

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

HRI HOLDING CORP, LLC, *et al.*,¹
Debtors.

Chapter 11

Case No. 19-12415 (MFW)
(Jointly Administered)

Re: Docket Nos. 15 & 89

**OBJECTION AND RESERVATION OF RIGHTS OF ARBOR DEVELOPMENT, LLC
TO NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT OF LEASE**

Arbor Development, LLC (“**Landlord**”) files this objection (the “**Objection**”) to Debtors’ Motion requesting authorization for the assumption and assignment of executory contracts (Docket No. 15), and the notice of the proposed assumption and assignment (Docket No. 89) (the “**Cure Notice**”), relating to Landlord’s Lease, and respectfully states as follows:

1. On July 13, 1989, Darryl’s of Overland Park, Inc. (“**Tenant**”) entered into a *Lease Agreement* with Landlord for retail space located in at 8901 Metcalf Avenue, Overland Park, Kansas 66212 (the “**Lease**”), to be used for the operation of a restaurant commonly known as J. Gilbert’s. The Lease was amended on September 11, 1992, and Tenant exercised options to extend the Lease on September 9, 2009, and September 15, 2014.

2. On September 30, 2019, the parties entered into a *Settlement Agreement*, resolving a dispute and lawsuit concerning Common Area Maintenance charges and other

¹ Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: HRI Holding Corp. (4677), Houlihan’s Restaurants, Inc. (8489), HDJG Corp. (3479), Red Steer, Inc. (2214), Sam Wilson’s/Kansas, Inc. (5739), Darryl’s of St. Louis County, Inc. (7177), Darryl’s of Overland Park, Inc. (3015), Houlihan’s of Ohio, Inc. (6410), HRI O’Fallon, Inc. (4539), Algonquin Houlihan’s Restaurant, L.L.C. (0449), Geneva Houlihan’s Restaurant, L.L.C. (3156), Hanley Station Houlihan’s Restaurant, LLC (4948), Houlihan’s Texas Holdings, Inc. (5485), Houlihan’s Restaurants of Texas, Inc. (4948), JGIL Mill OP LLC (0741), JGIL Millburn, LLC (6071), JGIL Milburn Op LLC (N/A), JGIL, LLC (5485), JGIL Holding Corp. (N/A), JGIL Omaha, LLC (5485), HOP NJ NY, LLC (1106), HOP Farmingdale LLC (7273), HOP Cherry Hill LLC (5012), HOP Paramus LLC (5154), HOP Lawrenceville LLC (5239), HOP Brick LLC (4416), HOP Secaucus LLC (5946), HOP Heights LLC (6017), HOP Bayonne LLC (7185), HOP Fairfield LLC (8068), HOP Ramsey LLC (8657), HOP Bridgewater LLC (1005), HOP Parsippany LLC (1520), HOP Westbury LLC (2352), HOP Weehawken LLC (2571), HOP New Brunswick LLC (2637), HOP Holmdel LLC (2638), HOP Woodbridge LLC (8965), and Houlihan’s of Chesterfield, Inc. (5073). The Debtors’ corporate headquarters and the mailing address is 8700 State Line Road, Suite 100, Leawood, Kansas 66206.



charges due from Tenant under the Lease, pursuant to which the parties entered into a new *Lease Agreement*, effective October 1, 2019. A copy of the Settlement Agreement and the Lease Agreement is attached as **Exhibit A**.

3. The new Lease Agreement provided, in relevant part, that :
 - a. Houlihan's Restaurant, Inc. guaranteed Tenant's obligations under the Lease.
 - b. Section 6.04 provides that Landlord shall reimburse Tenant for actual out of pocket costs, not to exceed \$750,000.00, incurred as a result of Tenant's substantial completion of a major Renovation of the Leased Premises within two year after the Date of the Lease.
 - c. Section 21.08 provides that the Lease shall not be effective unless Houlihan's Restaurants Inc. ("**Houlihan's**") guaranteed the Lease. That Guaranty, attached as Exhibit E to the Lease, is a guaranty of payment and performance and specifically acknowledged that "Landlord would not enter into the Lease unless Guarantor agreed to guarantee to Landlord the payment and performance of all obligations of Tenant under the Lease".

4. On November 14, 2019, a mere 44 days after entering into the Settlement Agreement and execution of the new Lease, (the "**Petition Date**"), Tenant and Houlihan's filed these Chapter 11 cases. During these proceedings Debtor has remained as a tenant in possession of the leased property.

5. The Debtors propose to sell substantially all of their assets to Landry's LLC ("**Landry's**"), and propose an assignment of the Lease to Landry's. However that assignment appears to revise the Guaranty provided by Houlihan's, and upon which Landlord specifically relied in agreeing to reimburse up to \$750,000.00 of Tenant's anticipated major renovation.

6. Houlihan's and Tenant have not acted in good faith in negotiating the terms of the new Lease, and, in particular, the terms related to the Guaranty and the reimbursable costs of renovation and the resolution of the lawsuit resulting in the Settlement Agreement.

7. Landlord has not been provided with information or assurances that Landry's has the ability or expertise to operate and manage a restaurant or perform under the Guaranty. In order to properly evaluate Landry's, or an affiliated entity, as a potential tenant, Landlord requires, at a minimum, the following:

- a. The identity and financials of the entity whose credit will be offered as security for the Lease, and
- b. the identity and credentials of the party responsible for managing and operating the restaurant.

8. Until and unless sufficient information is provided to Landlord, until Landlord receives enforceable written assurances that all terms of the Lease and Guaranty will be assumed without modification, and until and unless Landlord is adequately and fully assured that Landry's is a viable potential tenant and guarantor, Landlord cannot and does not accept Landry's, or its members or affiliates, as a replacement tenant for Tenant.

9. Additionally, if Landry's resolves Landlord's concerns, Landlord will require full payment of the amount required to cure all defaults under the Lease, if any, as of the date Landry's assumes the Lease.

10. Landlord reserves all rights under the Settlement Agreement and Lease and the right to further supplement this Objection.

WHEREFORE, Arbor Development, LLC respectfully requests that the Court (i) deny any proposed sale or assumption of the Lease until and unless Arbor Development, LLC is fully satisfied that the assignee is a qualified and viable tenant and guarantor, who can and will pay any and all undisputed cure amounts and other amounts due and owing under the lease including

the tenant improvements, and (ii) grant such further relief as the Court deems proper and appropriate.

Dated: December 13, 2019

MORRIS JAMES LLP

/s/ Eric J. Monzo

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Counsel to Arbor Development, LLC

EXHIBIT A

SETTLEMENT AGREEMENT

This Agreement is entered into by Arbor Development, LLC ("Landlord") and Darryl's of Overland Park, Inc. ("Tenant") as of this 30th day of September, 2019.

WHEREAS, Landlord and Tenant entered into that certain Retail Lease agreement dated July 13, 1989 ("Lease");

WHEREAS, pursuant to the Lease, Tenant leases certain property containing approximately 10,420 square feet of gross leasable space located at 8901 Metcalf Avenue, Overland Park, Kansas 66212 ("Premises") from the Landlord; and

WHEREAS, Landlord and Tenant entered into a First Lease Amendment dated September 11, 1992; and

WHEREAS, Tenant exercised options to extend the Lease on September 8, 2009 and September 15, 2014; and

WHEREAS, Landlord and Tenant are currently in a good faith dispute concerning Common Area Maintenance charges and other charges under the lease, which dispute has given rise to a legal action styled, *ME-0326, L.L.C. et al. v. Arbor Development, L.L.C.*, Case No. 19CV01109, Division 4, pending in the District Court of Johnson County, Kansas ("Lawsuit"); and

WHEREAS, as part of the Lawsuit, Landlord has certain claims and causes of action that Landlord would bring against Tenant arising out of the unpaid amounts in dispute; and

WHEREAS, both Landlord and Tenant deny any liability to the other but recognize the costs and uncertainty inherent in the Lawsuit and wish to resolve all disputes between them upon the terms and conditions contained in this Agreement.

THEREFORE, in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. **Lease Agreement.** Landlord and Tenant shall enter into the lease agreement which will be effective October 1, 2019 ("New Lease") attached hereto as Exhibit A. The terms of the Lease shall govern Tenant's obligations to Landlord until the commencement date of the New Lease, at which time the terms of the New Lease shall govern.
2. **Tenant Estoppel.** Tenant shall execute the Tenant Estoppel Statement ("Tenant Estoppel") attached hereto as Exhibit B.
3. **Tenant's Payment of Outstanding Amounts Due.** Upon execution of this Agreement and the New Lease, Tenant agrees that it shall immediately pay to Landlord, in addition to any amounts owed by Tenant under the Lease and all amendments thereto and in addition to all future obligations pursuant to the New Lease, the following:
 - a. Outstanding Real Estate Taxes Due Years 2015-2018: \$4,622.10
 - b. Outstanding Insurance Contribution Due Years 2015-2018: \$802.38

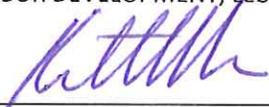
4. **Tenant's Ongoing Payment of CAM, Taxes and Insurance For 2019:** Tenant agrees that it shall pay to Landlord, in addition to amounts owed by Tenant under the Lease and all amendments thereto, the following schedule of estimated payments toward Common Area CAM, Taxes and Insurance (such estimates based on the Lease) which will be trued up at the end of 2019 based on the actual expenses and terms of the Lease through September 30, 2019 and New Lease from October 1, 2019 through December 31, 2019:
 - a. CAM estimated Monthly Payments 2019: \$2,653 Month
 - b. Taxes estimated Monthly Payments 2019: \$1,602 Month
 - c. Insurance estimated Monthly Payments 2019: \$409 Month

5. **Failure to Pay:** Failure to pay such amounts by Tenant pursuant to the terms of this Agreement shall constitute an Event of Default as that term is defined in the Lease and all amendments thereto and as defined in the New Lease. For clarification, failure of Tenant to pay the amounts required by the terms of this Agreement shall be an Event of Default under both the Lease and the New Lease, regardless of when such non-payment occurs.

6. **Dismissal of Tenant's Claims In Lawsuit.** Upon execution of this Agreement and the New Lease by Landlord and Tenant, Tenant shall immediately dismiss with prejudice Tenant's causes of action in the Lawsuit with Tenant to bear its own costs and attorneys' fees associated with the same. Landlord agrees it shall make no claim for its costs or attorneys' fees associated with the Lawsuit from Tenant.

7. **Mutual Release of All Claims.** Upon execution of this Agreement and the New Lease, Tenant and Landlord release all claims they have against each other arising out of or related to the Lease and Tenant's occupancy of the Premises. It is the intent of Landlord and Tenant that this release be interpreted broadly, to include all claims known and unknown that now exist against each other. Notwithstanding the same, nothing in this paragraph shall be deemed to release Tenant of its continuing obligations under the New Lease and nothing in this paragraph shall be deemed to release Landlord from its continuing obligations under the New Lease.

LANDLORD:
ARBOR DEVELOPMENT, LLC



By: Kurt Rhoden, authorized signatory

TENANT:
DARRYL'S OF OVERLAND PARK, INC.



By: Michael J. Archer (print name)

It's ~~subject~~ Executive Officer & President

Exhibit A

New Lease Agreement (Commencement October 1, 2019)

LEASE AGREEMENT

LANDLORD: ARBOR DEVELOPMENT, LLC

TENANT: DARRYL’S OF OVERLAND PARK, INC.

SHOPPING CENTER: PROMONTORY

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- Exhibit “B” – Commercial Agency & Brokerage Disclosure Addendum
- Exhibit “C” – Site Plan
- Exhibit “D” – Description of Tenant's Work
- Exhibit “E” – Guaranty
- Exhibit “F” – Tenant’s Quarterly Report

Exhibit "G" – Sign Criteria

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Other Exhibits: _____

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is entered into pursuant to the following terms and conditions:

ARTICLE I:

1.01 Basic Terms and Definitions: This Lease is subject to the following basic terms and definitions:

- (a) Date of Lease: October 1, 2019
- (b) "Landlord": Arbor Development, LLC
Address: 9744 Conant Avenue
Kansas City, Missouri 64153
Telephone: 816-436-3111 Fax: 816-436-3126
- (c) "Tenant": Darryl’s of Overland Park, Inc.
Contact Name/Title: Cynthia Dillard Parres, General Counsel
Notice Address: 8700 State Line Rd., Suite 100
Leawood, KS 66206
Social Security/Tax ID#: 43-1523015
Telephone: (913) 901-2591 Email: cparres@houlihans.com
- (d) Tenant’s Trade Name: J. Gilberts Wood-Fired Steaks & Seafood (or such other trade name Tenant uses for the majority of the restaurants that it designates as full service steak and seafood.)
- (e) "Shopping Center": Promontory
Located in: Overland Park (City), Kansas (State)
- (f) Tenant's "Leased Premises": containing approximately 10,420 sq..ft.
Address: 8901 Metcalf Avenue, Overland Park, Kansas 66212
- (g) Lease Term: 11 years, 0 months (see Section 1.04)
- (h) Commencement Date: October 1, 2019 (see Section 1.03)
Expiration Date: 6/29/31 (unless Extensions are exercised) (see Section 1.03)
- (i) Minimum Annual Rental: (see Sections 2.01 & 2.07)

	Original Term	Annually	Monthly	Per. Sq. Ft.
(1)	Date: <u>10/1/19 – 6/29/26</u>	<u>\$350,000</u> annually;	<u>\$ 29,166.67</u> monthly	<u>\$33.59</u> psf
(2)	Date: <u>6/30/26 – 6/29/31</u> (see Section 1.01(j))	<u>\$374,390</u> annually; (see Section 2.07)	<u>\$ 31,199.17</u> monthly (see Section 2.07)	<u>\$35.93</u> psf

First Extension:

	Term	Annually	Monthly	Per Sq. Ft.
(1)	Date: <u>6/30/31 – 6/29/36</u>	<u>\$400,649</u> annually;	<u>\$ 33,387.42</u> monthly	<u>\$38.45</u> psf
(2)	Date: <u>6/30/36 – 6/29/41</u> (see Section 1.01(j))	<u>\$428,679</u> annually; (see Section 2.07)	<u>\$ 35,723.25</u> monthly (see Section 2.07)	<u>\$41.14</u> psf

Second Extension:

	Term	Annually	Monthly	Per Sq. Ft
(1)	Date: <u>6/30/41 – 6/29/46</u>	<u>\$458,688</u> annually;	<u>\$ 38,224.00</u> monthly	<u>\$44.02</u> psf
(2)	Date: <u>6/30/46 – 6/29/51</u> (see Section 1.01(j))	<u>\$490,782</u> annually; (see Section 2.07)	<u>\$ 40,898.50</u> monthly (see Section 2.07)	<u>\$47.10</u> psf

Third Extension:

Term	Annually	Monthly	Per Sq. Ft
(1) Date: <u>6/30/51 – 6/29/56</u> (see Section 1.01(j))	<u>\$525,168</u> annually; (see Section 2.07)	<u>\$ 43,764</u> monthly (see Section 2.07)	<u>\$50.40</u> psf

- (j) Option(s) to Extend: 1st option to extend for 10 years; 2nd option to extend for 10 years; and 3rd option to extend for 5 years for a total of 25 years. (see Section 1.08)
- (k) Percentage Rent: 9 % of gross food sales in excess of the Natural Breakpoint (see Section 2.02)
- (l) Use of Leased Premises: Tenant will use and occupy the Leased Premises as a full-service J. Gilberts Restaurant with take-out service, and incidental merchandising, serving alcoholic beverages for on/off premises consumption (or such other concept name as Tenant may hereafter use for the majority of its restaurants it designates as full-service steak and seafood restaurants.)
- (m) Trade name of Tenant: J. Gilberts Wood-Fired Steaks & Seafood
- (n) "Landlord's Broker": None "Tenant's Broker": None.
- (o) Security Deposit: \$ 0 (see Section 22.01)
- (p) Rent Deposit: \$ 0 (see Section 22.03)
- (q) Beginning the Commencement Date (October 1, 2019), the Tenant's contributions for Common Area taxes (if any), Common Area insurance and Common Area operating costs shall be based on Tenant's pro rata share of the Shopping Center subject to a cap of 7.25%. Beginning the Commencement Date (October 1, 2019), all Building Costs and all Building taxes, all Building special assessments and all Building insurance shall be paid by Tenant. There currently is no Promotion Fund (see Section 13.01) contribution. Tenant's continuing contributions through estimated payments for 2019 shall be trued up at the 2019 year-end to reflect a pro-rata application of the partial year under the terms of this Lease and the partial year under the terms of the previous lease agreement between Tenant and Landlord.
- (r) Condition of Leased Premises (see Section 1.05): Tenant will take X "AS IS" or upon substantial completion of Landlord's Work described on Exhibit "C" and Exhibit "D".
- (s) Guarantor: Houlihan's Restaurants, Inc.
- (t) Riders: Not applicable.
- (u) Penalty for each day late in reporting sales: \$50.00 (see Section 21.25)

Landlord demises and Leases to Tenant, and Tenant rents from Landlord the Leased Premises depicted on Exhibit "A".

1.02 Use of Common Areas. The use and occupation by Tenant of the Leased Premises shall include the use, in common with others entitled thereto, of the common areas, employees' parking areas, service roads, loading facilities, sidewalks and customer car parking areas of the Shopping Center (generally depicted on Exhibit C), and such other facilities as may be designated from time to time by Landlord, subject, however, to the terms and conditions of this Lease. Subject to Tenant's rights herein, Landlord may designate certain portions of the parking areas as reserved for use of certain tenants or customers of certain tenants. All parking rights are also subject to ordinances of the City.

1.03 Commencement of Rental and Other Charges. Tenant's obligation to pay minimum rent and other charges due hereunder shall commence on the "Commencement Date" which shall be the date set forth in Section 1.01(h).

1.04 Length of Term. The Lease Term shall be as set forth in Section 1.01(g), commencing with the Commencement Date. If the Commencement Date is other than the first day of the month, the first year of the Lease Term shall be deemed to be extended to include such partial month and the following twelve (12) months, so as to end on the last day of the month.

