressly set forth herein.

Assignee's address for notices shall be as set forth in the Lease.

If any party(s) to this Assignment commences an action against another party(s) hereto arising out of or in connection with this Assignment, the prevailing party(s) shall be entitled to recover from the losing party(s) reasonable attorney's fees and costs of suit as part of its judgment.

This Assignment contains all of the agreements of the parties hereto with respect to the matters contained herein, and no prior agreement, arrangement or understanding pertaining to any such matters shall be effective for any purpose.

[Signature Page Follows]

EXECUTED this 10<sup>th</sup> day of June, 2018.

ASSIGNOR:

RTHT INVESTMENTS, LLC  
a Delaware limited liability company

By: Yaron P. Goldman

Name: Yaron Goldman

Title: Manager

ASSIGNEE:

SD RESTAURANT GROUP, LLC,  
a Delaware limited liability company

By: Yaron P. Goldman

Name: Yaron Goldman

Title: Manager

**Balance Sheet**  
Period: 5 of 2018 ending on 5/20/2018

## RTHT Investments LLC

[Show GL Detail](#)

## All - Selected Cost Centers

## ASSETS

## CURRENT ASSETS

## CASH AND CASH EQUIVALENTS

	Year to Date	
	Current	Prior Yr End
102000 - Cash on Hand	7,040	6,040
<b>TOTAL CASH ON HAND</b>	<b>7,040</b>	<b>6,040</b>
 CASH IN BANK		
103000 Cash in Bank - Master 5523	0	0
103001 Cash in Bank - Disbursement 1892	(118)	(119)
103002 Cash in Bank - Tax 7080	0	0
103006 Cash in Bank - Boa_Disb 3048	1,125,155	1,125,155
103007 Cash in Bank - Wells Fargo	0	0
103013 - Cash in Bank - RTHT_Disb - 6154	41,029	123,788
103014 - Cash in Bank - RTHT_Oper - 6141	319,406	188,535
103016 - Cash in Bank - SDH_Oper - 5758	90,081	90,081
103026 - Cash in Bank - SDH_Disb - 5842	0	0
103111 - Cash in Bank - BOA_OP 3035 SD-Missouri	(1,125,155)	(1,125,155)
103144 - Cash in Bank - Restricted Cash - Escrow	0	0
103174 - Cash in Bank - BOA_OP 6886 - SD-Charlotte	0	0
103175 - Cash in Bank - BOA 8899 - AP - SD-Charlotte	0	0
103176 - Cash in Bank - BOA_OP 7258 - SD-Restaurant Group	0	0
103177 - Cash in Bank-BOA 7269 - AP - SD-Restaurant Group	0	0
103178 - Cash in Bank - BOA_OP 8857 SD Oxi	0	0
103179 - Cash in Bank BOA_DEP	0	0
103180 - Cash in Bank-BOA 2717 - OP - SD-Ormaha, LLC	0	0
103181 - Cash in Bank-BOA 2720 - AP - SD-Ormaha, LLC	0	0
<b>TOTAL CASH IN BANK</b>	<b>450,397</b>	<b>402,285</b>

## ACCOUNTS RECEIVABLE AND OTHER RECEIVABLES

## ACCOUNTS RECEIVABLE

119000 - Accounts Receivable - A/R Module	0	0
119100 - Accounts Receivable - Trade	0	0
119101 - Accounts Receivable - OLO	0	0
119102 - Accounts Receivable - Wait Delivery Service	0	0
119200 - Accounts Receivable - DMAC	712	642
119300 - Accounts Receivable - Mile High	0	0
119900 - Accounts Receivable - Allowance for Bad Receivable	0	0
114000 - Accounts Receivable -	0	0
 <b>TOTAL ACCOUNTS RECEIVABLE</b>	<b>712</b>	<b>642</b>

## RELATED PARTY RECEIVABLES

120000 - Accounts Receivable - Other	0	0
121600 - Accounts Receivable - SD Missouri	1,498,990	1,050,000
121601 - Accounts Receivable - SD Holdings, LLC	2,829,123	2,829,123
121602 - Accounts Receivable - RTHT Investments, LLC	16,064	16,064
121603 - Accounts Receivable - SD-Charlotte LLC	15,000	0
121604 - Accounts Receivable - SD-Restaurant Group LLC	49,438	500
121605 - Accounts Receivable - SD Oxi LLC	0	0
121606 - Accounts Receivable - SD Omaha, LLC	0	0
<b>TOTAL RELATED PARTY RECEIVABLES</b>	<b>4,208,615</b>	<b>3,895,687</b>

## OTHER RECEIVABLES

110000 - Accounts Receivable - Employee	0	0
113000 - Accounts Receivable - Gift Cards	1,009	0
<b>TOTAL OTHER RECEIVABLES</b>	<b>1,009</b>	<b>0</b>