1.05 Condition of Leased Premises. Tenant is accepting the Leased Premises according to Section 1.01(f) and Section 1.01(r) subject to the following provisions:

(a) **Acceptance of Leased Premises.** If Tenant is to take the Leased Premises "AS IS" pursuant to Section 1.01(r), Landlord shall have no obligation to prepare the Leased Premises for Tenant's use and there shall be no Landlord's Work. No rights or remedies shall accrue to Tenant arising out of the failure of Landlord to construct or lease any other parts of the Shopping Center. It is understood that said Exhibit "A" sets forth the general layout of the Leased Premises in relation to the Shopping Center but shall not be deemed as a warranty, representation or agreement on the part of Landlord that the Shopping Center layout will be exactly as depicted on said Exhibit. Tenant has inspected the Leased Premises is satisfied with its present condition. Landlord or its real estate agent has not made, and does not now make, any representations as to the past, present or future condition, income, expenses, operation or any other matter or thing affecting or relating to the Leased Premises except as may be herein expressly set forth, and Tenant hereby acknowledges that no such terms, agreements, covenants and conditions were made by and between the parties hereto. Tenant has satisfied itself that the Leased Premises described herein are properly zoned and usable for the purpose for which Tenant is leasing same. Tenant has obtained a certificate of occupancy and/or any other required permit(s) from any authority having jurisdiction over the Leased Premises confirming that Tenant may occupy the Leased Premises.

1.06 Tenant's Work. Other than Landlord's Work, Tenant shall be responsible for making any other improvements to the Leased Premises that Tenant desires for operation of Tenant's business ("Tenant's Work"). Tenant's Work shall comply in all material respects with all applicable statutes, ordinances, regulations, and codes and with the requirements of Article VI hereof. Tenant may not puncture the roof or interfere with the sprinkler system without specific written permission from Landlord. Tenant shall present plans of Tenant's Work to Landlord, and Tenant may not begin Tenant's Work without prior written approval of Landlord.

1.07 Shopping Center Provisions. No rights or remedies shall accrue to Tenant arising out of the failure of Landlord to construct or lease any other parts of the Shopping Center or from any changes in occupancy by tenants in the Shopping Center or from any changes Landlord makes to the Shopping Center. It is understood that Exhibit "A" sets forth the general layout of the Leased Premises in relation to the Shopping Center, but shall not be deemed as a warranty, representation or agreement on the part of Landlord that the Shopping Center layout will be exactly as depicted on said Exhibit, and subject to the terms hereof, Landlord reserves the right from time to time: (i) to change the number, size, height (including additional stories) or locations of the buildings or common areas in the Shopping Center as Landlord may deem proper; (ii) to change or modify any means of ingress or egress; (iii) construct building(s) and/or kiosk(s) on or in the common area; (iv) to add additional land or buildings or both to the Shopping Center; or (v) to relocate the space leased to any other tenant. Landlord's rights under this Section shall be subject to Tenant's rights under Section 4.04..

1.08 Options to Extend. Provided Tenant is operating its business in the Leased Premises and shall not then be in material default hereunder, each option set forth in Section 1.01(j) shall be automatically exercised by Tenant unless, upon delivery by Tenant to Landlord of its written notice of intent not to exercise such option at least one hundred eighty (180) days prior to the expiration of the then existing Lease Term, each upon the same terms and conditions herein contained, except that the fixed minimum monthly rental shall be as specified in Section 1.01(i).

1.09 Property Incentives. Tenant acknowledges that the Shopping Center is part of a Tax Increment Financing ("TIF") District and Community Improvement District ("CID"). Tenant agrees to meet all state and other governmental requirements related to the same. Tenant acknowledges that all taxable sales (except liquor sales) within the Shopping Center (including Tenant's Premises) are or will become subject to the CID sales tax, which Tenant agrees to pay to the State of Kansas or other designated governmental authority on a monthly basis along with other applicable sales taxes required by law. Tenant agrees that it shall cooperate with Landlord in the ongoing operation of the CID, and where necessary, amendment of the CID (and Tenant will not oppose any such amendment that does not materially adversely affect Tenant's business or rights under this Lease). If requested by governmental authorities, Tenant will cooperate in documenting all applicable CID sales tax that has been collected and remitted by Tenant to appropriate governmental authorities. Tenant further acknowledges and agrees that it is not entitled to any reimbursement from Landlord arising out of or related in any way to the TIF or CID.

ARTICLE II: RENT

2.01 Minimum Annual Rental. Minimum rental hereunder shall be as set forth in Section 1.01(i) and shall be due and payable in monthly installments in advance, without set off (other than as set forth in Section 6.04), on the first day of each and every month throughout the Lease Term at the office of Landlord or at such other place designated by Landlord, without any prior demand. Minimum rental for any fractional month shall be prorated and payable in advance. For purposes of this Lease, the gross leasable area of the Leased Premises shall be deemed to be that set forth in Section 1.01(f). The minimum annual rent set forth in Section 1.01(i) shall control the calculation of the rent for the Leased Premises and the calculates therein for monthly payments and per square foot are for convenience purposes only and shall not control in the event of a mathematical error or rounding error.

2.02 Percentage Rent. In addition to the payment of the fixed minimum rent as hereinbefore provided, Tenant shall pay to Landlord for each applicable full or partial Lease Year (including during any renewal term), as percentage rent, a sum equivalent to the amount, if any, by which the percentage set forth in Section 1.01(k) of the gross receipts, as hereinafter defined, exceeds the Natural Breakpoint (the "Percentage Rent"). As used herein, the "Natural Breakpoint" means the annual fixed minimum rent for the applicable Lease Year divided by .09. For example, the fixed annual minimum rent for the first full calendar year is \$350,000 resulting in a Natural Break Point of \$3,888,888.89. Within ninety (90) days after the close of each Lease Year during the Term, Tenant shall furnish to Landlord a statement certified by an officer of Tenant showing the amount of gross receipts for such Lease Year and authorized exclusions and deductions therefrom. Contemporaneously with furnishing such statement, Tenant shall pay to Landlord an amount equal to any Percentage Rent due for said Lease Year. The term "Lease Year," as used herein, shall refer to each calendar year during the Lease Term, but for the first and last years of the Term shall mean the partial calendar year involved as to each, and for any such partial years, the percentage rent breakpoint shall be proportionately adjusted based upon the length of the partial year. Tenant's statement of gross receipts shall be certified by Tenant's president or chief financial officer.

2.03 Gross Receipts Defined. The term "gross receipts," as used herein, is defined to mean the aggregate of all gross receipts by Tenant and by any licensees, concessionaires and sublessees of Tenant from all non-alcohol sales upon or from the Leased Premises, regardless of whether the such receipts are collected by or made through persons within or without the Leased Premises, and irrespective of whether such receipts be evidenced by check, credit, charge account, cash exchange, but specifically excluding all gift certificates, otherwise included in gross receipts. Such gross receipts shall include those received from any transaction, including, but not be limited to, the amounts received from the sale and rental of goods, wares, merchandise and shelf and/or floor space, and for services and repairs performed on or from the Leased Premises, together with the amount of all orders taken or received at the Leased Premises, whether such orders be filled therefrom or elsewhere, and shall include sale made by or from vending devices in the Leased Premises. Gross receipts shall also include, but not be limited to, all deposits not refunded to purchasers and all sales to employees or agents of Tenant. Gross receipts shall not include (or if included shall be deducted therefrom) cash or credit refunds upon gross receipts where the merchandise sold or some part of it is returned by the purchaser to and accepted by Tenant; the sales price of merchandise returned by customers for exchange provided that the sales price of Merchandise delivered to the customer in exchange shall be included in gross receipts, any discounted food or free food provided to employees and the amount of any sales, use, or gross receipts tax imposed by any federal, state, municipal or other governmental authority directly on sales and collected from customers, provided that the amount thereof is billed separately to the customer and is required to be paid by Tenant to such governmental authority. Furthermore, gross receipts shall not include (or if included shall be deducted therefrom) all sales of alcohol. No franchise or capital stock tax and no inheritance, income, occupation, or similar tax or license fee based upon income, sales or profits, as such, shall be deducted from gross receipts.

2.04 Tenant's Records. For the purpose of ascertaining the amount payable as percentage rent, Tenant agrees to prepare, maintain, and preserve on at Tenant's corporate headquarters, for a period of not less than three (3) years following the end of each

Lease Year, sales records showing inventories and receipts of merchandise at the Leased Premises and daily receipts from all sales and other transactions on the Leased Premises made and conducted by Tenant and all other persons or firms conducting any business upon said premises. Tenant shall record at the time of sale, all receipts from sales or other transactions whether for cash or credit in a cash register or in cash registers having a cumulative total. Tenant further agrees to keep on the Leased Premises for at least three (3) years following the end of any partial Lease Year and each Lease Year the gross income, sales and occupation tax returns with respect to said partial Lease Year and Lease Years and all pertinent original sales records. Pertinent original sales records shall include: (a) cash register tapes, including tapes from temporary registers; (b) serially-numbered sales slips; (c) the originals of all mail or electronic orders at and to the Leased Premises; (d) the original records of all telephone or electronic orders at and to the Leased Premises; (e) settlement report sheets of transactions with subtenants, concessionaires and licensees; (f) the original records showing that merchandise returned by customers was purchased at the Leased Premises by such customers; (g) memorandum receipts or other records of merchandise taken out on approval; (h) credit card receipts and records; and (i) such other sales records, if any, which would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Tenant's sales; and (j) the records specified in (a) to (i) above of subtenants, assignees, concessionaires or licensees. In the event of any dispute as to the amount of percentage rent due, Tenant agrees to keep all the foregoing records until such dispute is resolved.

2.05 Audit. The acceptance by Landlord of payments of percentage rent shall be without prejudice to Landlord's right to an examination of Tenant's books and records of its gross receipts on the Leased Premises for purposes of verification. At its option, Landlord may at any reasonable time, upon fourteen (14) days' prior written notice to Tenant, cause a complete audit to be made of Tenant's entire business affairs, tax returns and other records relating to the Leased Premises for the period covered by any and all statement issued by Tenant as above set forth. If such audit shall disclose a liability for rent to the extent of two percent (2%) or more in excess of the rentals theretofore computed and paid by Tenant for such period or if Tenant's records are not adequate or the records are not made available within fourteen (14) days after written notice to Tenant to permit said accountants to determine gross receipts, Tenant shall promptly pay to Landlord the reasonable cost of said audit in addition to the deficiency, which deficiency shall be payable in any event. Any information obtained by Landlord as a result of such audit shall not be made public except to the extent necessary to enforce this Lease and to provide information to Landlord's Lender(s) or potential purchasers of the Shopping Center.

2.06 Taxes and Insurance. Tenant shall pay to Landlord as additional rent all of the real estate taxes, special taxes and assessments and all insurance for the building where the Leased Premises are located ("Building"). For illustrative purposes, the Building is generally identified on Exhibit A attached to this Lease. Insurance for the Building shall include fire insurance, extended coverage and all other perils coverage, loss of rents coverage, plus all endorsements and other coverages deemed reasonable and necessary by Landlord. In addition, Tenant shall pay to Landlord, as additional rent, its proportionate share of the common area real estate taxes (if any), common area special taxes (if any), common area assessments (if any) and common area insurance for the general common areas for the Shopping Center, ("Common Area") specifically including, but not limited to Shopping Center drives, parking areas, monuments, sidewalks, landscaped islands and landscape areas etc. For illustrative purposes, the Shopping Center is included on Exhibit C, and the Common Areas are all areas other than the buildings depicted on Exhibit C. Currently Tenant's Premises occupy 10,420 square feet within the Shopping Center's current total square footage of 99,515 for a proportionate share of 10.47% of the Shopping Center. Notwithstanding the preceding calculation, in no case will Tenant's proportionate share of the Shopping Center Common Area real estate taxes (if any), Common Area special taxes (if any), Common Area assessments (if any) and Common Area insurance for the general Common Area of the Shopping Center exceed 7.25% ("CAM Cap") at any time during the Lease Term. Insurance for the Common Area shall include property and liability coverage plus all endorsements and other coverages deemed reasonable and necessary by the Landlord. Tenant agrees and acknowledges that Landlord anticipates significant changes to the Shopping Center, including certain demolition and construction. Tenant agrees and acknowledges that the definition of the "Shopping Center" may change from time to time, and Landlord shall have the right in its sole discretion to adjust the gross leasable area in the Shopping Center and therefore Tenant's share of the taxes and insurance. Notwithstanding the preceding sentence, in no case will Tenant's proportionate share of the Shopping Center Common Area real estate taxes (if any), Common Area special taxes (if any), Common Area assessments (if any) and Common Area insurance for the general common areas for the Shopping Center exceed 7.25% ("CAM Cap") at any time during the Lease Term. Tenant acknowledges and agrees that the Shopping Center does not include the building located at 9029 Metcalf Avenue (currently Alaskan Fur) and that they currently contribute a specific contractual amount toward snow removal only. Tenant further acknowledges and agrees the Shopping Center shall include the retail space below the Promontory Apartments (including future phases of additional mixed-use retail / apartments) but will not include the residential apartments and related residential-devoted areas included within the Promontory Apartments. Additionally, Tenant's obligations to pay the amounts set forth in this section shall not be reduced or impacted by the pending TIF / CID incentives Landlord is seeking or may recover. Landlord, at Landlord's option, may bill Tenant on a monthly basis based on one-twelfth (1/12) of the estimated annual amount for taxes and insurance as estimated by Landlord and Tenant shall pay said cost for tax and insurance with monthly minimum rent. In addition to the monthly bill, the Landlord may also notify Tenant of additional amounts due for such taxes and insurance charges, and Tenant shall pay Landlord such additional amounts within fifteen (15) days from the date of notice to it by Landlord. Tenant acknowledges that the yearly taxes and insurance may substantially increase or decrease.

Additionally, with respect to taxes:

- (a) **Right to Contest Assessments**. Landlord may contest any and all such real estate taxes. If the result of any such contest shall be a reduction in the amount of the real estate taxes so contested, that portion of any refund, reduction, credit or recovery from the taxing authorities with respect to such real estate taxes which is in the same proportion of the total refund or recovery as Tenant's share of taxes, shall belong to Tenant, and the balance shall belong to Landlord. The cost of any such contest shall be paid as additional rent in the same proportionate share as the real estate taxes are paid, and shall not be subject to the CAM Cap.
- (b) **Municipal, County, State or Federal Taxes**. Tenant shall pay, before delinquency, all municipal, county and state or federal taxes assessed against any leasehold interest of Tenant or any fixtures, furnishings, equipment, stock-in-trade or other personal property of any kind owned, installed or used in or on the Leased Premises.
- (c) **Real Estate Tax**. Real estate tax means: (i) any fee, license fee, license tax, property tax, business license fee, commercial rental tax, levy, charge, assessment, penalty or tax imposed by any taxing or judicial authority against the Shopping Center or land upon where the Shopping Center is located; (ii) any tax on Landlord's right to receive, or the receipt of, rent or income from the Shopping Center or against Landlord's business of leasing the Shopping Center; (iii) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Shopping Center by any governmental agency; (iv) any tax imposed upon this transaction, or based upon a reassessment of the Shopping Center due to a change in ownership or transfer of all or part of Landlord's interest in the Shopping Center; (v) any cost, expense or fees incurred in protesting taxes, including appeals of the same; and (vi) any charge or fee replacing any tax previously included within the definition of real property tax.

This Section 2.06 shall govern all aspects of Tenant's obligation to pay taxes and insurance to Landlord under the Lease and this Section 2.06 shall control and supersede any prior agreements, written or otherwise, related to the same.

2.07 Rent During Option Period. If this Lease is extended, then during each extension period Tenant shall pay to Landlord as minimum rent the amount set forth in Section 1.01(i).

2.08 Net Lease. It is the intention of Landlord and Tenant that this Lease be construed as a "net, net, net" lease, so that the rental received by Landlord pursuant to this Article II is not reduced by taxes, assessments, insurance, or maintenance and repair or restoration attributable to the Leased Premises and Tenant shall pay Tenant's share of all expenses as provided in this Lease.

2.09 Delinquent Payment: Additional Charge for Rent. Tenant agrees that in the event any monthly installment of minimum rent, percentage rent, proportional share of taxes or insurance or other payments required by this Lease is not paid by the fifth (5th) day of the month in which it is due, Tenant shall pay to Landlord, additional rent equal to five percent (5%) of the late rent, charges and other unpaid arrearage owed by the Tenant for each such month. Said additional five percent (5%) rental may be assessed on unpaid installments or arrearages on the sixth (6th) day after said installment is due and may be invoiced accordingly.

2.10 Handling Charge. Tenant shall pay to Landlord a handling charge of Fifty Dollars (\$50.00) for any check given to Landlord by Tenant for payment of any sums due hereunder which is dishonored by Tenant's bank for any reason.

2.11 Payment of Rental. Any payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord shall be treated as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant. All payments on account received by Landlord from Tenant shall be applied in the following order: 1) to the payment of any past due late fees, then 2) to any past due expenses which have been charged to Tenant for maintenance properly chargeable to Tenant under Section 7.01 of the Lease, then 3) to past due charges for common area maintenance charged to Tenant under Article V and for taxes and insurance under Section 2.06, then 4) to any other indebtedness other than the above due hereunder from Tenant to Landlord such as unpaid mechanic's liens, then 5) to any past due rent, then 6) to any current late fees, then 7) current expenses which have been charged to Tenant for maintenance properly chargeable to Tenant under Section 7.01 of the Lease, then 8) current charges for common area maintenance charged to Tenants under Article V and taxes and insurance under Section 2.06, and then 9) to current rents.

ARTICLE III: CLEANING AND REPAIR OF LEASED PREMISES

3.01 Landlord's Obligations. The Landlord has no responsibility or duty to clean or repair the Leased Premises except as set forth specifically in this Lease.

ARTICLE IV: CONDUCT OF BUSINESS

4.01 Use of Premises. Tenant shall use the Leased Premises solely for the purpose set forth in Section 1.01(l) and shall operate under the trade name set forth in Section 1.01(d). Tenant shall use the Leased Premises for no other business or purpose or under any other name without the prior written consent of Landlord, which will not be unreasonably withheld, conditioned or delayed.

4.02 Operation of Business. Tenant shall have the right to operate its business during any hours or to cease operations at the Leased Premises, in its sole discretion, provided Tenant continues to otherwise meet all its obligations under this Lease .

4.03 Radius. During the Lease Term, neither Tenant nor any person, firm or corporation who or which controls or is controlled by Tenant shall directly or indirectly own, operate or become financially interested in any similar or competing business (defined as a business under the J. Gilbert's Woodfired Grill & Seafood trade name) within a radius of three (3) miles from the Shopping Center. In the event Tenant violates this provision, in addition to being an Event of Default under this Lease, the gross receipts (as defined in this Lease) of any such business or businesses within said radius shall be included in the gross receipts made from the Leased Premises for the purposes of computing Percentage Rent hereunder.

4.04 Protected Area. Notwithstanding anything to the contrary contained in this Lease or any other agreement or instrument executed in connection herewith, during the Lease Term, so long as Tenant is not in material Default which is continuing beyond any applicable cure period, Landlord shall not, without Tenant's consent (which shall not be unreasonably withheld): (a) permanently reduce the field of parking utilized by Tenant's customers; (b) reduce access or visibility of the Leased Premises from the streets adjacent to the Leased Premises; (c) place a kiosk in an area that materially reduces visibility of the Leased Premises from the streets adjacent to the Leased Premises; (d) construct or place any structure or landscaping that materially impairs the view of the Leased Premises and signage thereon from the streets adjacent to the Leased Premises; or (e) impede ingress or egress to or from the Leased Premises. In the event Landlord needs to temporarily reduce Tenant's field of parking, access or visibility, Landlord will take reasonable measures to limit the negative impact of the same on Tenant.

4.05 Use Exclusivity. During the term of this Lease, so long as Tenant is not in Default and is operating the Leased Premises as a J. Gilbert's Woodfired Steak & Seafood restaurant (or such other trade name Tenant uses for the majority of the restaurants that it designates as full service steak and seafood), Landlord shall not, without Tenant's consent, lease other space within the Shopping Center to a full-service restaurant serving steaks and seafood as its primary menu items or that offers a menu (written or verbal) where such menu's combined steak and seafood offerings constitute more than thirty percent (30%) of the menu's offerings. Nothing contained in this section shall prevent Landlord from leasing space within the Shopping Center to a restaurant that is a bar / grill / casual dining / fast-service American style restaurant or bar similar in style, food and service to that currently provided by Tanners, 54th Street Bar & Grill, Applebee's, Chili's, Cheddar's or similar type restaurants.

ARTICLE V: COMMON USE FACILITIES

5.01 Control of Common Facilities by Landlord. The common facilities as defined in this Lease shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right from time to time to establish, revoke, modify and enforce reasonable rules and regulations with respect to all or any part of said facilities. Landlord shall also have the right to close all or any portion of said areas or facilities to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; and to do and perform such other acts in and to said areas and improvements, and/or revise and develop the same, as Landlord shall determine to be advisable, with a view to the improvement of the convenience and use thereof by the tenants of the Shopping Center and their customers, provided proper access to the Leased Premises is maintained.

5.02 Building Costs and Common Facilities Contribution. Tenant shall directly pay all Building Costs for the Building where the Leased Premises are located. For illustrative purposes, the Building is generally identified on Exhibit A attached to this Lease. Currently Tenant's Leased Premises occupy 10,420 square feet within the Building's current total square footage of 10,420 for a

proportionate share of 100.00% of the Building. Building Costs are defined below in Section 5.03. Tenant shall indemnify and hold harmless Landlord for any costs, expenses, liens, judgments and expenses, including reasonable attorneys’ fees and court costs, arising out of or related to any Building Costs. In addition, Tenant shall pay to Landlord, as additional rent, its proportionate share of all Common Area Operating Costs as defined below in Section 5.03) for common areas of the Shopping Center specifically including, but not limited to Shopping Center drives, parking areas, monuments, sidewalks, landscaped islands and landscape areas etc. For illustrative purposes, the Common Areas are generally identified on Exhibit C attached to this Lease. Currently Tenant’s Leased Premises occupy 10,420 square feet within the Shopping Center’s current total square footage of 99,515 for a proportionate share of 10.47% of the Shopping Center. Notwithstanding the preceding calculation, in no case will Tenant’s proportionate share of the Common Area Operating Costs exceed 7.25% for purposes of contributing toward Common Area Operating Costs (“CAM Cap”). Notwithstanding the foregoing, if any item of Building Costs or Common Area Operating Cost for the Shopping Center are increased materially because of Tenant’s use, Tenant shall additionally pay for such excess cost but only to the extent such materially increased costs are attributed (pro-rata or otherwise) to Tenant’s specific use. Tenant agrees and acknowledges that Landlord anticipates significant changes to the Shopping Center, including certain demolition and construction. Tenant agrees and acknowledges that the definition of the “Shopping Center” or “Building” may change from time to time, and Landlord shall have the right in its sole discretion to adjust the gross leasable area in the Shopping Center or Building and therefore Tenant’s share of the Common Area Operating Costs, subject to the CAM Cap. Tenant’s share of such costs shall be estimated by Landlord on an annual basis for each calendar twelve (12) month period ending on December 31, prorating fractional years. Additionally, Tenant’s obligations to pay the amounts set forth in this section shall not be reduced or impacted by the pending TIF / CID incentives Landlord is seeking or may recover. Landlord, at Landlord’s option, may bill Tenant on a monthly basis based on one-twelfth (1/12) of the estimated annual amount for Common Area Operating Costs as estimated by Landlord and Tenant shall pay said costs with monthly minimum rent. In addition to the monthly bill, upon demonstration of unanticipated additional material costs incurred or expected which were not included in the estimated CAM payments, Landlord may also notify Tenant of additional amounts due for Common Area Operating Costs, and Tenant shall pay Landlord such additional amounts (subject to the CAM Cap) within sixty (60) days from the date of notice to it by Landlord. Tenant acknowledges that the yearly Common Area Operating Costs may substantially increase or decrease and that the below estimate is merely an estimate for 2019 and that the actual expenses for Common Area Operating Costs shall control. Landlord’s estimate for 2019 estimated monthly payments for Common Area Operating Costs are as follows:

Building Costs:	All Building Costs to be paid directly by Tenant		
	<u>Total</u>	<u>Tenant’s Portion</u>	<u>Monthly Est.</u>
Common Area Operating Costs:	\$200,000	\$ 14,500 (subject to CAM Cap)	\$1,209

- (a) Tenant shall pay Landlord on the first day of each calendar month of the term of this Lease an amount estimated by Landlord to be Tenant’s pro rate share of such Common Area Operating Costs. In the event Landlord incurs any Building Costs, Tenant shall reimburse Landlord such costs immediately. Landlord may adjust the estimated monthly charge during the calendar year (but not more than semi-annually) on the basis of Landlord’s experience & reasonably anticipated costs.
- (b) Within ninety (90) days following the end of each calendar year, Landlord shall furnish Tenant a statement covering the calendar year just expired, certified as correct by an authorized representative of Landlord, showing the total Common Area Operating Cost, the amount of Tenant’s pro rata share of such Common Area Operating for such calendar year and the payments made by Tenant with respect to such period as set forth in Subparagraph (a). If Tenant’s pro rata share of such Common Area Operating Costs exceed Tenant’s payments so made, Tenant shall pay Landlord the deficiency within thirty (30) days after receipt of such statement. If said payments exceed Tenant’s pro rata share of such Common Area Operating Costs Tenant shall be entitled to offset the excess against payments next thereafter to become due Landlord as set forth in said Paragraph (a). Tenant shall have an opportunity, at Tenant’s cost and expense, to audit the Common Area Operating Costs.
- (c) **Business Association.** Tenant acknowledges that Landlord has formed a business association called “Arbor Business Association, Inc.” (“Business Association”). The Business Association is intended to address the future possibility of diverse ownership of separate parcels within the Shopping Center in order to provide coherent and consistent appearance of all buildings within the Shopping Center and consistent and coherent administration of the Common Area and payment of Common Area Operating Costs. The Business Association shall own the Common Areas and each owner within the Shopping Center shall be subject to certain declarations and restrictions to ensure coherent and consistent appearance of all buildings within the Shopping Center and consistent and coherent administration of the

Common Area and payment of Common Area Operating Costs. In the event of diverse ownership within the Shopping Center, Landlord and Tenant shall submit themselves to the authority of the Business Association to administer the Common Area Operating Costs in a manner consistent with the terms of this Lease.

- (d) This Section 5.02 shall govern all aspects of Tenant's obligation to pay Building Costs directly and to pay Common Area Operating Costs to Landlord under the Lease and this Section 5.02 shall control and supersede any prior agreements, written or otherwise, related to the same.

5.03 Definitions. For purposes of this Lease, "Building Costs" shall mean any and all expenses incurred in operating, managing, maintaining, and repairing the Building and the area immediately surrounding the Building up to the edge of the parking curb. The term Building Costs shall be construed broadly to include any cost related to or arising out of the Building and shall include, but not be limited to expenses related to repairs to the roof of the Building, repairs to the sidewalk immediately surrounding the Building, all utility lines that specifically and solely serve the Building, maintenance or repairs to the Building walls, Building exterior features, Building foundation.

For the purpose of this Lease, "Common Area Operating Costs" or "common area operating costs" shall mean any and all expenses incurred in operating, managing, maintaining, repairing, relocating, modifying, renovating and/or [replacing] the common facilities hereinafter defined, including without limitation the costs of maintaining detention ponds, irrigation sprinkler system, common utility lines and resurfacing or patching the parking areas and labor associated with line painting, common sidewalks and curbs, security and traffic control, public liability and umbrella insurance, gardening, watering and landscaping, lighting, seasonal decorations, storm drainage system maintenance, personal property taxes attributable to the Common Area, rental charges for machinery and equipment, maintenance of sanitary control, all costs for utilities to common areas, removal of snow, ice, drainage, trash (unless Tenant solely utilizes its own private trash service at Tenant's sole cost and expense), maintenance and repairs of all common/shared trash receptacle areas, costs to remedy and/or comply with governmental and/or environmental and hazardous waste matters, repair or installation of equipment for energy-saving or safety purposes, any costs associated with any promotion funds for the Shopping Center, depreciation on equipment and machinery used in maintenance, cost of personnel required to provide such services, management, administrative costs, and all costs and expenses associated with Landlord's obligation to repair and maintain the common areas, and such other items of cost and expense which are relatable to proper maintenance of the common areas. Landlord shall have the right to charge an additional management fee not to exceed market terms or hire a third-party management group on market terms to provide common area maintenance and management and such fees shall be included in the common area operating costs. "Common facilities" means all areas, space, equipment, and special services provided by Landlord for common or joint use and benefit of the occupants of the tracts shown on Exhibit 2, their employees, agents, servants, customers and invitees, including without limitation parking areas, access roads, driveways, Landlord maintained right-of-ways, retaining walls, landscaped and vacant areas, loading facilities, pedestrian malls, walkways, sidewalks, ramps, wash rooms, fountains, shelters, signs, security, lighting fixtures and equipment, cost of utility service, and the facilities appurtenant to each of the aforesaid, and any other facilities maintained for the benefit of the Shopping Center. Landlord shall have the right to modify the common facilities from time to time as deemed reasonable by Landlord. Snow and ice removal by Landlord shall be limited to minimum accumulation thresholds deemed standard by Landlord's snow removal contractor. If snow or ice removal is desired by Tenant during intermittent times when Landlord's snow removal contractor is between routes, Tenant shall have the sole responsibility to address Tenant's needs at no cost to Landlord.

5.04 Changes and Additions to Shopping Center. Notwithstanding anything set forth in this Lease to the contrary, but subject to the provisions of Section 4.04 Protected Area, Landlord reserves the right, without invalidating this Lease or modifying any provision thereof, at any time either before, during or after the initial construction thereof, once or more often, to make alterations, changes and additions (including additional stories) to any building in the Shopping Center or to construct free standing building(s) and/or kiosk(s) on or in the common area or the parking lots and/or to add additional land and buildings. Subject to the provisions of Section 4.04 Protected Area, Tenant shall have no rights or remedies against Landlord arising out of or related to Landlord's changes, alterations or additions (including additional stories) to any building or property in the Shopping Center or from the construction of free standing building(s) and/or kiosk(s) on or in the common area or the parking lot.

5.05 Shopping Center Renovations. Landlord, at its election, may renovate the Shopping Center during the Lease Term. The renovation may include renovating the exterior, painting, repairing, maintaining and otherwise altering and improving the appearance of the Shopping Center and any pylon or marquee signage.

ARTICLE VI: ALTERATIONS, LIENS AND SIGNS

6.01 Alterations. The requirements of this Section 6.01 shall apply to Tenant's Work as described in Section 1.06 and any alterations thereafter. Tenant shall not, without Landlord's prior written consent, either make or cause to be made any alterations, including additions and improvements, to the Leased Premises or to any exterior signs, shades or awnings. In the event Tenant desires to make alterations, Tenant shall first submit plans of the proposed alterations to Landlord for review. In the event Landlord has been provided all requested plans and documentation and does not respond to Tenant's request within fifteen (15) days of the same, such plans are deemed accepted by Landlord. Tenant shall not be permitted to begin work on the proposed alterations until Landlord provides consent in writing (or such consent is deemed given per this Section). Consent shall not be unreasonably withheld, conditioned or delayed by Landlord. Subject to the provisions of Section 6.04 below, any alterations consented to by Landlord shall be made at Tenant's sole expense. Tenant shall provide its own trash containers for construction debris; use service entrances to the Leased Premises, if any; conduct no core drillings during business hours; and disrupt other tenants as little as possible. Tenant shall secure any and all governmental permits, approvals or authorizations required in connection with any such work and shall hold Landlord harmless from any and all liability, costs, damages, expenses (including attorney's fees) and liens resulting therefrom. All alterations (expressly including all light fixtures and floor coverings, except trade fixtures, appliances and equipment that do not become a part of the Leased Premises,) shall immediately become the property of Landlord. At Landlord's request, Tenant shall utilize only contractors or subcontractors who traditionally and normally perform the work of the crafts involved in such work. Upon completion of any such work, Tenant shall provide Landlord with "as built" plans, copies of all construction contracts, and evidence of payment for all labor and materials, specifically including unconditional final lien waivers.

6.02 Tenant Shall Discharge All Liens. Tenant shall promptly pay its contractors and materialmen for all work done and performed by Tenant, so as to prevent the assertion or imposition of liens upon or against the Leased Premises, and shall, upon request provide Landlord with lien waivers. Should any such lien be asserted or filed, Tenant shall bond against or discharge the same within thirty (30) days after written request by Landlord. In the event Tenant fails to remove said lien within said thirty (30) days, Tenant shall be in default hereof and Landlord may, at its sole option, elect to satisfy and remove the lien by paying the full amount claimed or otherwise, without investigating the validity thereof, and Tenant shall pay Landlord upon demand the amount paid out by Landlord in Tenant's behalf, including Landlord's costs and expenses with interest. Landlord's election to discharge liens as provided hereunder shall not be construed to be a waiver or cure of Tenant's default hereunder.

6.03 Signs, Awnings and Canopies. Tenant will not, without Landlord's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed, place or suffer to be placed or maintained upon the roof or on any exterior door, wall or window of the Leased Premises, any sign, awning or canopy, or advertising matter or other thing of any kind, and will not without such consent place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Leased Premises. All signs, awnings, canopies, decorations, lettering, advertising matter or other thing so installed by Tenant shall at all times be maintained by Tenant, at its expense, in good condition and repair. If Tenant installs any new sign that does not meet Landlord's sign criteria as set forth in Exhibit "G", Landlord shall have the authority without liability to enter the Leased Premises, remove and store the subject sign and repair all damage caused by removal of the sign. All expenses Landlord incurs shall be immediately paid by Tenant as additional rent. Landlord reserves the right to remove Tenant's sign during any period when Landlord repairs, restores, constructs or renovates the Leased Premises or the building of which the Leased Premises are a part. In the event Landlord elects to ever allow freestanding tenant signage, Tenant shall also be represented on any such signage, monument, pylon or directional signs for the Shopping Center.

6.04 Landlord Contribution Toward Tenant Renovations. In the event that within two (2) years after the Date of this Lease as set forth in Section 1.01(a) above, Tenant substantially completes a major Renovation of the Leased Premises (hereinafter "Renovation" and defined as a comprehensive renovation or comprehensive update of the interior and/or exterior of the Leased Premises as one or more projects), Landlord shall reimburse Tenant for Tenant's actual out-of-pocket costs incurred in the Renovation in an amount not to exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00). Landlord's reimbursement obligation shall be within twenty (20) days after Tenant completes the any portion of the Renovation and delivers to Landlord reasonably satisfactory evidence of paid invoices, documents reasonably satisfactory to Landlord to support the expenses incurred, and all lien waivers from all contractors, subcontractors and material suppliers for all work through the date of the payment request. Any request for payment, (other than the final request) shall be in a minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000). In the event Landlord fails to make a reimbursement payment to Tenant within thirty (30) days after Tenant has satisfied all conditions for payment set forth herein, Tenant shall have the ability to deduct any unpaid amounts from the Minimum Rent together with a ten percent (10%) administrative fee on the balance of such unpaid amounts. In the event Tenant exercises the First Extension set forth in Section 1.01(i), and is not in Default under this Lease, Landlord will match dollar for dollar any amounts Tenant spends on additional Renovations up to a maximum reimbursement of One Hundred Fifty Thousand Dollars (\$150,000) by Landlord to Tenant. Such reimbursements shall be paid by Landlord to Tenant pursuant to the reimbursement request and timing procedures set forth in this Section above.

ARTICLE VII: MAINTENANCE OF LEASED PREMISES, SURRENDER AND RULES

7.01 Maintenance, Repair and Replacement by Tenant. Tenant shall, at its expense, at all times repair, maintain and replace (a) the interior of the Leased Premises, together with exterior entrances, all glass and all window moldings, (b) all fixtures, partitions, ceilings, floor coverings and utility lines in the Leased Premises, and all plumbing and sewage facilities within the Leased Premises including free flow up to utility owned sewer lines, and (c) all doors, door openers, equipment, machinery, appliances, signs and appurtenances thereof (including lighting, heating, air conditioning, and plumbing equipment and fixtures), in conformity with governmental regulations and all rules and regulations of the Board of Fire Underwriters, in good order, condition, maintenance and repair. If any item which Tenant is obligated to repair cannot be fully repaired, Tenant shall promptly replace such item, regardless of whether the benefit of such replacement extends beyond the Lease Term. Tenant shall make any structural, interior and exterior alterations and/or repairs to the Leased Premises required by any governmental entity or insurance carrier or arising from damage caused by Tenant, its employees, servants, agents, invitees, or customers. If Tenant be required to make any exterior, interior or structural alterations, additions or improvements in the Leased Premises, Tenant shall proceed with same at its own cost after first obtaining Landlord's written approval of the plans therefor and satisfaction of each of the conditions set forth in Section 6.01 hereof. Tenant shall use, at its cost and at intervals as Landlord shall reasonably require, a reputable service company to clean and replace air conditioning filters; or at Landlord's option, Landlord may contract for such services and include the charges therefor as a common area operating cost. If Tenant refuses or neglects to commence or complete repairs, maintenance or replacements promptly and adequately, Landlord may make or complete said repairs, maintenance or replacements and Tenant shall pay the cost thereof to Landlord upon demand.