## INVENTORIES

140000 - Inventory	0	0
141000 - Inventory - Food	45,939	34,250
<b>TOTAL INVENTORIES</b>	<b>45,939</b>	<b>34,250</b>

## PREPAYMENTS

131000 - Prepaid General Insurance	16,591	0
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131100 - Prepaid Worker's Compensation (June)	1,994	1,994
131200 - Prepaid Auto Insurance	0	0
131400 - Prepaid Insurance Other	0	0
131500 - Prepaid Insurance Other	0	0
133000 - Prepaid License	5,054	618
134000 - Prepaid Rent	26,378	26,378
134500 - Prepaid Advertising	500	808
134501 - Prepaid Advertising - Quarterly Adjustment	0	0
135000 - Prepaid Miscellaneous	0	0
135500 - Prepaid Computer Expenses	0	0
135600 - Prepaid Contract Maintenance	0	0
137000 - Prepaid 13th Period Expenses - Rent	0	0
137001 - Prepaid 13th Period Expenses - Electric	0	0
137002 - Prepaid 13th Period Expenses - Phone	0	0
137003 - Prepaid 13th Period Expenses - Gas	0	0
137004 - Prepaid 13th Period Expenses - Credit Card Fees	0	0
137005 - Prepaid 13th Period Expenses - Water	0	0
137007 - Prepaid 13th Period Expenses - Bank Charge	0	0
137008 - Prepaid 13th Period Expenses - Internet	0	0
<b>TOTAL PREPAYMENTS</b>	<b>62,817</b>	<b>29,798</b>
<b>TOTAL CURRENT ASSETS</b>	<b>4,768,229</b>	<b>4,168,702</b>
<b>PROPERTY, PLANT AND EQUIPMENT</b>		
153000 - Leaseholds	4,186,532	3,562,263
153500 - Furniture & Fixtures	286,424	209,778
154000 - Equipment	1,159,077	896,729
154500 - Computer/Phone Equipment	167,497	120,843
158500 - Vehicles	0	0
155000 - Signs	248,651	217,057
155500 - Office Equipment	0	0
<b>TOTAL PROPERTY, PLANT AND EQUIPMENT</b>	<b>6,048,182</b>	<b>6,008,670</b>
<b>ACCUMULATED DEPRECIATION</b>		
160000 - Accumulated Depreciation	(940,868)	(704,679)
<b>TOTAL ACCUMULATED DEPRECIATION</b>	<b>(940,868)</b>	<b>(704,679)</b>
<b>NET BOOK VALUE OF FIXED ASSETS</b>	<b>5,107,314</b>	<b>4,301,991</b>
<b>OTHER ASSETS</b>		
128000 - Intercompany	0	0
160000 - Deposits	4,000	4,000
180200 - Deposits - Rent	4,571	4,571
180400 - Deposits - Utilities	1,300	1,740
192500 - Investments	0	0
170000 - Intangible Assets - Other	0	0
171000 - Franchise Fee	325,000	300,000
171500 - Pre-Opening Cost	309,462	229,258
172000 - Start-Up Cost	0	0
173000 - Organizational Costs	0	0
173500 - Goodwill	0	0
174000 - Favorable Market Leases	0	0
172500 - Loan Origination Fee	0	0
175500 - Area Rights Co Office	0	0
<b>TOTAL OTHER ASSETS</b>	<b>644,333</b>	<b>639,668</b>
<b>ACCUMULATED AMORTIZATION</b>		
Accumulated Amortization	(104,849)	(79,538)
Accumulated Amortization - Franchise Fee	(962)	0
Accumulated Amortization - Loan Origination	(385)	0
Accumulated Amortization - Organizational Costs	0	0
Accumulated Amortization - Area Rights Co Office	0	0
<b>TOTAL ACCUMULATED AMORTIZATION</b>	<b>(104,196)</b>	<b>(79,538)</b>
<b>TOTAL OTHER ASSETS</b>	<b>638,137</b>	<b>460,030</b>
<b>TOTAL ASSETS</b>	<b>10,411,680</b>	<b>8,930,724</b>
<b>LIABILITIES AND MEMBERS EQUITY</b>		
<b>CURRENT LIABILITIES</b>		

## ACCOUNTS PAYABLE

200000 - Accounts Payable - AP Module	923,004	830,078
201000 - Accounts Payable - Other	(386,103)	(386,103)
201002 - Accounts Payable - Donation Fund Berwick	0	0
201102 - Accounts Payable - PFG	0	0
201103 - Accounts Payable - FreshPoint	0	0
201203 - Accounts Payable - Merchants Food	0	0
201204 - Accounts Payable - AMEX	0	0
201500 - Accounts Payable - Officer/Owner	0	0
<b>TOTAL ACCOUNTS PAYABLE</b>	<b>536,901</b>	<b>443,975</b>

## GIFT CERTIFICATES PAYABLE

201200 - Accounts Payable - Credit Card	0	0
201299 - Accounts Payable - Gift Card - Sales	207,239	188,497
201300 - Accounts Payable - Gift Cards - Redeemed	(204,216)	(158,816)
<b>TOTAL GIFT CERTIFICATES PAYABLE</b>	<b>3,024</b>	<b>29,679</b>

## RELATED PARTY PAYABLES

201600 - Accounts Payable - SD Missouri, LLC	5,384,618	5,039,026
201801 - Accounts Payable - SD Holdings, LLC	1,398,496	1,325,573
201802 - Accounts Payable - RTHT Investments LLC	(9,182)	(9,182)
201803 - Accounts Payable - SD - Charlotte LLC	45,000	20,000
201804 - Accounts Payable - SD - Restaurant Group LLC	4,344	0
201805 - Accounts Payable - SD Oxi LLC	0	0
201806 - Accounts Payable - SD Omaha, LLC	0	0
<b>TOTAL RELATED PARTY PAYABLES</b>	<b>6,823,276</b>	<b>6,378,416</b>

## ACCRUED PAYROLL

213000 - Accrued Payroll	0	55,200
213100 - Accrued Vacation	0	0
108000 - Tips	(93,821)	(73,653)
<b>TOTAL ACCRUED PAYROLL</b>	<b>(93,821)</b>	<b>(18,452)</b>

## OTHER CURRENT LIABILITIES

211900 - Accrued Workers Compensation - Policy End (June)	10,651	10,651
211901 - Accrued Workers Compensation - Audit Pending	0	0
212000 - Accrued Retirement Plan	18,709	9,183
212500 - Accrued Garnishments	0	0
213500 - Accrued Sales Tax	0	0
213501 - Accrued Sales Tax - North Carolina	107,535	23,533
213502 - Accrued Sales Tax - VA	0	0
213503 - Accrued Sales Tax - GA	0	0
213504 - Accrued Sales Tax - TN	0	0
213505 - Accrued Sales Tax - AL	0	0
213506 - Accrued Sales Tax - NE	0	0
213507 - Accrued Sales Tax - IA	0	0
214000- Accrued Real Prop Taxes	8,290	(904)
214100 Accrued Pers Property Tax	1,311	0
214200 Accrued Property Insurance	88	(56)
214500 - Accrued Rent	(21,549)	0
214600 - Accrued CAM	1,370	2,858
216000- Accrued Accounting/Legal	0	0
217000 - Accrued Royalties	(1,783)	5,062
217500 - Accrued Advertising	(17,918)	12,343
218000 - Accrued Expenses	2,734	541
218101 - Accrued Electric	(1,699)	828
218102 - Accrued Gas	(2,393)	(182)
218103 - Accrued Water	5,198	2,098
218104 - Accrued Garbage	(5,185)	(4,728)
218105 - Accrued Pest	(450)	(9)
218106 - Accrued Phone	3,411	(482)
218107 - Accrued Internet	(2,024)	(478)
218108 - Accrued Music	(2,027)	0
218109 - Accrued Security	(2,885)	(1,007)
218210 - Accrued Cable	0	0
218275 - CHARITABLE CONTRIBUTIONS PAYABLE	0	0
218300- Accrued Conventions	0	0
219000 - Accrued Interest	0	0
219500 - Accrued State Income Taxes	0	0
<b>223500- Deferred Rent</b>	<b>694,897</b>	<b>928,330</b>