7.02 Maintenance by Landlord. Landlord shall have no obligations of maintenance or repairs related to the Building. All costs associated with the Building shall be paid by the Tenant. Notwithstanding the preceding, if Tenant fails to perform maintenance that Landlord, in its reasonable discretion, believes is necessary for the Building, Landlord may, but is not required to, perform such maintenance and charge Tenant for the same.

7.03 Surrender of Premises. At the expiration of the tenancy hereby created, Tenant shall peaceably surrender the Leased Premises, including all alterations, additions, improvements, decorations and repairs made thereto (but excluding all trade fixtures, equipment, signs and other personal property installed by Tenant, provided that in no event shall Tenant remove any of the following materials or equipment without Landlord's prior written consent: any freestanding signs, any power wiring or power panels; lighting or lighting fixtures; wall coverings; drapes, blinds or other window coverings; carpets or other floor coverings; or other similar building operating equipment and decorations), broom clean and in good condition and repair, reasonable wear and tear excepted. Tenant shall remove all its property not required to be surrendered to Landlord before surrendering the Leased Premises as aforesaid and shall repair any damage to the Leased Premises caused thereby. Any personal property remaining in the Leased Premises at the expiration of the lease period shall be deemed abandoned by Tenant, and Landlord may claim the same and shall in no circumstances have any liability to Tenant therefor. Upon termination, Tenant shall also surrender all keys for the Leased Premises to Landlord and, if applicable, inform Landlord of any combinations of locks or safes in the Leased Premises. If the Leased Premises are not surrendered at the end of the Term as hereinabove set out, Tenant shall indemnify Landlord against loss or liability or cost, including but not limited to attorneys' fees, resulting from delay by Tenant in so surrendering the Leased Premises, including without limitation claims made by the succeeding tenant founded on such delay. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term of this Lease.

7.04 Rules and Regulations. Tenant agrees as follows:

(a) The delivery or shipping of goods, merchandise, supplies and fixtures to and from the Leased Premises shall be subject to such rules and regulations as in the reasonable judgment of Landlord are necessary for the proper operation of the Shopping Center.

(b) No loud speakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside the Leased Premises without the prior written consent of Landlord.

(c) Tenant shall not place or permit any obstructions or merchandise in the outside areas immediately adjoining the Leased Premises or other common facilities and shall not use such areas for business purposes other than for ingress and egress.

(d) Tenant and Tenant's employees shall park their cars only in those portions of the parking area designated for that purpose by Landlord.

(e) Tenant shall have full responsibility for protecting the Leased Premises and the property located therein from

theft and robbery.

(f) Tenant shall not knowingly permit on the Leased Premises any act or practice which is unlawful.

(g) Tenant and Tenant's employees and agents shall not solicit business in the parking or other common areas, nor shall Tenant distribute or place handbills or other advertising matter in or on automobiles parked in the parking areas or in other common areas.

(h) Tenant shall not conduct any auction, fire, bankruptcy sales, sidewalk sales or close out sales in the Leased Premises.

(i) Reserved.

(j) Tenant shall keep the Leased Premises orderly, neat, clean and free from rubbish and trash at all times and to permit no refuse to accumulate around the exterior of the Leased Premises. Tenant shall not burn any trash, rubbish or garbage in or about the Leased Premises. Trash shall be stored in a sanitary and inoffensive manner inside the Leased Premises or in screened areas approved by Landlord, and Tenant shall cause the same to be removed at reasonable intervals.

(k) Reserved

(l) To use or permit the use of the common facilities by others to whom Landlord may grant or may have granted such rights in such manner as Landlord may from time to time designate, including but not limited to truck and trailer sales and special promotional events.

(m) Tenant shall not place any directories in the common areas of the Leased Premises or the Shopping Center.

(n) Reserved.

(o) Landlord shall not be responsible for lost or stolen personal property, equipment money, or jewelry from the Leased Premises regardless of whether such loss occurs when the Leased Premises is locked against entry or not.

(p) The water and wash closets and other plumbing fixtures in the Leased Premises shall not be used for any purposes other than those for which they were constructed, and no sweepings, rubbish, rags or other substance shall be thrown therein. All damage resulting from any misuse of such fixtures shall be borne by Tenant who, or whose employees, agents, guests, invitees, customers, or licensees, shall have caused the same.

(q) Reserved.

(r) Landlord shall have the right to prohibit the use of the name of the Shopping Center or any other publicity by Tenant, which in Landlord's reasonable discretion, tends to impair the reputation of the Leased Premises or its desirability for the executive offices of Landlord or of other tenants; and, upon written notice from Landlord, Tenant shall refrain or discontinue such publicity. Notwithstanding the foregoing, Tenant may include the location of the restaurant in any advertising it engages.

(s) Unless Tenant is specifically permitted by this Lease to operate a restaurant, no cooking shall be done or permitted by the Tenant in the Leased Premises without the prior written consent of the Landlord. Consent shall be in Landlord's sole discretion. Tenant may, however, maintain standard office coffee machines and a microwave for the use of its employees; provided, however, under no circumstances shall Tenant cause or permit any unusual or objectionable noise or odor to be produced upon or emitted from the Leased Premises.

(t) Tenant, when closing the Leased Premises, shall see that all windows and exit doors from the Leased Premises are closed and securely locked. Tenant shall furnish Landlord with "after-hours" emergency telephone numbers for the use of Landlord in Landlord's sole discretion.

(u) Reserved.

(v) Movement in or out of the Leased Premises or Shopping Center of furniture or office equipment, or dispatch

or receipt by Tenant of any merchandise or materials which require use of elevators or stairways, or movement through building entrances or lobbies shall be restricted to hours reasonably designated by Landlord. All such movement shall be under supervision of Landlord and in the manner agreed between Tenant and Landlord by prearrangement before performance. Such prearrangement initiated by Tenant will include determination by Landlord, and is subject to Landlord's sole discretion, as to time, method, and routing of movement and as to limitations imposed for safety or other concerns which may prohibit any articles, equipment, or any other item from being brought into the Leased Premises. Tenant is to assume all risk as to damage to articles moved and injury to persons or public engaged or not engaged in such movement, including equipment, property, and personnel of Landlord if damaged or injured as a result of acts in connection with carrying out this service for Tenant, from time of entering property to completion of work; and Landlord shall not be liable for acts of any person engaged in, or any damage or loss to any said property or persons resulting from any act in connection with such service performed by Tenant, regardless of Landlord's negligence or willful misconduct.

(w) Tenant shall not install a telephone or satellite antenna outside the Leased Premises without Landlord's written consent. Consent shall be in Landlord's reasonable discretion. If Tenant is permitted to connect with any master antenna provided by Landlord, Tenant shall furnish and install any and all wiring and booster systems related to such connection and the operation within the Leased Premises of television receivers, and Tenant shall pay to Landlord such reasonable connection and/or subscription charges as Landlord may establish.

(x) Tenant shall not permit the sale of merchandise from vending machines, except vending machines installed for sales to Tenant's employees only.

(y) Tenant shall not permit the operation of coin or token-operated video games or machines of similar nature.

(z) Tenant shall at all times conduct its business and carry out the use described in Section 1.01(k), and use its commercially reasonable efforts to control its agents, employees, and invitees, in a manner that will not breach the covenant of quiet enjoyment privileges of any other tenants and/or occupants of the Shopping Center.

Landlord reserves the right from time to time to reasonably amend or supplement the foregoing rules and regulations and to adopt and promulgate reasonable additional reasonable rules and regulations applicable to the Shopping Center. Notice of such rules and regulations and amendments and supplements thereto, if any, shall be given to Tenant in writing. Tenant agrees to comply with all such reasonable rules and regulations, and Tenant shall be responsible for the observance of these rules and regulations by Tenant's employees, agents and invitees. Landlord, at its option, may waive certain rules with respect to individual tenants, provided, that Landlord does not act in a manner that is arbitrary or unreasonable in such waiver of enforcement.

7.05 Tenant's Use and Parking. Tenant, and its employees and customers, and when duly authorized pursuant to the provisions of this Lease, shall have the non-exclusive right to use the Common Area as constituted from time to time and such use is to be in common with the Landlord, other tenants in the Shopping Center and other persons permitted by Landlord to use the same, and subject to such reasonable rules and regulations governing use as Landlord may from time to time prescribe, including the designation of specific areas within the Shopping Center or in reasonable proximity thereto in which automobiles owned by Tenant, its employees, subtenants, licensees and concessionaires shall be parked. Landlord may from time to time substitute for any parking area other areas reasonably acceptable to the Tenants of the Shopping Center, which areas may be elevated, surface or underground. If Tenant or its employees fail to park their cars in designated parking areas, then Landlord may charge Tenant twenty-five dollars (\$25.00) per day for each day or partial day per car parked in any areas other than those designated; provided, however, that Landlord shall give prompt notice of any such violations (i.e. Landlord may not aggregate violations without providing to Tenant notice of such violations). Subject to Landlord's reasonable approval, Tenant may engage a valet parking program for Tenant's customers at Tenant's sole cost and expense.

7.06 HVAC Maintenance. All HVAC maintenance and replacement thereof shall be at Tenant's sole cost and expense. Tenant shall perform regular maintenance on the HVAC and quarterly inspections. Inspection reports will be provided to Landlord. Landlord reserves the right to contract maintenance work if not completed by Tenant within thirty (30) days of notice by Landlord and Tenant shall be responsible for all costs and expenses associated with the same.

7.07 Trash Pick-Up. All trash shall be contained within the Leased Premises or in a container furnished by Tenant at Tenant's sole expense, in a location approved by Landlord. Tenant shall bear all cost of trash pick-ups and if Landlord elects to furnish the container, all cost of the container, as may be applicable to the Leased Premises and shall pay such sums the first of each month, which sum shall be separate and distinct from Common Area Maintenance charges. Tenant shall keep said Leased Premises free from filth, danger of fire or any nuisance, and shall comply with all city ordinances, state laws and regulations applicable thereto, and protect and defend Landlord from all charges for such. Tenant shall be required to contract for trash removal with the contractor selected by

Landlord. In the event Tenant's trash services are not being performed in accordance with the terms of this Lease, Landlord reserves the right to install and cause tenants to use trash containers in common with other tenants and in the event Landlord so chooses, the expense of such trash containers shall be pro-rated among tenants as part of common area expenses, subject to the CAM Cap.

ARTICLE VIII: INSURANCE AND INDEMNITY

8.01 Casualty Insurance. Tenant shall at all times keep and maintain in force and effect its own insurance coverage, protecting it from loss, damage or injury by whatever means, with respect to all furniture, fixtures, machinery, equipment, stock in trade, and all other items kept, used, or maintained by Tenant in, on, or about the Leased Premises.

8.02 Waiver of Subrogation. Each of the parties hereto does hereby release the other party hereto from all liability for damage due to any act or neglect of the other party (except as hereinafter provided) occasioned to property owned by said parties which is or might be incident to or the result of a fire or any other casualty against loss from which either of the parties is now carrying or hereafter may carry insurance; provided, however, that the releases herein contained shall not apply to any loss or damage occasioned by the willful acts of either of the parties hereto. The parties further covenant that any insurance obtained on their respective properties shall contain an appropriate provision whereby the insurance company or companies consent(s) to the mutual release of liability contained in this paragraph.

8.03 Increase in Fire Insurance Premiums. Tenant agrees not to keep, use, sell or offer for sale, in or upon the Leased Premises, any articles or goods which may be prohibited by the standard form of fire insurance policy. Tenant agrees to pay upon demand any increase in premium for fire and extended coverage insurance and all other perils that may be charged during the Term of this Lease on the amount of such insurance which may be carried by Landlord on said premises, or the building of which the same are a part, resulting from the use of the Leased Premises by Tenant, whether or not Landlord has consented to such use.

8.04 Liability Insurance. Tenant shall, during the entire Term hereof, keep in full force and effect a policy of public liability and property damage insurance with respect to the Leased Premises and the business operated by Tenant and permitted subtenants of Tenant in the Leased Premises in which the limits of coverage shall not be less than \$2,000,000 per occurrence / \$4,000,000 annual aggregate for bodily and/or personal injuries and in which the coverage for property damage liability shall not be less than \$2,000,000 or a combined single limit of \$4,000,000.

8.05 Indemnification of Landlord. Tenant will protect, indemnify, defend and save harmless Landlord, its agents and servants, from and against any and all claims, actions, damages, suits, judgments, decrees, orders, liability and expense (including costs and attorney fees) in connection with loss of life, bodily injury, personal injury and/or damage to Property of whatever kind or character, howsoever caused, arising from or out of any occurrence in, upon or about the Leased Premises, or in the occupancy or use by Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, sublessees or concessionaires, notwithstanding any possible negligence (whether sole, concurrent or otherwise) on the part of Landlord, its agents, contractors, employees or servants.

8.06 Plate Glass Insurance. Tenant shall keep and maintain in force during the Term hereof, plate glass insurance upon windows and doors in the Leased Premises.

8.07 Liquor Liability Insurance. In the event that at any time during the Term of this Lease or any extension or renewal thereof, beer, wines or other alcoholic liquors or beverages are sold or given away upon or from the Leased Premises (it being understood and agreed, however, that the foregoing provision shall not authorize the use of the Leased Premises for such purposes without the express consent of Landlord being set forth otherwise in this Lease), Tenant shall, at its sole expense, obtain, maintain and keep in force, adequate liquor liability insurance protecting both Tenant and Landlord in connection therewith within policy limits acceptable to Landlord. In the event Tenant shall fail to procure such insurance where applicable, Landlord may procure the same at Tenant's expense. In the event such insurance is not carried, sales of the foregoing products shall be suspended until such coverage is in force.

8.08 Business Interruption Insurance. [Tenant shall, during the entire Term hereof, keep in full force and effect a policy of business interruption insurance in an amount satisfactory to Landlord, which amount shall be Landlord's estimate of the minimum rent, percentage rent and additional rent to be paid by Tenant to Landlord pursuant to Article II hereof for a period of twelve (12) months.

8.09 Insurance Policy. The insurance required in this Article VIII shall be in form approved by Landlord, in its reasonable discretion, which insurance shall name Landlord and Tenant as the insured, and shall contain a clause that the insurer will not cancel, materially modify or fail to renew the insurance without first giving Landlord thirty (30) days' prior written notice (or ten (10) days'

notice in the event of cancellation due to non-payment). The insurance shall be in an insurance company approved by Landlord, authorized to do business in the state and have a policyholder's rating of no less than "A" in the most current edition of Best's Insurance Reports. A copy of the policy or a certificate of insurance shall be delivered to Landlord. The policy shall insure Tenant's performance of the indemnity provisions of Section 8.05 hereof.

ARTICLE IX: UTILITIES

9.01 Utility Charges. Tenant shall be solely responsible for and promptly pay all charges for heat, water, gas, sewer, electricity or any other utility or service used on or attributable to the Leased Premises. Landlord may elect to furnish any one or more of the above utility services, in which event Tenant shall accept and use such services as furnished by Landlord. Landlord's charges therefor shall not exceed the rates charged by local public utility companies to retail customers for the same or similar services. In no event shall Landlord be liable for an interruption or failure in the supply of any such utilities or services supplied by Landlord because of necessary repairs or improvements or for any cause beyond Landlord's control.

ARTICLE X: PRIORITY OF LEASE

10.01 Subordination. Landlord shall have the right to transfer, mortgage, assign, pledge, and convey in whole or in part the Leased Premises, the Shopping Center, this Lease and all rights of Landlord existing and to exist, and rents and amounts payable to it under the provisions hereof; and nothing herein contained shall limit or restrict any such right, and subject to Landlord obtaining an agreement of non-disturbance in form reasonably acceptable to Tenant, the rights of Tenant under this Lease shall be subject and subordinate to all instruments executed and to be executed in connection with the exercise of any such right of Landlord, including, but not limited to, the lien of any mortgage, deed of trust or security agreement now or hereafter placed upon the Leased Premises and the Shopping Center and to all renewals, modifications, consolidations, participations, replacements and extensions thereof. Said subordination shall not require the agreement or consent of Tenant, but Tenant covenants and agrees, if requested, to execute and deliver upon demand such further instruments subordinating this Lease to the lien of any such mortgage, deed of trust or security agreement as shall be requested by Landlord and/or any mortgage, proposed mortgagee or holder of any security agreement, and Tenant hereby irrevocably appoints Landlord as its attorney-in-fact to execute and deliver any such instrument for and in the name of Tenant, provided, however, that such subordination shall be subject to an agreement of non-disturbance in form reasonably acceptable to Tenant.

Notwithstanding anything set out in this Lease to the contrary, in the event the holder of any mortgage or deed of trust elects to have this Lease superior to its mortgage or deed of trust, then, upon Tenant being notified to that effect by such encumbrance holder, this Lease shall be deemed prior to the lien of said mortgage or deed of trust, whether this Lease is adopted prior to or subsequent to the date of said mortgage or deed of trust.

10.02 Notice to Landlord of Default. In the event of any act or omission or default by Landlord under this Lease, Tenant will not make such claim or exercise such right until it has given written notice of such act or omission or default to Landlord. Landlord shall have sixty (60) days following the giving of such notice, during which Landlord may commence diligently to remedy such act or omission or to cause the same to be remedied. In the event the written notice specifically identifies an act or omission or default by Landlord under this Lease involving a material and serious risk to public health or safety, Landlord will commence diligently to remedy such issue as soon as reasonably practical. Nothing herein contained shall be deemed to create any rights in Tenant not specifically granted in this Lease or under applicable provisions of law.