224000 - Deferred Revenue - Landlord

225100- Intercompany

TOTAL OTHER CURRENT LIABILITIES

TOTAL CURRENT LIABILITIES

LONG TERM LIABILITIES

262000 - Note Payable - Short Term

270000 - Notes Payable - Merrick McKinnie

270200 - Notes Payable - Midwest Dell

278000 - Notes Payable - Minicake

281000 - Notes Payable - Capital Spring

282500 - Notes Payable - Young

283500 - Notes Payable - JC Clark

284000 - Notes Payable - Baxter

284500 - Notes Payable - JC Clark Buyout

285000 - Notes Payable - Mickey King

285500 - Notes Payable - Terry Tower

285600 - Notes Payable - Pacific Premier 1

285650 - Notes Payable - Pacific Premier 2

285655 - Notes Payable - Pacific Premier 3

285700 - Notes Payable - Lundquist

285800 - Notes Payable - D&amp;A Partners, LLC

285900 - Notes Payable - Hirschfield Real Estate Group, Inc

286000 - Notes Payable - EG Capital, LLC

286100 - Notes Payable - Bridge Funding 1

286200 - Notes Payable - Bridge Funding 2

286300 - Notes Payable - Bridge Funding 3

286400 - Notes Payable - Bridge Funding 4

286500 - Notes Payable - Bridge Funding 5

286600 - Notes Payable - Bridge Funding 6

286700 - Notes Payable - Bridge Funding 7

286800 - Notes Payable - Bridge Funding 8

286805 - Notes Payable - Bridge Funding 9

286806 - Notes Payable - Bridge Funding 10

287000 - Notes Payable - Apple Pie Capital

TOTAL LONG TERM LIABILITIES

TOTAL LIABILITIES

MEMBERS EQUITY

CAPITAL

305500 - Member's Capital - Yaron Goldman

305501 - Member's Capital - Towler Grill

305502 - Member's Capital - Merrick McKinnie

305503 - Member's Capital - SD Holdings, LLC

305504 - Member's Capital - Hirschfield Real Estate Group, INC.

305505 - Member's Capital - Jeffery Lindquist

305506 - Member's Capital - Holloway

305507 - Member's Capital - John Clark

305508 - Member's Capital - D&amp;A Partners, LLP

TOTAL CAPITAL

RETAINED EARNINGS

306000 - Accumulated Earnings/(Losses)

307000 - Retained Earnings

TOTAL RETAINED EARNINGS

WITHDRAWALS

355500 - Member's Draw - Yaron Goldman

TOTAL WITHDRAWALS

NET INCOME (LOSS)

TOTAL MEMBERS EQUITY

TOTAL LIABILITIES &amp; MEMBERS EQUITY

	0	0
TOTAL OTHER CURRENT LIABILITIES	996,319	987,603
TOTAL CURRENT LIABILITIES	8,285,698	7,818,421
LONG TERM LIABILITIES		
262000 - Note Payable - Short Term	0	0
270000 - Notes Payable - Merrick McKinnie	0	0
270200 - Notes Payable - Midwest Dell	0	0
278000 - Notes Payable - Minicake	0	0
281000 - Notes Payable - Capital Spring	0	0
282500 - Notes Payable - Young	0	0
283500 - Notes Payable - JC Clark	0	0
284000 - Notes Payable - Baxter	0	0
284500 - Notes Payable - JC Clark Buyout	0	0
285000 - Notes Payable - Mickey King	0	0
285500 - Notes Payable - Terry Tower	0	0
285600 - Notes Payable - Pacific Premier 1	0	0
285650 - Notes Payable - Pacific Premier 2	0	0
285655 - Notes Payable - Pacific Premier 3	0	0
285700 - Notes Payable - Lundquist	0	0
285800 - Notes Payable - D&A Partners, LLC	0	0
285900 - Notes Payable - Hirschfield Real Estate Group, Inc	0	0
286000 - Notes Payable - EG Capital, LLC	0	0
286100 - Notes Payable - Bridge Funding 1	1,163,601	1,211,772
286200 - Notes Payable - Bridge Funding 2	709,904	302,174
286300 - Notes Payable - Bridge Funding 3	0	0
286400 - Notes Payable - Bridge Funding 4	647,463	0
286500 - Notes Payable - Bridge Funding 5	0	0
286600 - Notes Payable - Bridge Funding 6	0	0
286700 - Notes Payable - Bridge Funding 7	0	0
286800 - Notes Payable - Bridge Funding 8	0	0
286805 - Notes Payable - Bridge Funding 9	0	0
286806 - Notes Payable - Bridge Funding 10	0	0
287000 - Notes Payable - Apple Pie Capital	0	0
TOTAL LONG TERM LIABILITIES	2,619,969	1,613,846
TOTAL LIABILITIES	10,785,698	8,332,367
MEMBERS EQUITY		
CAPITAL		
305500 - Member's Capital - Yaron Goldman	(213,765)	(213,765)
305501 - Member's Capital - Towler Grill	0	0
305502 - Member's Capital - Merrick McKinnie	(74,940)	(74,940)
305503 - Member's Capital - SD Holdings, LLC	(74,940)	(74,940)
305504 - Member's Capital - Hirschfield Real Estate Group, INC.	0	0
305505 - Member's Capital - Jeffery Lindquist	0	0
305506 - Member's Capital - Holloway	0	0
305507 - Member's Capital - John Clark	0	0
305508 - Member's Capital - D&A Partners, LLP	0	0
TOTAL CAPITAL	(363,645)	(363,645)
RETAINED EARNINGS		
306000 - Accumulated Earnings/(Losses)	0	0
307000 - Retained Earnings	(27,998)	29,234
TOTAL RETAINED EARNINGS	(27,998)	29,234
WITHDRAWALS		
355500 - Member's Draw - Yaron Goldman	(10,000)	(10,000)
TOTAL WITHDRAWALS	(10,000)	(10,000)
NET INCOME (LOSS)	27,668	(57,232)
TOTAL MEMBERS EQUITY	(373,986)	(401,844)
TOTAL LIABILITIES & MEMBERS EQUITY	10,411,680	8,930,724