10.03 Estoppel Certificate. Tenant agrees, at any time, and from time to time, upon not less than fourteen(14) days' prior notice by Landlord, to execute, acknowledge and deliver to Landlord, a statement in writing addressed to Landlord or other party designated by Landlord certifying that this Lease is 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), stating the actual commencement and expiration dates of the Lease, stating the dates to which rent, and other charges, if any, have been paid that the Leased Premises have been completed on or before the date of such certificate and that all conditions precedent to the Lease taking effect have been carried out, that Tenant has accepted possession, that the Lease Term has commenced, whether Tenant is occupying the Leased Premises and is open for business, and stating whether or not there exists any known default by either party in the performance of any covenant, agreement, term, provision or condition contained in this Lease, and, if so, specifying each such default of which the signer may have knowledge and the claims or offsets, if any, claimed by Tenant; it being intended that any such statement delivered pursuant hereto may be relied upon by Landlord or a purchaser of Landlord's interest and by any mortgagee or prospective mortgagee of any mortgage affecting the Leased Premises or the Shopping Center, but, except in the case of intentional material misrepresentations or material fraud by Tenant, shall not be the basis of any monetary liability of Tenant to any such party. If Tenant does not deliver such statement to Landlord within such fourteen (14) day

period, Landlord and any prospective purchase or encumbrancer may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been cancelled or terminated except as otherwise represented by Landlord; (iii) that not more than one (1) month's minimum rent or other charges have been paid in advance; and (iv) that Landlord is not in default under the Lease. In such event, Tenant shall be estopped from denying the truth of such facts. Tenant shall also, on ten (10) days' written notice, provide an agreement in favor of and in the form customarily used by such encumbrance holder, by the terms of which Tenant will agree to give prompt written notice to any such encumbrance holder in the event of any casualty damage to the Leased Premises or in the event of any default on the part of Landlord under this Lease, and will agree to allow such encumbrance holder a reasonable length of time after notice to cure or cause the curing of such default before exercising Tenant's right of self-help under this Lease, if any, or terminating or declaring a default under this Lease.

10.04 Attornment. At the option of the holder of any mortgage affecting the Leased Premises, Tenant agrees that no foreclosure of a mortgage affecting the Leased Premises, nor the institution of any suit, action, summary or other proceeding against Landlord herein, or any successor Landlord, or any foreclosure proceeding brought by the holder of any such mortgage to recover possession of such property, shall by operation of law or otherwise result in cancellation or termination of this Lease or the obligations of Tenant hereunder, and upon the request of the holder of any such mortgage, Tenant covenants and agrees to execute an instrument in writing satisfactory to such party or parties or to the purchaser of the Leased Premises in foreclosure whereby Tenant attorns to such successor in interest.

ARTICLE XI: ASSIGNMENT AND SUBLETTING

11.01 Consent Required. Tenant shall not voluntarily or involuntarily assign this Lease in whole or in part, nor sublet all or any part of the Leased Premises without following the procedures detailed herein and obtaining the prior written consent of Landlord in each instance, which consent may be granted or withheld in Landlord's sole discretion. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent in any subsequent assignment or subletting. The foregoing shall be construed to include a prohibition against any voluntary or involuntary assignment or subletting arising by operation of law. As a condition to any assignment of this Lease by Tenant which is consented to by Landlord, the assignee thereof shall be required to execute and deliver to Landlord an agreement in recordable form whereby such assignee assumes and agrees with Landlord to discharge all obligations of Tenant under this Lease.

Notwithstanding anything in this Lease to the contrary, Tenant may assign the Lease without consent or approval by Landlord to an assignee who demonstrates equal or stronger financial condition as Tenant and is otherwise a) Tenant's parent corporation; b) an affiliate corporation of Tenant's parent; or c) a public or private entity that acquires Tenant and the majority of other restaurants units designed by Tenant as its full service steak and seafood restaurants owned by Tenant's parent corporation in the same transaction.

Landlord has retained the prior right of consent to proposed subleasing or assignment for several substantial business and equity reasons which were considerations for this Lease, including without limitation: the fact that the success and continuation of the Shopping Center is directly related to the use and operation of each particular store in the concept of the overall and integrated merchandising scheme of the Shopping Center; the obligations of Landlord owed to mortgagees, major tenants, other nearby shopping centers and the public, if applicable; the direct economic benefits to be derived to Landlord in the form of percentage rent based upon gross sales; and the reputation and expertise of Tenant. In evaluating and determining whether or not to consent to a requested sublease or assignment of the Lease by Tenant, Landlord must be satisfied in its sole discretion that the criteria set forth above must continue to be satisfied, and Landlord must receive adequate assurance of the financial condition and stability of the proposed assignee ("transferee"), the reputation and expertise of the transferee, the ability and likelihood of payment of all rents and other amounts due hereunder and such other assurances as Landlord requires including those assurances that Landlord has the right to receive in accordance with bankruptcy laws.

Tenant shall pay to Landlord a One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) processing fee with each and every proposed assignment or sublease which requires Landlord's consent. Such processing fee shall be due prior to Landlord reviewing any proposed assignment or sublease and shall be nonrefundable regardless of whether Landlord approved such assignment or sublease or whether or not such assignment or sublease is ultimately fully executed.

In the event that Tenant receives a bona fide written offer from an unrelated third party for the sublease or assignment of the Leased Premises that Tenant desires to accept and which requires Landlord's consent, Tenant shall forthwith notify Landlord in writing attaching a copy of said offer, of Tenant's desire to sublet or assign this Lease upon the terms of said offer, whereupon Landlord shall have thirty (30) days to accept or reject said assignment or sublease. Tenant agrees to reimburse Landlord for attorney's fees incurred

by Landlord in connection with the processing and documentation of any assignment, subletting, change of ownership or other transfer under this Section for which Landlord's consent is required or sought; it being agreed that Landlord shall not be required to take any action thereon until Tenant has paid such amount.

If Tenant assigns or sublets the Leased Premises, the minimum rent shall thereafter be the rent specified in Section 2.01 plus any percentage rent paid during the preceding twelve (12) months. At Landlord's request, Tenant shall assign to Landlord the right to collect rent (including any additional rent) from any subtenant of Tenant and to apply such proceeds to Tenant's obligations under this Lease.

Landlord shall have the right to sell, convey, transfer or assign all or any part of its interest in the Shopping Center and the buildings of which the Leased Premises are a part or its interest in this Lease, and Tenant agrees to attorn to Landlord's purchaser or assignee. All covenants and obligations of Landlord under this Lease shall cease upon the execution of such conveyance, transfer or assignment, but such covenants and obligations shall run with the Land and shall be binding upon the subsequent owner or owners thereof or of this Lease.

Upon consent by Landlord to any assignment by Tenant, Tenant and Guarantor shall be released from any ongoing obligations under this Lease.

ARTICLE XII:
WASTE, GOVERNMENTAL AND INSURANCE REQUIREMENTS AND HAZARDOUS SUBSTANCES

12.01 Waste or Nuisance. Tenant shall not commit or suffer to be committed any waste upon the Leased Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant in the building in which the Leased Premises may be located or in the Shopping Center, or which may disturb the quiet enjoyment of occupants of adjoining properties.

12.02 Governmental and Insurance Requirements. Tenant shall, at its sole cost and expense, comply with all of the requirements of any insurance carrier for the Shopping Center and of all county, municipal, state, federal and other applicable governmental authorities, now in force or which may hereafter be in force.

12.03 Hazardous Substances and Environmental Compliance. Tenant covenants and warrants that Tenant, Tenant's Work and any alterations thereto and Tenant's use of Leased Premises will at all time comply with and conform to all laws, statutes, ordinances, rules and regulations of any governmental, quasi-governmental or regulatory authorities ("Laws") which relate to the transportation, storage, placement, handling, treatment, discharge, generation, production or disposal (collectively "Treatment") of any waste, petroleum product, waste products, environmental hazard, radioactive waste, polychlorinated biphenyl, asbestos, hazardous materials of any kind, and any substance which is regulated by any law, statute ordinance, rule or regulation (collectively "Waste"). Tenant further covenants and warrants that it will not engage in or permit any person or entity to engage in any Treatment of any Waste on or which affects the Leased Premises and will not allow any waste on the Leased Premises or Shopping Center.

Immediately upon receipt of any Notice (as hereinafter defined) from any person or entity, Tenant shall deliver to Landlord a true, correct and complete copy of any written Notice. "Notice" shall mean any note, notice or report of any suit, proceeding, investigation, order, consent order, injunction, writ, award or action related to or affecting or indicating the Treatment of any Waste in or affecting the Leased Premises.

Tenant hereby agrees it will indemnify, defend, save and hold harmless Landlord and Landlord's officers, directors, shareholders, employees, agents, partners, and their respective heirs, successors and assigns (collectively "Indemnified Parties") against and from, and to reimburse the Indemnified Parties with respect to, any and all damages, claims, liabilities, loss, costs and expense (including, without limitation, all attorneys' fees and expenses, court costs, administrative costs and costs of appeals), incurred by or asserted against the Indemnified Parties by reason of or arising out of: (a) the breach of any representation or undertaking of Tenant under this Section 12.03; or (b) arising out of the Treatment of any Waste by Tenant or any licensee, concessionaire, manager or other party occupying or using the Leased Premises; or (c) the presence of any Waste at the Leased Premises first introduced thereon or therein after the date hereof and not introduced by Landlord or its agents, contractors or invitees or another tenant of the Shopping Center. This provision will survive termination of the Lease.

Landlord is given the right, but not the obligation, to inspect and monitor the Leased Premises and Tenant's use of the Leased Premises in order to confirm Tenant's compliance with the terms of this Section 12.03 and the representations set forth in this Section 12.03. In the event Landlord has a good faith basis to believe Tenant has violated this Section 12.03, Landlord may require that Tenant

deliver to Landlord concurrent with Tenant's vacating the Leased Premises upon the expiration of this Lease, or any earlier vacation of the Leased Premises by Tenant, at Tenant's expense, a certified statement by licensed engineers satisfactory to Landlord, in form and substance satisfactory to Landlord, stating that Tenant, Tenant's Work and any alterations thereto and Tenant's use of the Leased Premises complied and conformed to all Laws which relate to the Treatment of any Waste in or affecting the Leased Premises.

Tenant agrees to deliver upon request from Landlord estoppel certificates to Landlord expressly stipulating whether Tenant is engaged in or has engaged in the Treatment of any Waste in or affecting the Leased Premises, and whether Tenant has caused any spill, contamination, discharge, leakage, release or escape of any Waste in or affecting the Leased Premises, whether sudden or gradual, accidental or anticipated, or any other nature at or affecting the Leased Premises and whether, to the best of Tenant's knowledge, such an occurrence has otherwise occurred at or affecting the Leased Premises.

ARTICLE XIII: PROMOTION FUND

13.01 Promotion Fund. Landlord or the Arbor Business Association or other entity designated by Landlord may establish an Advertising, Marketing and Promotional Program (hereinafter referred to as the "Program") to furnish and maintain advertising and sales promotions which will benefit the Shopping Center. The Promotion Fund shall be used by Landlord to pay all costs and expenses associated with the formulation and carrying out of an ongoing Program for the promotion of the Shopping Center, which Program may include, without limitation, special events, shows, displays, signs, seasonal events, institutional advertising for the Shopping Center, promotional material to be distributed within the Shopping Center, and other activities within the Shopping Center designed to attract customers. The staff and any consultants hired by Landlord to direct and perform the activities of the Program shall be under the direction and supervision of Landlord. Landlord has the exclusive right to review and approve of all proposed activities and acts of the Program and, in its sole discretion, may approve, disapprove and/or establish its own conditions for the Program. Tenant agrees to pay monthly, in advance, the sum set forth in Section 1.01(q) as its estimated share of the Promotion Fund. Landlord shall supply Tenant with a statement covering all costs and expenditures as enumerated in this section and a determination of Tenant's share. Tenant shall pay to Landlord its share of the cost of the Program as the same will be billed by Landlord from time to time. In the event the amount paid by Tenant shall be less than its share, the same shall be paid within ten (10) days after notice of such determination, or in the alternative, any payment made by Tenant in excess of its share of the sum, shall be credited to the next due from Tenant. Said statement shall also contain a determination by Landlord of the monthly sum to be paid by Tenant during the succeeding months, which determination shall be based in part on the statement of expense for the preceding period modified by any known increases in the cost of the Program. Upon request of Landlord, Tenant shall submit to Landlord on a calendar quarterly basis its completed Promotion Report, which will be supplied by Landlord and will include sale results and other information necessary from Tenant in determining the Program's effectiveness.

ARTICLE XIV: DESTRUCTION OF LEASED PREMISES

14.01 Partial Destruction. In the event of the partial destruction of the building or improvements located on the Leased Premises by fire or any other casualty, Landlord shall, at Landlord's option, restore or repair said building and improvements with reasonable diligence. Landlord shall expend such sums as required to repair or restore improvements to the condition they were in immediately prior to the date of the destruction, but only to the extent that the sums expended in repair of the Leased Premises do not exceed Landlord's insurance proceeds. A just and proportionate part of the rent payable by Tenant to the extent that such damage or destruction renders the Leased Premises untenable shall abate from the date of such damage or destruction until the Leased Premises are repaired or restored.

14.02 Substantial Destruction. If the Leased Premises shall be so damaged by fire or other casualty or happening as to be substantially destroyed, then Landlord shall have the option to terminate this Lease by giving Tenant written notice within thirty (30) days after such destruction, and any unearned rent shall be apportioned and returned to Tenant. If Landlord does not elect to cancel this Lease as aforesaid, then the same shall remain in full force and effect and Landlord shall proceed with all reasonable diligence to repair and replace the Leased Premises to the condition they were in prior to the date of such destruction, but only to the extent that the sums expended in repair of the Leased Premises do not exceed Landlord's insurance proceeds. During the time the Leased Premises are so destroyed and totally untenable, the rent shall be abated.

14.03 Partial Destruction of Shopping Center. INTENTIONALLY DELETED.

ARTICLE XV: EMINENT DOMAIN

15.01 Condemnation. In the event of any condemnation or conveyance in lieu thereof of the Leased Premises or the Shopping Center, or both, whether whole or partial, Landlord may terminate this Lease, and in any event, Tenant shall have no claim against Landlord or the condemning authority for the value of the unexpired Term, and Tenant shall not be entitled to any part of the compensation or award, whether paid as compensation for diminution in value to the leasehold or to the fee of the Leased Premises, and Landlord shall receive the full amount thereof, Tenant hereby waiving any right to any part thereof and assigning to Landlord its interest therein; provided, however, to the extent the amount recoverable by Landlord, as hereinabove set forth, is not diminished thereby, Tenant shall have the right to claim and recover from the condemning authority (but not from Landlord) such compensation as may be separately awarded to Tenant in Tenant's own name and right on account of all damage to Tenant's business by reason of the condemnation and any cost which Tenant may incur in removing Tenant's property from the Leased Premises. Provided, further, Tenant's rights to recover under this paragraph shall be subordinate to the rights of Landlord's first mortgagee.

ARTICLE XVI: DEFAULT OF TENANT

16.01 Default. The following shall constitute an "Event of Default" under this Lease:

(a) failure of Tenant to make, within five (5) days after the date when due, any payment of rent, percentage rent, additional rent or other charge payable by Tenant hereunder or to timely discharge any other monetary obligation (it being understood that Tenant's obligation to pay any rental herein is an independent covenant and that Tenant will pay such rental without offset or deduction).

(b) Tenant's failure to perform any other of the terms, conditions or covenants of this Lease to be observed or performed by Tenant for more than fourteen (14) days after written notice thereof.

(c) if Tenant shall become bankrupt or insolvent, or file or have filed against it any bankruptcy proceedings, or take or have taken against it in any court pursuant to any statute, either of the United States or of any state, a petition of bankruptcy or insolvency, or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, or if Tenant makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement.

(d) if Tenant shall abandon the Leased Premises (which for avoidance of doubt does not include a simple cessation of business which is permitted herein), or suffer this Lease to be taken under any writ of execution.

(e) the material falsification by Tenant or any agent of Tenant of any report or statement required to be furnished to Landlord pursuant to the terms of this Lease.

If any Event of Default occurs, Landlord, besides all such other rights or remedies it may have under this Lease or in law or in equity, shall have the immediate right to enter the Leased Premises and take possession thereof and of all permanent improvements thereon and may remove all persons and property from the Leased Premises by force, summary action, or otherwise, and such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant, all without service of notice or resort to legal process, and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. Tenant agrees that Tenant shall have no further claim under this Lease and shall quit and deliver up the possession of the Leased Premises, including permanent improvements to the Leased Premises, when this Lease terminates by limitation or in any other manner provided for herein.

16.02 Remedies. If an Event of Default occurs, Landlord may elect to reenter, as herein provided, or take possession pursuant to legal proceedings or pursuant to any notice provided for herein, and it may either terminate this Lease, or it may from time to time without terminating this Lease make such alterations and repairs as may be necessary in order to relet the Leased Premises or any part thereof for such term or terms (which may be for a term extending beyond the Term of this Lease) and at such rental or rentals and upon such other terms and conditions as Landlord, in its sole discretion, may deem advisable. Upon each reletting all rentals received by Landlord from such reletting shall be applied first to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorneys' fees, and of costs of such alterations and repairs; third, to the payment of the most current rent owed at that time; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder from Tenant. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant shall be liable for the payment of 110% of such deficiency to Landlord. Such deficiency shall be calculated and become payable monthly.

No such re-entry or the taking of possession of the Leased Premises by Landlord shall be construed as an election on its part to terminate this Lease or to accept a surrender thereof unless a written notice of such intention be given to Tenant.

Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach. Should Landlord at any time terminate this Lease for any Event of Default, in addition to any other remedies it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost and attempts of recovering the Leased Premises, and the worth at the time of such termination of the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then-reasonable rental value of the Leased Premises for the remainder of the stated Term, all of which amounts shall be immediately due and payable from Tenant to Landlord. In determining the rent which would be payable by Tenant hereunder subsequent to default, the annual rent for each year of the unexpired Term shall be equal to the average annual minimum and percentage rents paid by Tenant from the commencement of the Term to the time of default, or during the preceding three (3) full calendar years, whichever period is shorter. Any reletting shall be done in such a manner as Landlord may deem proper, and if Tenant believes Landlord's efforts are not sufficient, Tenant shall so notify Landlord in writing and shall specify in detail such additional action Landlord should take. Unless such notice is given, Landlord's efforts to relet shall be deemed to be adequate.