RTHT Investments LLC

Show GL Detail

All - Selected Cost Centers

## REVENUE

	Year to Date					
	Current	%	Prior Year	%	Variance	%
Sales - Retail	0	0.00	0	0.00	0	0.00
Sales - Deli Clothing	0	0.00	0	0.00	0	0.00
Sales - Catering	0	0.00	0	0.00	0	0.00
Sales - Food	3,095,834	88.81	1,585,531	87.28	1,510,303	1.53
Sales - Beverage	430,260	12.34	244,544	13.45	185,716	(1.12)
Sales - Beer	58,203	1.67	29,479	1.62	28,724	0.05
Sales - Wine	9,182	0.26	5,529	0.30	3,654	(0.04)
Sales - Liquor	0	0.00	0	0.00	0	0.00
Sales - Cleaning Services	0	0.00	0	0.00	0	0.00
Discounts	(4,296)	(0.12)	(2,557)	(0.14)	(1,740)	0.02
Comp - Manager Meals	0	0.00	0	0.00	0	0.00
Refunds	(4,130)	(0.12)	(134)	(0.01)	(3,996)	(0.11)
Promotions	(99,003)	(2.84)	(45,773)	(2.52)	(53,230)	(0.32)
<b>NET SALES</b>	<b>3,486,050</b>	<b>100.00</b>	<b>1,816,619</b>	<b>100.00</b>	<b>1,669,431</b>	<b>0.00</b>

## COST OF FOOD SALES

Purchases - Meat	121,760	3.49	68,031	3.74	53,729	(0.25)
Purchases - Poultry	54,580	1.57	35,637	1.96	18,943	(0.40)
Purchases - Produce	90,483	2.60	48,031	2.64	42,452	(0.05)
Purchases - Dairy	210,623	6.04	124,476	6.85	86,147	(0.81)
Purchases - Bakery/Bread	151,911	4.36	89,192	4.91	62,719	(0.55)
Purchases - Soups	0	0.00	0	0.00	0	0.00
Purchases - Desserts	27,720	0.80	1,895	0.10	25,825	0.69
Purchases - Grocery	106,477	3.05	81,456	4.48	25,020	(1.43)
Purchases - Food Transfers	0	0.00	0	0.00	0	0.00
Purchases - Dressings & Spreads	40,498	1.16	19,517	1.07	20,981	0.09
<b>TOTAL COST OF FOOD SALES</b>	<b>804,051</b>	<b>23.06</b>	<b>488,238</b>	<b>25.78</b>	<b>335,815</b>	<b>(2.71)</b>

## COST OF BEVERAGE SALES

Purchases - Beverage	108,718	3.12	66,139	3.64	42,579	(0.52)
Purchases - Water	0	0.00	0	0.00	0	0.00
Purchases - Beer	19,450	0.56	10,781	0.59	8,669	(0.04)
Purchases - Wine	5,205	0.15	2,549	0.15	2,556	0.00
Purchases - Liquor	0	0.00	0	0.00	0	0.00
Supplies - CO2/Nitrogen	5,816	0.17	3,753	0.21	2,062	(0.04)
Purchases - Retail Merchandise	0	0.00	0	0.00	0	0.00
Purchases - Cleaning Solution	0	0.00	0	0.00	0	0.00
Other Income - Vendor Rebates	(11,758)	(0.34)	(17,351)	(0.96)	5,593	0.62
<b>TOTAL COST OF BEVERAGE SALES</b>	<b>127,432</b>	<b>3.68</b>	<b>65,872</b>	<b>3.63</b>	<b>61,460</b>	<b>0.02</b>

## TOTAL COST OF SALES

	831,483	28.72	534,208	28.41	397,275	(2.69)
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## COST OF PAPER SALES

Purchases - Paper	0	0.00	(281)	(0.02)	281	0.02
Purchases - Utensils	4,452	0.13	2,218	0.12	2,234	0.01
Purchases - Napkins	11,418	0.33	6,170	0.34	5,248	(0.01)
Purchases - Cups and Lids	32,920	0.94	16,904	0.93	16,016	0.01
Purchases - Plate/Bowls and Lids	4,833	0.14	1,736	0.10	3,097	0.04
Purchases - Packaging	6,782	0.19	9,256	0.51	(2,473)	(0.31)
Purchases - Packaging Pizza Boxes	47,957	1.38	25,671	1.41	22,285	(0.04)
Purchases - Catering	0	0.00	0	0.00	0	0.00
Purchases - Condiments	1,382	0.04	1,618	0.09	(236)	(0.05)
<b>TOTAL COST OF PAPER SALES</b>	<b>109,743</b>	<b>3.15</b>	<b>63,291</b>	<b>3.48</b>	<b>48,452</b>	<b>(0.34)</b>