Tenant agrees that this Lease is a lease of "real property in a shopping center" and that a debtor in possession and/or trustee in bankruptcy acting pursuant to the provisions of the revised bankruptcy code, may assume this Lease only if, in addition to such other conditions of this Lease and of applicable law, said debtor in possession/trustee shall provide Landlord with such written assurances of future performance as are acceptable to Landlord. Any closing of Tenant's business, change in product or service mix, alteration in the size of the Leased Premises, change in advertising program, change in method of operation or change of Tenant's trade name by said debtor in possession/trustee shall be deemed to be a material disruption in the tenant mix and balance of the Shopping Center.

Landlord shall have at all times a valid lien for all rentals and other sums of money becoming due hereunder from Tenant, upon all fixtures and trade fixtures of Tenant situated on the Leased Premises, and such property shall not be removed therefrom without the consent of Landlord until all arrearages in rent as well as any and all other sums of money then due to Landlord hereunder shall first have been paid and discharged. Upon the occurrence of any Event of Default by Tenant, Landlord may, in addition to any other remedies provided herein or by law or equity, enter upon the Leased Premises and take possession of any and all goods, wares, equipment, fixtures, furniture and other personal property of Tenant situated on the Leased Premises without liability for trespass or conversion, and sell the same with or without notice at public or private sale, with or without having such property at the sale, at which Landlord or its assigns may purchase, and apply the proceeds thereof less any and all expenses connected with the taking of possession and sale of the property, as a credit against any sums due by Tenant to Landlord. Any surplus shall be paid to Tenant, and Tenant agrees to pay any deficiency forthwith. Alternatively, the lien hereby granted may be foreclosed in the manner and form provided by law for foreclosure of security interest or in any other form provided by law. Any statutory lien for rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereto. Tenant will execute upon Landlord's request a financing statement and security agreement evidencing Landlord's security interest in Tenant's personal property and warrants to Landlord that there are no prior liens or security interests on said personal properties.

In addition to other remedies available under this Lease, in the event of an occurrence of an Event of Default or, in the event of a threatened breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event Tenant is evicted or dispossessed for any cause, or in the event Landlord obtains possession of the Leased Premises. No receipt of monies by Landlord from or for the account of Tenant or from anyone in possession or occupancy of the Leased Premises after the termination in any way of this Lease or after the giving of any notice of termination shall reinstate, continue or extend the Term of this Lease or affect any notice given to Tenant prior to the receipt of such money; it being agreed that after the service of notice of termination or commencement of a suit, or after final judgment for possession of the Leased Premises, Landlord may receive and collect any rent or other amounts due Landlord and such payment shall not in any respect reinstate this Lease and shall not waive, affect or impair said notice, said suit or said judgment without the express written consent of Landlord. No delay or omission of Landlord to exercise any right or remedy under this Lease, or in law or in equity shall be construed as a waiver of any such right or remedy of any Event of Default.

16.03 Legal Expenses. If suit shall be brought or claim shall be made (whether or not suit is commenced or judgment entered) for recovery of possession of the Leased Premises, and/or the recovery of rent or any other amount due under provisions of this Lease, or because of the breach of any other covenant herein contained, and the breach shall be established, the Tenant shall pay to the Landlord, in addition to all other sums and relief available to Landlord, all expenses incurred therefor, including reasonable attorneys' fees, regardless of whether Tenant is the prevailing party.

16.04 Failure to Pay; Interest. If Tenant at any time shall fail to pay any taxes, assessments or liens, provide insurance or perform any act required by this Lease to be made or performed by it, or fail to pay any charge payable by Tenant or to timely discharge any other monetary obligation of Tenant required by this Lease, Landlord, without waiving or releasing Tenant from any obligation or default under this Lease, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Tenant. All sums so paid by Landlord and all costs and expenses so incurred shall accrue interest at a rate equal to the lesser of one and one-quarter percent (1.25%) per month or the maximum rate permitted by law, from the date of payment or incurring thereof by Landlord and shall constitute additional rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord upon demand.

ARTICLE XVII: ACCESS BY LANDLORD

17.01 Right of Entry. Landlord or Landlord's agents shall have the right to enter the Leased Premises at all reasonable times to examine the same and to show it to purchasers and to make such repairs, alterations, improvements or additions as Landlord may deem necessary or desirable, and Landlord shall be allowed to take all material into and upon the Leased Premises that may be required therefor without the same constituting an eviction of Tenant in whole or in part. During the three (3) months prior to the expiration of the Term of this Lease or any renewal term, Landlord may exhibit the Leased Premises to prospective tenants or purchasers and place upon the Leased Premises the usual signage for space rental provided that Landlord coordinates with Tenant any such showings during Tenant's non-business hours. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever for the care, maintenance or repair of the building or any part thereof, except as otherwise herein specifically provided.

17.02 Excavation. If an excavation shall be made upon land adjacent to the Leased Premises, or shall be authorized to be made, Tenant shall afford license to the person causing or authorized to cause such excavation to enter upon the Leased Premises for the purpose of doing such work as Landlord shall deem necessary to preserve the wall of the building of which the Leased Premises form a part from injury or damage and to support the same by property foundation.

ARTICLE XVIII: TENANT'S PROPERTY

18.01 Taxes on Leasehold. Tenant shall be responsible for and shall pay before delinquency all municipal, county or state taxes assessed during the Term of this Lease against any leasehold interest or personal property of any kind owned by or placed in, upon or about the Leased Premises by Tenant.

18.02 Loss and Damage. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam gas, electricity, water, rain or snow, or leaks from any part of the Leased Premises, or from the pipes, appliances or plumbing works, or from the roof, street or subsurface, or from any other place, or by dampness or by any other cause of whatsoever nature, and whether originating in the Leased Premises or elsewhere. All property of Tenant kept or stored on the Leased Premises shall be so kept or stored at the risk of Tenant only, and Tenant hereby holds Landlord harmless from any claims arising out of damage to the same, including subrogation claims by Tenant's insurance carriers, a waiver of which shall be obtained in advance by Tenant.

18.03 Notice by Tenant. Tenant shall give immediate notice to Landlord in case of fire, accident, damage or defects in the Leased Premises or in the building of which the Leased Premises are a part. The term "fire" as used in this section shall not include fire utilized for cooking or outdoor fire pits or otherwise used by Tenant in its ordinary course of business which does not otherwise cause any damage to property or the Building and does not cause injury to persons.

ARTICLE XIX: HOLDING OVER; SUCCESSORS

19.01 Holding Over. Any holding over after the expiration of the Term hereof, with or without the consent of Landlord, shall be construed to be a tenancy from month-to-month at the rents herein specified (prorated on a monthly basis) and shall otherwise be on the terms and conditions herein specified, so far as applicable; provided, however, if such holding over is without the consent of Landlord, minimum rent for such holdover period shall be two (2) times the minimum rent due for the last month of the Lease Term.

19.02 Successors and Assigns. Except as otherwise herein provided, this Lease and all the covenants, terms, provisions and conditions herein contained shall inure to the benefit of and be binding upon the heirs, representatives, successors and assigns of each party hereto, and all covenants herein contained shall run with the land and bind any and all successors in title to Landlord.

ARTICLE XX: QUIET ENJOYMENT

20.01 Landlord's Covenant. Upon payment by Tenant of the rents herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the Term hereby demised without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord; subject, nevertheless, to all the terms and conditions of this Lease.

ARTICLE XXI: MISCELLANEOUS

21.01 Waiver. The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver shall be in writing.

21.02 Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent installments herein stipulated shall be deemed to be other than on account of the most current stipulated rent owed at that time, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction.

21.03 No Partnership. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business or otherwise, or joint venturer or a member of a joint enterprise with Tenant or any agent of Tenant.

21.04 Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then the time allowed for performance of such act shall be extended by a period equivalent to the period of such delay. The provisions of this Section 21.04 shall not operate to excuse Tenant from the prompt payment of rent, percentage rent, additional rent or any other payment required by the terms of this Lease.

21.05 Landlord's Liability. If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed, Tenant shall provide Landlord written notice of the same. Landlord shall then have sixty (60) days from receipt of Tenant's notice to cure any alleged default. If Landlord shall cure the alleged default, then Landlord's and Tenant's obligations under this Lease shall continue as if no default had occurred. In the event Landlord does not cure the alleged default within sixty (60) days from the receipt of Tenant's notice, Tenant may not terminate the Lease and Tenant's sole remedies shall be money damages and specific performance. Notwithstanding anything to the contrary contained herein, Landlord shall commence initial steps toward the cure any such default within thirty (30) days. If Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy 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 such partnership shall be liable for any deficiency. It is understood that in no event shall Tenant have any right to levy execution against any property of Landlord other than its interest in the Shopping Center as hereinbefore expressly provided. In the event of the sale or other transfer of Landlord's right, title and interest in the Leased Premises or the Shopping Center, Landlord shall be released from all liability and obligations hereunder. Notwithstanding anything to the contrary contained herein, should Landlord's failure to perform any covenant, term or condition of this Lease have a material and adverse impact upon Tenant's business operations, Tenant shall have the right to undertake such reasonable actions to remedy such default without waiving any of its rights hereunder.

21.06 Notices and Payments. Any notice by Tenant to Landlord must be served by Federal Express or similar overnight delivery service addressed to Landlord at the place designated for the payment of rent, or at such other address as Landlord may designate from time to time by written notice. Any notice by Landlord (which may be given by Landlord or Landlord's attorney or management company) to Tenant must be served by Federal Express or similar overnight delivery service addressed to Tenant at Tenant's corporate offices located at 8900 State Line Road, Leawood, Kansas (or such other place as designed by Tenant in a notice complying with the terms hereof). All notices shall be effective upon delivery or attempted delivery in accordance with this Section 21.06. Until otherwise

notified in writing, Tenant shall pay all rent reserved herein and all other sums required under this Lease by check payable to the order of Landlord and shall forward the same to Landlord as herein provided.

21.07 Financial Statements. Tenant represents and warrants to Landlord that the financial statements delivered to Landlord prior to the execution of this Lease fairly present the value of all the assets and liabilities of Tenant and Guarantors. Each fiscal year, Tenant shall deliver to Landlord its audited financial statements within thirty (30) days after the issuance of such financial statements.

21.08 Guarantors. This Lease shall not be effective unless the persons, if any, listed in Section 1.01(s) hereof shall execute the Guaranty attached as Exhibit "E" of this Lease.

21.09 Continuing Offer. Execution of the Lease by Tenant constitutes an offer which shall not be deemed accepted by Landlord until Landlord has executed this Lease and delivered or mailed pursuant to the terms of this Lease, a duplicated original thereof to Tenant. Such offer may be rescinded upon notice thereof to Landlord.

21.10 Reserved.

21.11 Reserved.

21.12 Validity of Lease. This Lease is not valid and binding until it is executed by Landlord.

21.13 Captions and Section Numbers. The captions, section numbers, article numbers and headings appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles of this Lease.

21.14 Definitions. The word "Tenant" shall mean each and every person, firm or corporation 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 it shall have the same force and effect as if given by or to all thereof. If there shall be more than one Tenant, they shall all be bound jointly and severally.

21.15 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 of this Lease shall be valid and enforceable to the fullest extent permitted by law.

21.16 Recording. This Lease or a certificate or memorandum thereof prepared by Landlord may, at the option of Landlord, be recorded. Tenant shall execute any such certificate, short form lease or memorandum upon demand by Landlord. Tenant shall not have a right to record a memorandum of this Lease.

21.17 Entire Agreement. The Lease, the exhibits and rider, if any, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. All prior communications, negotiations, arrangements, representations, agreements and understandings, whether oral, written or both, between the parties hereto and their representatives are merged herein and extinguished, this Lease superseding and cancelling the same. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and executed by the party against which such subsequent alteration, amendment, change or modification is to be enforced. If any provision contained in any rider hereto is inconsistent with any printed provisions of this Lease, the provisions contained in such rider shall supersede said printed provision. Tenant hereby acknowledges that this Lease shall not be deemed or interpreted to contain, by implication or otherwise, any warranty, representation or agreement on the part of Landlord that any department store or regional or national chain store or any other merchant shall open for business or occupy or continue to occupy any premises in or adjoining the Shopping Center during the Term of this Lease or any part thereof, and Tenant hereby expressly waives all claims with respect thereto and acknowledges that Tenant is not relying on any such warranty, representation or agreement by Landlord either as a matter of inducement in entering into this Lease or as a condition of this Lease or as a covenant by Landlord.

21.18 Jury Trial; Claims; Survival. To the extent permitted by applicable law, and acknowledging that the consequences of said waiver are fully understood, Tenant hereby expressly waives the right to trial by jury in any action taken with respect to this Lease and waives the right to interpose any set-off or counterclaim of any nature or description in any action or proceeding instituted against Tenant pursuant to this Lease. Notwithstanding anything in this Lease to the contrary, the representations and undertakings of Tenant under this Lease shall survive the expiration or termination of this Lease regardless of the means of such expiration or

termination.

21.19 Applicable Law. This Lease and the rights and obligations of the parties arising hereunder shall be construed in accordance with the laws of the State of Kansas without regard to principles of conflicts of law that might direct the application of the laws of a different state. Tenant specifically consents to this choice of law designation and consents that all actions or proceedings arising directly, indirectly or otherwise in connection with, out of, related to, or from this Lease shall be litigated only in the Circuit Court of Johnson County, Kansas, and Tenant (i) waives any right to transfer or change the venue of litigation brought under this Lease, and (ii) agrees to service of process, to the extent permitted by law, by mail.

21.20 Consents and Approvals. Whenever Landlord's consent or approval is required herein, except as otherwise set forth herein, such consent or approval shall not be deemed given until Landlord has provided such consent or approval in writing. Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with Tenant's request for Landlord's consent or approval. Where the consent or approval of Landlord shall be required, such consent or approval shall be granted in Landlord's sole discretion unless otherwise expressly provided.

21.21 Authority. Tenant represents and warrants that Tenant is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Tenant to do business in the State; all franchise and corporate taxes have been paid to date; all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due; and those persons executing this Lease on behalf of Tenant are duly qualified and authorized to bind, and in fact do bind, the corporation. In the event Tenant hereunder shall be a partnership, either general or limited, the persons or entities executing this Lease on behalf of Tenant hereby covenant and warrant that Tenant is a duly qualified partnership and all steps have been taken prior to the date hereof to qualify Tenant to do business in the State, if required by law; all franchise and partnership taxes have been paid to date; all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due; and those entities executing this Lease on behalf of partnership are duly qualified to bind, and in fact do bind, the partnership. This Lease shall be effective only when it is signed by both Landlord and Tenant. Tenant's submission of a signed lease for review by Landlord does not give Tenant any interest, right or option in the Leased Premises.

21.22 Interpretation. Both parties have read this Lease and had the opportunity to employ legal counsel and negotiate changes to the Lease. The Lease is the joint product of the parties and, in the event of any ambiguity herein, no inference shall be drawn against a party by reason of document preparation.

21.23 Brokers and Real Estate Agency Disclosure. Tenant represents and warrants to Landlord that no broker or agent negotiated or was instrumental in negotiating or consummating this Lease except as listed in Section 1.01(n) ("Broker"). Broker is representing Landlord on this Lease, and Broker's commission shall be paid by Landlord. Tenant knows of no other real estate broker or agent who is or might be entitled to a commission or compensation in connection with this Lease. All fees, commissions or other compensation payable to any broker or agent of Tenant shall be paid by Tenant. Tenant shall hold Landlord harmless from all damages and shall indemnify Landlord for all damages paid or incurred by Landlord resulting from any claims asserted against Landlord by brokers or agents claiming through Tenant. Tenant acknowledges that Tenant has been informed that person(s) associated with Broker may have or may acquire an ownership interest in the Shopping Center, and Tenant acknowledges by signing this Lease that such ownership interest shall not affect the terms, conditions or validity of this Lease.

21.24 Right of Relocation. Intentionally deleted.

21.25 Quarterly Sales Reporting. Tenant shall furnish to Landlord within thirty (30) days after the close of each and every quarter during the Lease Term a statement in the form attached as Exhibit "F" (form may be modified from time to time in as determined by Landlord in Landlord's sole discretion) showing in such detail as Landlord shall reasonably require the amount of gross receipts as defined in Section 2.03 of this Lease. If Tenant shall fail to furnish any report of gross receipts within thirty (30) days after the period required, Landlord shall give Tenant written notice of such failure and if the report is not received within ten (10) days after such written notice, Landlord may charge Tenant a penalty of Fifty Dollars (\$50) for each day the report is thereafter delinquent.

ARTICLE XXII: RESERVED.

ARTICLE XXIII: TENANT COVENANTS; EASEMENTS

23.01 Tenant Covenants. Notwithstanding anything to the contrary contained herein, this Lease is subject to and made on the understanding that Landlord has granted and/or will grant certain restrictions and exclusive use covenants to other tenants of the Shopping Center (herein the "Tenant Covenants"). Tenant acknowledges that Tenant's use and/or occupancy of the Leased Premises in violation of any current or future Tenant Covenants would subject Landlord to substantial damages, and as such, Tenant acknowledges and agrees that any such violation by Tenant of any such Tenant Covenants shall constitute a default hereunder entitling Landlord to cancel this Lease or enjoin Tenant from violating such Tenant Covenants, or exercise any of the remedies stated in Article XVI hereof and any other remedies available under the law of the State. Nothing contained in this Section 23.01 shall be construed to permit Tenant to expand the use restrictions set forth in Section 4.01 hereof. No current or future Tenant Covenants shall conflict with Tenant's rights hereunder to operate a restaurant, including reasonable menu alterations within the same general concept.

23.02 Easements. The Shopping Center is and/or may be encumbered and/or benefitted from time to time by certain easements, development and operating covenants, and similar agreements. Tenant agrees that it shall abide by any such agreement, including as any such agreement may be amended from time to time in Landlord's sole discretion, provided that such easement, development and operating covenants, and similar agreements do not impair the rights of Tenant to operate a restaurant. Landlord shall have the right to enter into and/or terminate any such agreement in Landlord's sole discretion.

23.03 Confidentiality. Landlord agrees to hold in confidence and shall not disclose, and not use except in connection with this Lease, any financial information provided by Tenant to Landlord, including without limitation sales reports and financial statements provided by Tenant to Landlord hereunder.