WAGES						
Wages - Hourly Regular	695,126	19.94	371,037	20.42	324,089	(0.48)
Wages - Bonus Manager	25,872	0.74	3,421	0.19	22,451	0.55
Wages - Hourly O/T	2,368	0.07	2,390	0.13	(22)	(0.06)
Wages - Hourly Manager	0	0.00	0	0.00	0	0.00
Wages - Hourly Manager O/T	0	0.00	0	0.00	0	0.00
Wages - Salary Management	307,383	8.62	129,468	7.13	177,914	1.69
Wages - Manager in Training	43,949	1.26	7,445	0.41	36,504	0.85
Contract Labor	0	0.00	0	0.00	0	0.00
<b>TOTAL WAGES</b>	<b>1,074,697</b>	<b>30.83</b>	<b>513,762</b>	<b>28.28</b>	<b>560,936</b>	<b>2.55</b>
LABOR BENEFITS						
Taxes - Employer's Payroll	107,383	3.08	50,768	2.79	56,615	0.29
Taxes - Federal Unemployment	0	0.00	0	0.00	0	0.00
Worker's Compensation	(2,990)	(0.09)	8,301	0.46	(11,291)	(0.54)
Insurance - Employee Health	12,555	0.36	(8,435)	(0.46)	20,989	0.82
Wages - Severance	0	0.00	0	0.00	0	0.00
Incentive - Employee	0	0.00	174	0.01	(174)	(0.01)
Incentive - Manager	0	0.00	0	0.00	0	0.00
Employer's Pension Match	1,662	0.05	0	0.00	1,662	0.05
Employee Benefits	1,751	0.05	2,151	0.12	(399)	(0.07)
Employee Garnishments	(5,686)	(0.16)	0	0.00	(5,686)	(0.16)
Insurance - Officer's Health	0	0.00	0	0.00	0	0.00
<b>TOTAL LABOR BENEFITS</b>	<b>114,674</b>	<b>3.29</b>	<b>52,958</b>	<b>2.92</b>	<b>61,716</b>	<b>0.37</b>
<b>TOTAL COST OF LABOR</b>	<b>1,189,372</b>	<b>34.12</b>	<b>566,720</b>	<b>31.20</b>	<b>622,652</b>	<b>2.82</b>
<b>GROSS PROFIT</b>	<b>1,255,453</b>	<b>36.01</b>	<b>652,401</b>	<b>35.91</b>	<b>603,052</b>	<b>0.10</b>
<b>TOTAL FL</b>	<b>2,230,597</b>	<b>63.99</b>	<b>1,164,218</b>	<b>64.09</b>	<b>1,066,379</b>	<b>(0.10)</b>
ADVERTISING EXPENSE						
Advertising - National	54,402	1.56	27,526	1.52	26,876	0.05
Advertising - Store Allocation	7,298	0.21	0	0.00	7,298	0.21
Advertising - Direct	0	0.00	0	0.00	0	0.00
Advertising - Billboards	465	0.01	5,325	0.29	(4,860)	(0.28)
Advertising - Radio	0	0.00	0	0.00	0	0.00
Advertising - Facebook	0	0.00	0	0.00	0	0.00
Advertising - Print	6,626	0.19	9,355	0.51	(2,729)	(0.32)
Advertising - Promotions	0	0.00	0	0.00	0	0.00
Advertising - Grand Opening	0	0.00	0	0.00	0	0.00
Advertising - Gift Cards	0	0.00	0	0.00	0	0.00
Advertising-Hornets	0	0.00	0	0.00	0	0.00
Advertising - Miscellaneous	808	0.02	1,667	0.09	(859)	(0.07)
Advertising - Pinckney	0	0.00	30	0.00	(30)	(0.00)
<b>TOTAL ADVERTISING EXPENSE</b>	<b>69,599</b>	<b>2.00</b>	<b>43,903</b>	<b>2.42</b>	<b>25,698</b>	<b>(0.42)</b>
CONTROLLABLE EXPENSES						
Cash Over/Short	1,440	0.04	(2,433)	(0.13)	3,873	0.18
Catering Expense	0	0.00	102	0.01	(102)	(0.01)
Charge Order Adjustment	0	0.00	0	0.00	0	0.00
Credit Card Variances	39	0.00	874	0.05	(836)	(0.05)
Commissions	0	0.00	0	0.00	0	0.00
Computer Expense	0	0.00	0	0.00	0	0.00
Delivery Fee/Freight	998	0.03	0	0.00	998	0.03
Dues and Subscriptions	454	0.01	0	0.00	454	0.01
Employee Background Check	0	0.00	0	0.00	0	0.00
Employee Medical Expense	0	0.00	0	0.00	0	0.00
Employee Drug Testing	0	0.00	0	0.00	0	0.00
Fees - Online Ordering Fees	0	0.00	0	0.00	0	0.00

	0	0.00	1,219	0.07	(1,219)	(0.07)
Fees - Other Miscellaneous						
Garbage Service	5,386	0.15	3,049	0.17	2,336	(0.01)
Insurance - Vehicles Co Office	0	0.00	0	0.00	0	0.00
Insurance - Officer's Life	0	0.00	0	0.00	0	0.00
Laundry	13,265	0.38	6,213	0.34	7,051	0.04
Outside Services	0	0.00	0	0.00	0	0.00
Meals	0	0.00	0	0.00	0	0.00
Meals - Regional Manager	0	0.00	0	0.00	0	0.00
Mileage Expense	0	0.00	0	0.00	0	0.00
Moving Expense	0	0.00	0	0.00	0	0.00
Pest Control	2,616	0.08	3,702	0.20	(1,086)	(0.13)
Postage - Express	48	0.00	0	0.00	48	0.00
Postage - Regular	182	0.01	0	0.00	182	0.01
Printing	0	0.00	0	0.00	0	0.00
Professional Services	7,847	0.23	10,897	0.60	(3,051)	(0.37)
Recruitment	0	0.00	0	0.00	0	0.00
Repairs & Maintenance	0	0.00	23	0.00	(23)	(0.00)
Repairs & Maintenance - Building	355	0.01	361	0.02	(6)	(0.01)
Repairs & Maintenance - Equipment	590	0.02	336	0.02	254	(0.00)
Repairs & Maintenance - Ovens	0	0.00	0	0.00	0	0.00
Repairs & Maintenance - Refrigeration	1,279	0.04	0	0.00	1,279	0.04
Repairs & Maintenance - POS	13,991	0.40	15,420	0.85	(1,430)	(0.45)
Repairs & Maintenance - Contract	13,644	0.39	10,734	0.59	2,910	(0.20)
Small Equipment	1,407	0.04	0	0.00	1,407	0.04
Supplies - Miscellaneous	(2,659)	(0.08)	(1,766)	(0.10)	(893)	0.02
Supplies - Operating	38,380	1.10	18,593	1.02	19,787	0.08
Supplies - Cleaning	22,358	0.64	14,235	0.78	8,123	(0.14)
Supplies - Smallwares	73	0.00	846	0.05	(773)	(0.04)
Supplies - Office	351	0.01	743	0.04	(392)	(0.03)
Training & Meetings	0	0.00	0	0.00	0	0.00
Travel	3,049	0.09	1,068	0.06	1,981	0.03
Uniforms	(1,052)	(0.03)	34	0.00	(1,086)	(0.03)
Utilities - General	0	0.00	0	0.00	0	0.00
Utilities - Phone	10,293	0.30	10,018	0.55	275	(0.26)
Utilities - Internet Services	931	0.03	790	0.04	141	(0.02)
Utilities - Cell Phone	(463)	(0.01)	0	0.00	(463)	(0.01)
Utilities - Gas	18,227	0.52	8,068	0.44	10,159	0.08
Utilities - Electrical	27,098	0.78	20,976	1.15	6,120	(0.38)
Utilities - Water	11,640	0.33	5,250	0.29	6,390	0.04
Vehicle Expense	0	0.00	0	0.00	0	0.00
Vehicles - Gas and Oil	0	0.00	68	0.00	(68)	(0.00)
Vehicles - Lease	0	0.00	0	0.00	0	0.00
Vehicles - Maintenance	0	0.00	0	0.00	0	0.00
<b>TOTAL CONTROLLABLES</b>	<b>191,783</b>	<b>6.60</b>	<b>129,420</b>	<b>7.12</b>	<b>62,342</b>	<b>(1.62)</b>
<b>NON CONTROLLABLE EXPENSES</b>						
Bank Service Charges	15,177	0.44	9,962	0.55	5,215	(0.11)
Credit Card Settlement Fees	72,836	2.09	38,230	2.10	34,606	(0.02)
Accounting Fees	16,525	0.47	6,975	0.38	9,550	0.09
Payroll Processing Fees	7,583	0.22	(16)	(0.00)	7,599	0.22
Legal Fees	10,595	0.30	0	0.00	10,595	0.30
Outside Services - Music/Cable	1,998	0.06	2,088	0.11	(70)	(0.06)
Security	4,184	0.12	16,259	0.89	(12,075)	(0.77)
Contributions	4,162	0.12	1,802	0.10	2,361	0.02
Taxes - Other	4,035	0.12	2,119	0.12	1,917	(0.00)
Consulting Fee	0	0.00	0	0.00	0	0.00
Consulting Fee - MoDev LLC	0	0.00	0	0.00	0	0.00
<b>TOTAL NON CONTROLLABLE EXPENSES</b>	<b>137,094</b>	<b>3.93</b>	<b>77,398</b>	<b>4.28</b>	<b>59,898</b>	<b>(0.33)</b>
<b>LOCATION EXPENSE</b>						
Rent - Equipment	6,350	0.16	936	0.05	5,414	0.13