23.04 Real Estate Agency Disclosure. None. Not applicable.

ARTICLE XXIV: ADDENDA

24.01 Addenda. The following Addenda (riders, supplements, etc.) are attached hereto and are a part of this Contract (*Check Those Which Are Applicable*):

- Exhibit A (Leased Premises Depicted)**
- Exhibit B (Commercial Agency & Brokerage Disclosure Addendum)(not applicable)**
- Exhibit C (Site Plan)**
- Exhibit D (Description of Tenant's Work)**
- Exhibit E (Guaranty)**
- Exhibit F (Tenant's Monthly Report)**
- Exhibit G (Signage Criteria)**
- Exhibit H (Notice of Owner's Nonliability for Lien)**
- Exhibit I (Prior Exclusive Uses Granted)**
- Other:** _____
- Other:** _____

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD: Arbor Development, LLC

By: _____

Title: _____

TENANT: Darryl's of Overland Park, Inc.

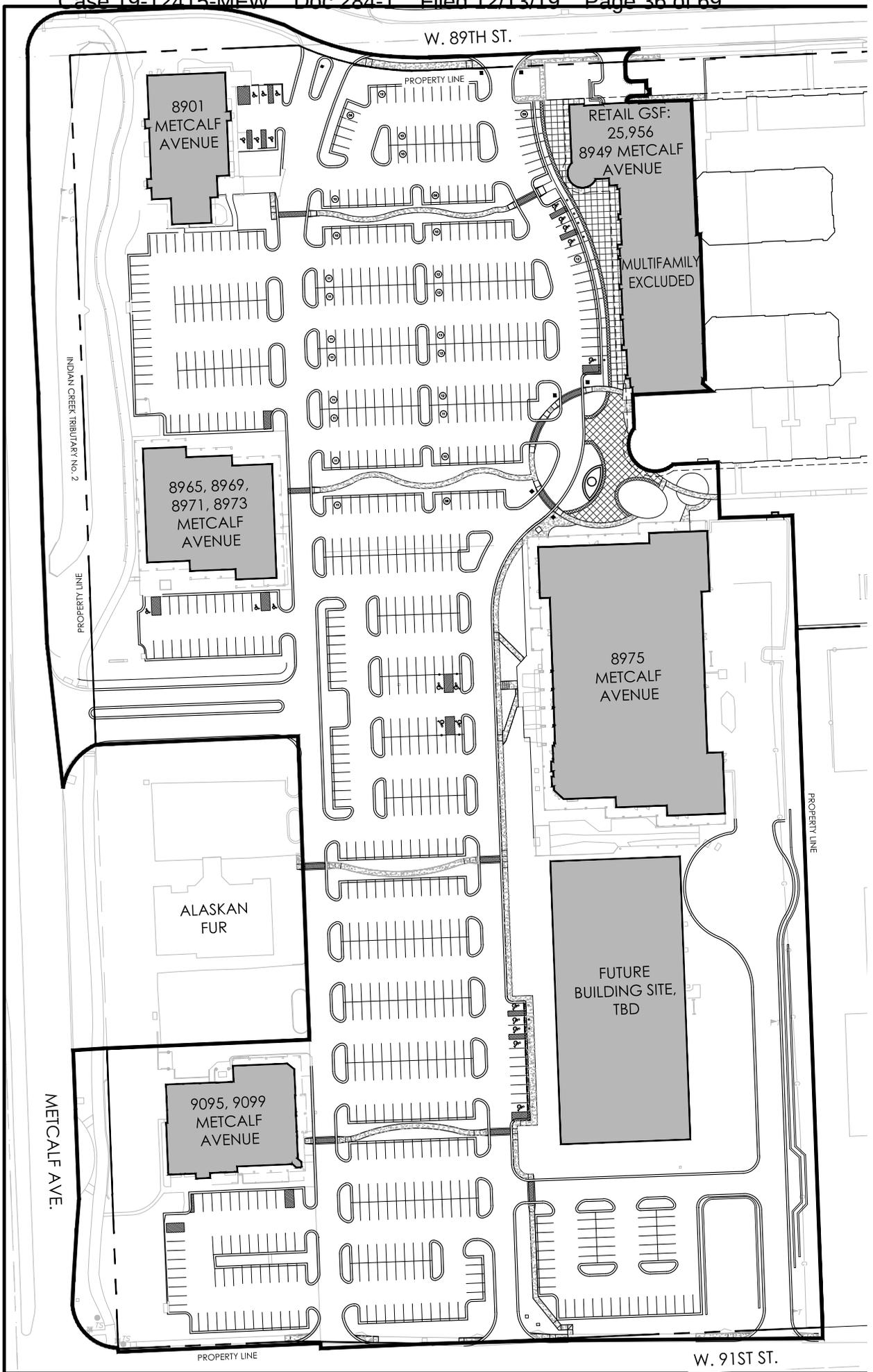
By: _____

Title: _____

ATTEST:

Secretary

EXHIBIT A
Leased Premises Depicted

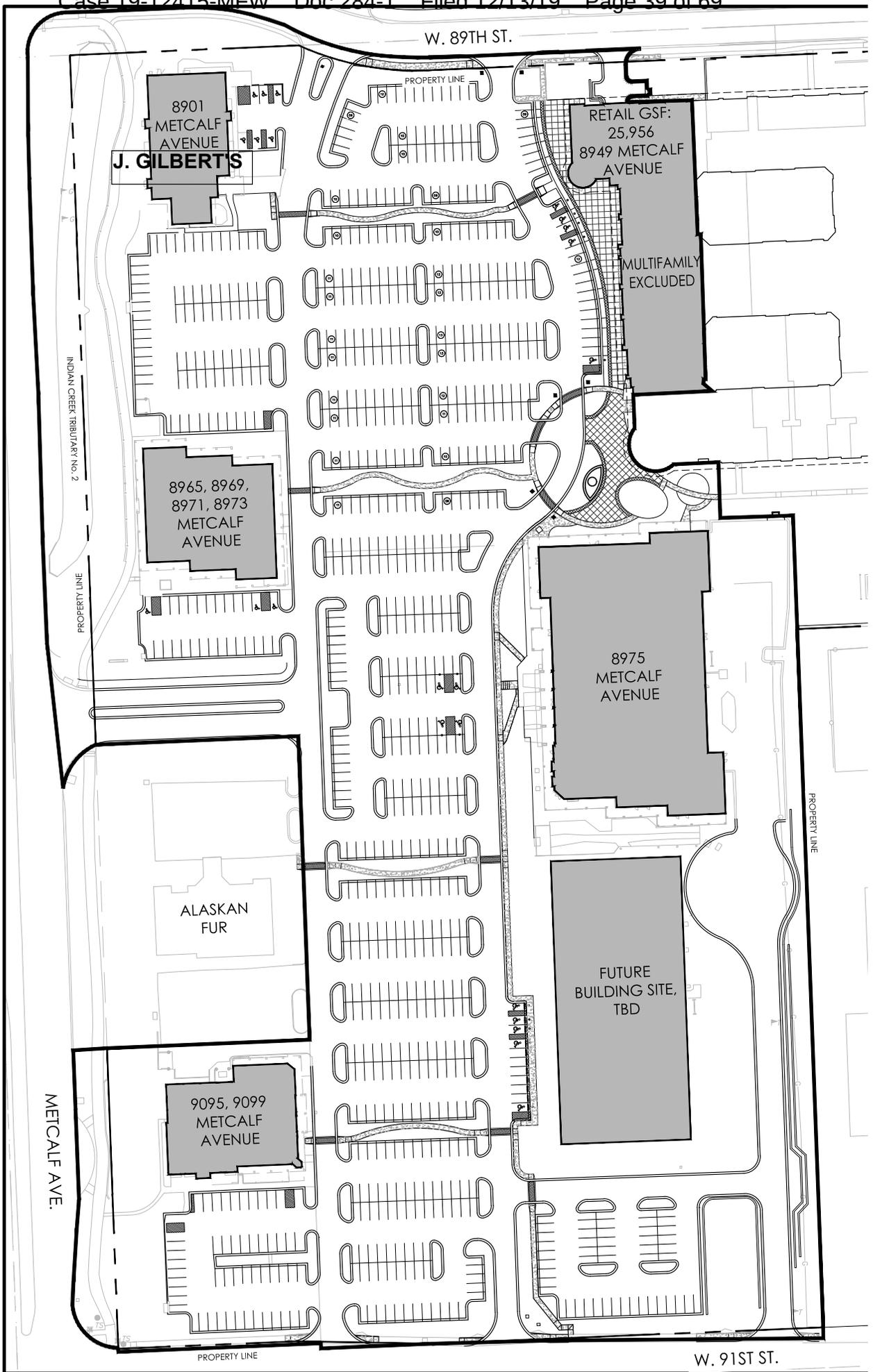


**EXHIBIT B
COMMERICAL AGENCY & BROKERAGE DISCLOSURE ADDENDUM**

Not Applicable.

**EXHIBIT "C"
TO LEASE AGREEMENT**

SITE PLAN WITH LEASED PREMISES DEPICTED



Site: 09-2019-343pm; Plotted By: transgenber; V:\2020\001\DWG\Eng\Sheet\CDX\0202405\HIS-PROP-SITE-PLAN.dwg; Layout: Site Plan

PROPERTY LINE

W. 91ST ST.

**EXHIBIT "D"
TO LEASE AGREEMENT**

DESCRIPTION OF TENANT'S WORK

Attached to and forming a part of Lease

Landlord: Arbor Development, LLC

Tenant: _____

Date: _____

A. TENANT'S WORK

B. CONSTRUCTION

1. All work undertaken by Tenant 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.

2. Work undertaken by Tenant during general construction shall be handled in the following manner:

a. Work attached to the structure such as additional plumbing, electrical work, plastering, terrazzo, etc., may be handled in any of the following ways:

(1) Awarded by Tenant to his own Contractor, who has been approved by Landlord.

(2) Awarded to the Project Contractor through the use of unit prices which have been established for this type of work by previous bidding.

b. Store furniture, fixtures, painting, floor covering, etc., may be let to any contractor approved by Landlord. Tenants should attempt to allow Contractors for this category of work who are already on the site to bid on their work.

3. Tenant Finish-Construction Period - Unless specifically stated otherwise, Tenant agrees to be responsible for all utility charges from date of turnover to Tenant and during any tenant finish construction period prior to actual Lease commencement date.

PROCEDURE

1. Tenant will provide Landlord, when preliminary plans have been prepared by Tenant's architect, with scale drawings, showing the general features of the Leased Premises, together with information on suitable locations for air-handling units, toilet rooms and design.

2. In developing the work drawing, Landlord reserves the right to make such necessary reasonable changes and adjustments which are the result of detailed technical development of the preliminary studies.

3. All such work performed by Tenant shall be subject to the approval of Landlord.

The aforesaid is agreed to as of the day and year first above written.

LANDLORD: Arbor Development, LLC

By: _____

Title: _____

TENANT: Darryl's of Overland Park, Inc.

By: _____

Title: _____

**EXHIBIT "E"
TO LEASE AGREEMENT**

GUARANTY

In order to induce Arbor Development, LLC ("Landlord") to enter into that certain Lease Agreement dated _____, 20__ (the "Lease") between Landlord and Darryl's of Overland Park, Inc.("Tenant"), and in consideration of the benefits inuring to the undersigned (the "Guarantor") under said Lease, the receipt and sufficiency of which is represented by the Guarantor to Landlord to be sufficient and adequate, the Guarantor hereby unconditionally guarantees the performance of all of Tenant's obligations under the Lease, including, without limitation, the payment of rental as provided thereof. This Guaranty shall remain in full force throughout the original Lease Term and any renewals thereof. This Guaranty shall be binding upon Guarantor and Guarantor's heirs, legal representatives, successors and assigns, and shall inure to the benefit of Landlord and its successors and assigns. If there is more than one Guarantor, the liability of each Guarantor shall be joint and several.

This Guaranty is a guaranty of payment and performance and not of collection. Landlord would not enter into the Lease unless Guarantor agreed to guarantee to Landlord the payment and performance of all obligations of Tenant under the Lease. Guarantor hereby waives notice of acceptance of this Guaranty agreement and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices to it of default by Tenant under the Lease, and hereby waives diligence, presentment, protest and suit on the part of Landlord in the enforcement of any liability, obligation or duty guaranteed hereby. Guarantor further agrees that Landlord shall not be first or concurrently required to enforce against Tenant or any other person, any liability, obligation or duty guaranteed hereby before seeking enforcement thereof against Guarantor. The liability of Guarantor shall not be affected by any indulgence, compromise, settlement or variation of terms which may be extended to Tenant by Landlord, or agreed upon by Landlord or Tenant, and shall not be affected by any assignment or sublease by Tenant of its interest in the Lease, nor shall the liability of the Guarantor be affected by the insolvency, bankruptcy (voluntary or involuntary), or reorganization of Tenant, nor by the voluntary or involuntary liquidation, sale, or other disposition of all or substantially all of the assets of Tenant, or by the release of any other guarantor. Landlord and Tenant, without notice to or consent by Guarantor, may at any time or times enter into such modifications, extensions, amendments or other covenants respecting the Lease as they may deem appropriate, and Guarantor shall not be released thereby but shall continue to be fully liable for the performance of all obligations and duties of Tenant under the Lease as so modified, extended or amended.

Guarantor further agrees (1) to indemnify and hold harmless Landlord from and against any claims, damages, expenses, or losses, including the reasonable fees of any attorney, resulting from or arising out of any breach of the Lease by Tenant or by reason of Tenant's failure to perform any of its obligations thereunder, and (2) to pay any costs or expenses, including the reasonable fees of an attorney, incurred by Landlord in enforcing this Guaranty. 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. Neither any waiver or modification of any provision of this Guaranty, nor any termination of this Guaranty, shall be effective unless in writing and signed by the party against which the waiver, modification or termination is sought to be enforced, nor shall any waiver be applicable except in the specific instance for which it is given.

The Guarantor acknowledges that Landlord may assign its rights under the Lease to an institutional investor as security for a loan to be made by such institutional investor to Landlord, and as long as any indebtedness of Landlord shall be outstanding and such assignment of the Lease shall exist, such institutional investor assignee shall be entitled to bring any suit, action or proceeding against the undersigned for the enforcement of any provision of this Guaranty, and it shall not be necessary in any such suit, action or proceeding to make Landlord a party thereto. This Guaranty may not be modified or amended without the prior written consent of such assignee of Landlord's interest in the Lease, and any attempted modification or amendment without such consent shall be void.

All existing and future advances by Guarantor to Tenant and all existing and future debts of Tenant to any Guarantor shall be subordinated to all obligations owed to Landlord under the Lease and this Guaranty. Guarantor assumes the responsibility to remain informed of the financial condition of Tenant and of all other circumstances bearing upon the risk of Tenant's default, which reasonable inquiry would reveal, and agrees that Landlord shall have no duty to advise Guarantor of information known to it regarding such condition or any such circumstance. Landlord shall not be required to inquire into the powers of Tenant or the officers, employees, partners or agents acting or purporting to act on its behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty. Each Guarantor hereby represents and warrants to Landlord that such Guarantor

has received a copy of the Lease, has read or had the opportunity to read the Lease, and understands the terms of the Lease. The provisions in the Lease relating to the execution of additional documents, legal proceedings by Landlord against Tenant, severability of the provisions of the Lease, interpretation of the Lease, notices, waivers, the applicable laws which govern the interpretation of the Lease and the authority of Tenant to execute the Lease are incorporated herein in their entirety by this reference and made a part thereof. Any reference in those provisions to "Tenant" shall mean each Guarantor and any reference in those provisions to the "Lease" shall mean this Guaranty.

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 in exclusion of any other remedy available to Landlord and shall not limit or prejudice any other legal or equitable remedy which Landlord may have. If any one or more of the provisions of this Guaranty shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Guaranty, and this Guaranty shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Guaranty shall be construed according to the laws of the State of Kansas. By execution hereof, the undersigned specifically consent to this choice of law designation and consent that all actions or proceedings arising directly, indirectly or otherwise in connection with, out of, related to, or from this Guaranty of the Lease shall be litigated only in the Circuit Court of Johnson County, Kansas, and the undersigned, (i) waive any right to transfer or change the venue of litigation brought against the undersigned, and (ii) agree to service of process, to the extent permitted by law, by mail.

Notwithstanding anything contained in this Guaranty to the contrary, this Guaranty shall expire on June 29, 2031.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND ACKNOWLEDGING THAT THE CONSEQUENCES OF SAID WAIVER ARE FULLY UNDERSTOOD, THE UNDERSIGNED HEREBY EXPRESSLY WAIVE THE RIGHT TO TRIAL BY JURY, THE RIGHT TO INTERPOSE ANY DEFENSE BASED UPON ANY STATUTE OF LIMITATIONS, ANY CLAIM OF LACHES AND ANY SET-OFF OR COUNTERCLAIM OF ANY NATURE OR DESCRIPTION IN ANY ACTION OR PROCEEDING INSTITUTED AGAINST THE UNDERSIGNED OR ANY OTHER PERSON LIABLE ON THE LEASE.

IN WITNESS WHEREOF, Guarantor(s) has/have caused this instrument to be executed this ____ day of _____, _____.

ATTEST:

Secretary

By: Houlihan's Restaurants Inc.
Its Parent

CORPORATE GUARANTOR

ATTEST:

INDIVIDUAL GUARANTORS

**EXHIBIT "F"
TO LEASE AGREEMENT**

TENANT'S QUARTERLY REPORT

Tenant Name: _____

Address: _____

A. QUARTERLY GROSS RECEIPTS REPORT

Gross Receipts for quarter of _____ \$ _____

The undersigned hereby certifies that the foregoing statement is true and correct:

Date: _____

TENANT: _____

By: _____

Title: _____

EXHIBIT "G"

SIGNAGE CRITERIA



PROMONTORY



TENANT SIGN CRITERIA



TENANT CRITERIA HANDBOOK

TENANT SIGN CRITERIA

BUILDING PARAMETERS:

Small Shop Tenant ---- Leasable area from 0 to 5,000 s.f.

Sub-Major Tenant ---- Leasable area from 5,001 to 10,000 s.f.

Major Tenant ---- Leasable area from 10,001 to 20,000 s.f.

TENANT SIGNAGE DESIGN CRITERIA

In the event of any conflict between the following signage requirements and local governmental ordinances, the more stringent will prevail. Upon written notice from Landlord, Tenant agrees to take such actions as may be necessary to comply at Tenant's expense, with applicable requirements.

The purpose of this section is to define and specify all exterior signage criteria for Promontory. (Entrance monuments will be addressed in the architectural plans). Each Tenant shall provide signage package for its space as described below.