Rent - Storage	0.00	0.00	0.00	0.00	0.00
Rent - Store	267,672	7.68	135,342	7.45	132,331
Rent - Relocation Expense	0	0.00	0	0.00	0
Rent - Non Cash Adjustment	(33,433)	(0.96)	(16,931)	(0.93)	(16,502)
Rent - Other	0	0.00	0	0.00	0
Rent - Office	0	0.00	0	0.00	0
Rent - Common Area Charges	24,600	0.71	13,087	0.72	11,513
Insurance - General	28,475	0.82	4,124	0.23	24,352
Taxes - Real Property	22,079	0.63	3,892	0.21	18,186
Taxes - Personal Property	7,749	0.22	9,188	0.51	(1,438)
Taxes - Licenses & Taxes	1,726	0.05	45	0.00	1,681
<b>TOTAL LOCATION EXPENSE</b>	<b>325,218</b>	<b>8.33</b>	<b>149,883</b>	<b>8.24</b>	<b>175,536</b>
<b>GENERAL &amp; ADMIN EXPENSES</b>	<b>160</b>	<b>0.00</b>	<b>0</b>	<b>0.00</b>	<b>160</b>
<b>TOTAL EXPENSES</b>	<b>2,954,431</b>	<b>84.75</b>	<b>1,564,622</b>	<b>86.13</b>	<b>1,389,808</b>
<b>OPERATING PROFIT</b>	<b>531,620</b>	<b>15.25</b>	<b>251,897</b>	<b>13.87</b>	<b>279,623</b>
<b>OTHER INCOME AND (EXPENSE)</b>					
Other Income - Misc	0	0.00	121	0.01	(121)
Other Income - Sales Tax Discount	0	0.00	0	0.00	0
Other Income - Rental	0	0.00	0	0.00	0
Other Income - Interest	(29)	(0.00)	0	0.00	(29)
Royalties	135,037	3.87	51,747	2.85	83,290
Interest Expense	38,746	1.11	0	0.00	38,746
Interest Expense - Capital Springs Cash	0	0.00	0	0.00	0
Penalties	988	0.03	0	0.00	988
Depreciation Expense	236,189	6.78	134,509	7.40	101,680
Amortization Expense	20,003	0.57	11,342	0.62	8,661
Gain/Loss on Assets	0	0.00	7,527	0.41	(7,527)
Bad Debt Expense	0	0.00	0	0.00	0
Start-Up Expense	63,495	1.82	6,353	0.35	57,142
Deal Closing Costs	5,572	0.16	0	0.00	5,572
Other Non-Recurring Expense	3,961	0.11	3,233	0.18	728
Taxes-Federal Income Taxes	0	0.00	0	0.00	0
Taxes-State Income & Franchise	0	0.00	0	0.00	0
Theft Loss	0	0.00	0	0.00	0
<b>TOTAL OTHER INCOME AND (EXPENSE)</b>	<b>503,962</b>	<b>14.46</b>	<b>214,832</b>	<b>11.83</b>	<b>289,130</b>
<b>NET INCOME (LOSS)</b>	<b>27,658</b>	<b>0.79</b>	<b>37,185</b>	<b>2.05</b>	<b>(9,507)</b>
<b>EBITDA</b>	<b>322,596</b>	<b>9.25</b>	<b>183,017</b>	<b>10.07</b>	<b>139,580</b>
Consulting Fee	0	0.00	0	0.00	0
Consulting Fee - MoDev LLC	0	0.00	0	0.00	0
Rent - Relocation Expense	0	0.00	0	0.00	0
Rent - Non Cash Adjustment	(33,433)	(0.96)	(16,931)	(0.93)	(16,502)
Start-Up Expense	63,495	1.82	6,353	0.35	57,142
Deal Closing Costs	5,572	0.16	0	0.00	5,572
Other Non-Recurring Expense	3,961	0.11	3,233	0.18	728
Theft Loss	0	0.00	0	0.00	0
Wages - Severance	0	0.00	0	0.00	0
<b>TOTAL EBITDA ADJUSTMENTS</b>	<b>39,596</b>	<b>1.14</b>	<b>(7,345)</b>	<b>(0.40)</b>	<b>46,941</b>
<b>ADJUSTED EBITDA</b>	<b>382,192</b>	<b>10.39</b>	<b>175,671</b>	<b>9.87</b>	<b>186,521</b>
					<b>0.72</b>