All sign packages shall be submitted in triplicate for approval at least one hundred twenty (120) days prior to Lease Commencement Date to Landlord and Landlord's Architect and prior to fabrication and installation. At a minimum, such drawings must show locations, sizes, and styles of lettering, materials, and types of illumination, installation details and logo design. Upon approval, Landlord will issue a letter of approval to the tenant for use in obtaining a sign permit from the city.

If the plans are disapproved by Landlord, Tenant shall resubmit them within fifteen (15) days from date of the notice of any disapproval by Landlord, or its Architect until such plans are finally approved by Landlord.

The cost of the fabrication, permitting and installation shall be the responsibility of each individual tenant. Sign construction is to be completed in compliance with local building code requirements and sign ordinances, and the instructions, limitations and criteria contained in this manual. Each sign will conform to the limitations listed in this document below.

SIGN TYPES AND PARAMETERS

The following types and amounts of signs will be permitted:

Small Shop Tenant Sign Parameters (0 - 5,000 s.f.)

- The maximum height for letters in the body of the sign is 3ft (max size at discretion of Landlord)
- Signs shall not extend more than 8" beyond the face of the surface to which the sign is mounted.
- One (1) wall/marquee sign will be allowed at the storefront, one (1) will be allowed at the rear facade if tenant has rear wall, and one (1) additional will be allowed at the storefront if the tenant is an endcap.
- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from flat, smooth one-eighth (1/8") plexiglass. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs, fully welded. Retainers shall be one inch (1") trimcap or the equivalent and shall match the return. All letters shall be illuminated.
- All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, raceways, etc. will be permitted.



TENANT CRITERIA HANDBOOK

Sub-Major Tenant Sign Parameters (5,001 to 10,000 s.f.)

- Tenant sign area shall be on the building faces above the entrances and as part of the building design.
- The maximum height for letters in the body of the sign is listed 3ft
- The sign areas shall not exceed ten percent (10%) of the area of the facade.
- Maximum one sign per facade with a maximum of (3) three.
- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from fl at, smooth one-eight inch (1/8") Plexiglas. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers shall be one inch (1") trim cap or the equivalent and shall match the return. All letters shall be illuminated.
- All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, raceways etc. will be permitted.

Major Tenant (10,001 to 20,000 s.f.)

- Tenant sign area shall be on the building faces above the entrances and as part of the building design.
- The maximum height for letters in the body of the sign is (36"—120" s.f.) (max size at discretion of Landlord)
- The sign areas shall not exceed ten percent (10%) of the area of the storefront.
- Maximum one sign per facade with a maximum of (3) three.

- Signage shall be illuminated individual letters mounted to the face of the building. The use of a colored or frosted Plexiglas face is required. Individual faces shall be fabricated from fl at, smooth one-eight inch (1/8") Plexiglas. Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs. Retainers shall be one inch (1") trim cap or the equivalent and shall match the return. All letters shall be illuminated.
- All signs must be illuminated from a concealed source. No exposed lamps, globes, tubes, etc. will be permitted.

General Sign Parameters

- In general signs must be made up of individual illuminated letters.
- Lettering on all store signs shall be limited to business or trade name of the premises as it appears on the lease. No sign manufacturer's name, union labels, or other lettering shall be visible. Logo signs will be reviewed on an individual basis, but in general logos will not be allowed.
- Tag lines shall be allowed on an individual basis only and are subject to Landlord approval. Any allowable tag lines shall be individual illuminated letters (no box signs) and shall not exceed 10" in height. The width of the tag line shall not exceed the width established for the primary signage.
- No exterior sign or sign panel will be permitted to extend above any roof line.
- Any sign, notice or other graphic or video display, particularly self-illuminated signs, located within the store and which is easily visible from the shopping center will not be allowed. Illuminated Signs within 48" of a window are regarded as signage.
- Manufacturers' labels, underwriters' labels, clips, brackets, or any other form of extraneous advertising attachment or lighting devices shall be fully concealed from public view.
- No exposed lamps or tubing will be permitted.
- No exposed raceways, crossovers or conduits will be permitted.
- All signage returns shall be semi-gloss black enamel finish or blend with adjacent building color.



TENANT CRITERIA HANDBOOK

- All cabinets, conductors, transformers and other equipment shall be concealed from public areas. Visible fasteners will not be permitted.
- All metal letters, including channel letters, shall be fabricated using fully-welded construction, with all welds ground smooth so as not to be visible.
- Acrycap or trimcap retainers used at the perimeter of sign letter faces shall match in color and finish the face or the sides of the sign.
- Threaded rods or anchor bolts shall be used to mount sign letters, which are spaced out from the building face. Angle clips attached to letter sides will not be permitted. All mounting attachments shall be sleeved and painted, and concealed.
- All signage whether halo illuminated or not, shall be pin mounted on building façade. Halo illuminated signage shall be pin mounted a minimum of 2" from building façade. Direct or internally illuminated signage shall be pin mounted a minimum of 1/2" and maximum of 1" from building face.
- Except as provided herein, no advertising placards, flags, balloons, banners, pennants, names, insignia, trademarks, or other descriptive materials shall be affixed or maintained upon the glass panes and supports of the storefront windows and doors, within 4' of the storefront without prior written approval of the Landlord. Painted, flashing, animated, audible, revolving, or other such signs that create animation are not permitted.
- Any Plexiglas sign faces shall not be clear.
- Sign illumination shall be internal and self contained.
- Non-illuminated exterior signage is not allowed.
- All main signs are to be centered horizontally in the signage band.
- All electric signs and installation methods must meet UL standards and contain a UL label.
- At no time will hand-lettered, non-professional signs, or newspaper advertisements be displayed on the storefronts.
- Decals or other signing indicating products lines or credit card acceptability shall not be permitted on the storefront glazing other than stores operating hours.
- All illuminated signs must be turned on during the Center's normal operating hours. The use of time clocks for sign and show window lighting is required. Lighting of signs shall be at hours required by Landlord.
- No logos will be allowed on Tenant storefronts without prior written approval.
- All letters must fit on a single line inside the box parameters
- Minimum height of all signage shall not be less than 60% of the maximum allowable letter height except for approved taglines.
- All signage is subject to the approval of the Landlord's Architect and the local authorities. Landlord has design discretion of overall size and height of letters and signs.
- Tenants are required to provide a concealed access panel from within the Tenant's leasable area, if applicable, to service and install exterior building signage



TENANT CRITERIA HANDBOOK

SIGNS NOT PERMITTED

The following types of signs shall not be permitted:

- Signs such as die cut vinyl, gold or silver leaf, or paint.
- Boxed pillow or cabinet type.
- Formed plastic or injection molded plastic signs.
- Banners or pennants without Special Event Permit from City.
- Signature signage (window sign or sign plate indicating name of shop or good sold) in addition to primary signage.
- Cloth, paper, cardboard and similar stickers or decals around or on surfaces on the storefront without prior written approval.
- “Sale” sign, “Special Announcements” sign or other advertisement of any kind on the exterior without Special Event Permit from City and must approved by Landlord
- Exposed neon signs.
- Banners on outparcel lots
- Animated, moving, rotating or flashing.
- Noise making.
- Additional signage of any kind within 4’ of storefront windows.
- Awning signage.
- Use of the word “Outlet” in the signage text is prohibited.

ADDITIONAL SIGNAGE

Service doors to Tenant spaces throughout the project shall be standard 4”, identification only (name and address number) in black text and shall be installed by the Tenant. The Tenant shall not apply any signage or other wording to service doors.

- All signage must be shown to scale on the approved storefront elevation.
- All additional signage shall be submitted to the Landlord’s Representative for approval as specified in Section Two.
- Any minor deviations to this criteria will be reviewed on an individual basis and subject to Landlord approval.



ENVIRONMENTAL GRAPHICS

- Must be non-commercial graphics.
- Must be front lit with concealed or other non-exposed type lighting system. No backlit lighting is allowed.
- Glass is required and must be flush or recessed from facade opening.
- Graphics must integrate with building facade design.
- Designs must integrate with the overall shopping center design.



TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign type A = 36"x120"



NORTH ELEVATION NEW



1 North Elevation View
Scale: 3/16" = 1'-0"

TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign type A = 36"x120"



1 South Elevation View
Scale: 3/16" = 1'-0"

SIGN TYPE A

SIGN TYPE A SIGN TYPE A



TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign type A = 36"x120"



1 East Elevation View
Scale: 3/16" = 1'-0"

SIGN TYPE A

SIGN TYPE A



TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign type A = 36"x120"



1 Renovated East Elevation View
Scale: 3/16" = 1'-0"

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SIGN TYPE A

SIGN TYPE A



TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign type A = 36"x120"



1 Renovated North Elevation View
Scale: 1/8" = 1'-0"



TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign type A = 36"x120"

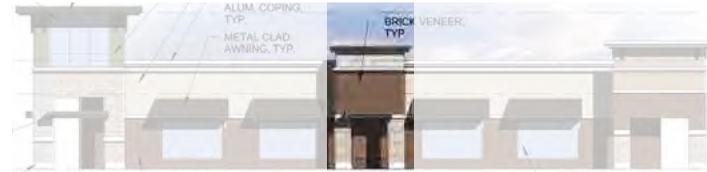




TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign Type B 72"x72"



1 Renovated West Elevation View
Scale: 3/16" = 1'-0"



TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign type A = 36"x120"



1 Renovated West Elevation View
Scale: 3/16" = 1'-0"



TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign type A = 36"x120"



1 Renovated West Elevation View
Scale: 3/16" = 1'-0"

SIGN TYPE A

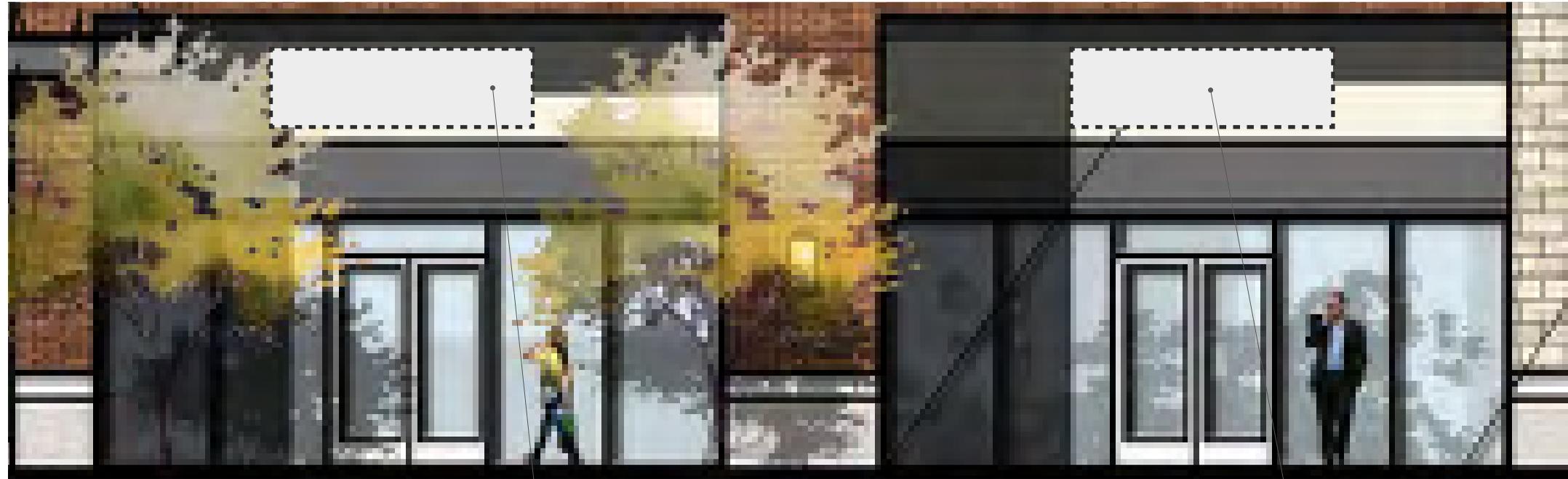
SIGN TYPE A



TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign type A = 36"x120"



1 Prelim West Elevation View
Scale: 3/16" = 1'-0"

SIGNTYPE A

SIGNTYPE A



TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign type A = 36"x120"



1 Prelim West Elevation View
Scale: 3/16" = 1'-0"

SIGN TYPE A

SIGN TYPE A



TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign type A = 36"x120"



1 Prelim West Elevation View
Scale: 3/16" = 1'-0"

— SIGN TYPE A

— SIGN TYPE A



TENANT CRITERIA HANDBOOK

SIGNAGE LOCATIONS

Sign type A = 36"x120"



1 Prelim West Elevation View
Scale: 3/16" = 1'-0"

SIGN TYPE A

EXHIBIT "H"
NOTICE OF OWNER'S NONLIABILITY FOR LIEN

NOTICE TO: Any Contractor or Subcontractor who has performed, is performing, or may hereafter perform work at the request of any party other than the undersigned owners of the premises, or their agent.

Notice is hereby given that the undersigned, being the owners of the premises known as _____, shall not be subject to any lien that might otherwise arise as a result of the provision by any Contractor or Subcontractor who has performed, is performing or may hereafter perform work at the request of any party other than the undersigned owners of the premises, or their agent, or labor, skill materials, machinery or other fixtures in connection with any erection, construction, alteration, removal, addition, repair or other improvement that has been, is being or may hereafter be performed upon the above-described premises or at the instance and request of any party other than the undersigned owners of the premises or their agent.

Neither the Tenant nor any other agent of the Tenant shall have the authority, expressed or implied, of the owner to charge the premises described above with a lien for labor or materials for construction or improvements to the premises.

DATED this ___ day of _____, 20____.

OWNER: Arbor Development, LLC

By: _____

Title: _____

STATE OF MISSOURI)
)
COUNTY OF _____) ss

On this ___ day of _____, 20____, personally appeared before me _____, the signer of the foregoing instrument, who duly acknowledged to me that he is a managing member of Arbor Development, LLC, a Missouri limited liability company and that said instrument was executed on behalf of said company.

NOTARY PUBLIC

My Commission Expires:

Exhibit "T"

Prior Exclusive Uses Granted By Landlord

I Hop – exclusivity for primarily serving breakfast food;

Massage Envy – primarily providing massage therapy, muscle therapy and custom facials.

Exhibit B

Tenant Estoppel

TENANT ESTOPPEL CERTIFICATE

To: Arbor Development, LLC (“Landlord”)

Re: Lease of Premises at 9001 Metcalf Avenue, Overland Park, Kansas 66212 (the “Property”)

The undersigned, Darryl’s of Overland Park, Inc. (“Tenant”), hereby represents and certifies to Landlord as follows:

1. Tenant is the tenant under that certain lease (the "Lease") attached hereto as Exhibit A dated between Tenant and Landlord with respect to certain demised premises containing square feet and more particularly described in the Lease (the "Premises"). Exhibit A is a true, correct and complete copy of the Lease and includes every amendment, addendum, rider or supplement to the Lease. There are no oral agreements between Tenant and Landlord modifying or in any way altering the terms of the Lease or otherwise obligating the Landlord to the Tenant.
2. All items of construction and improvements, if any, required to be completed by the Landlord, have been satisfactorily completed in accordance with the terms and conditions of the Lease. There are no structural or mechanical defects in the Property. The Tenant has not been granted and has not exercised any options or right of expansion, purchase, or first refusal concerning the Property, provided however that parties acknowledge that pursuant to a Settlement Agreement between the parties, the parties intend to enter into a new lease agreement which will be effective beginning October 1, 2019 and that such new lease includes three extension terms, as set forth in such new lease. The Landlord has not given any consent to Tenant other than those expressly contained in writing in the Lease. Tenant has not entered into any sublease, assignment or other agreement transferring any interest in the Lease or the Property.
3. The Lease is in full force and effect and has not been modified, supplemented, amended, terminated or surrendered in any way except for the First Amendment and options to extend the Lease dated September 8, 2009 and September 15, 2014, which are included in Exhibit A. There are no events or conditions presently existing which: (a) constitute a monetary or other default of Landlord under the Lease; (b) entitle Tenant to offsets, limitation, reduction, or defenses against the prompt, current payment of rent, real estate taxes, insurance, common area maintenance charges and operating expenses to Landlord or any assignee of Landlord in the Lease; or (c) entitle Tenant to terminate the Lease for any reason. The Tenant is not entitled to any free rent or other rent concessions of any kind that are not expressly set forth

in the Lease.

4. The term of the Lease commenced on July 13, 1989 and shall expire September 30, 2019, as set forth in the Settlement Agreement.
5. The current fixed monthly rent payment pursuant to the Lease is in the amount of \$30,604.95 and has been paid through and including September, 2019. The percentage rent in the amount of 9% of gross proceeds in excess of \$4,097,450 has been paid for the year 2018. The estimated additional rent payable pursuant to the Lease on account of real estate taxes, insurance, common area maintenance charges and operating expenses has been paid through and including September, 2019. No rents are accrued and unpaid under the Lease. Pursuant to a Settlement Agreement between the Landlord and Tenant, Tenant owes certain amounts for the 2016 and 2017 estate taxes, insurance, common area maintenance charges and operating expenses to be paid pursuant to the Settlement Agreement.
6. Tenant has deposited with Landlord \$0 as a security deposit.
7. Tenant has accepted possession of the Premises, is in occupancy and paying full rental due under the Lease.
8. No rent has been paid more than thirty (30) days in advance.
9. The interest of Tenant in the Lease has not been assigned or encumbered, and no part of the Premises has been sublet.
10. There are no actions, whether voluntarily or otherwise, pending against Tenant under the Lease pursuant to the bankruptcy or insolvency laws of the United States or any state thereof.

Dated: _____

TENANT: Darryl's of Overland Park, Inc.

By: Name:

Title:

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

HRI HOLDING CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-12415 (MFW)
(Jointly Administered)

AFFIDAVIT OF REBECCA A. ZERBE, PARALEGAL

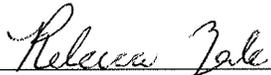
STATE OF DELAWARE :
: SS:
NEW CASTLE COUNTY :

I, Rebecca A. Zerbe, certify that I am, and at all times during the service, have been an employee of Morris James LLP, not less than 18 years of age and not a party to the matter concerning which service was made. I certify further that on December 13, 2019, I caused to be served:

**OBJECTION AND RESERVATION OF RIGHTS OF ARBOR DEVELOPMENT, LLC
TO NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT OF LEASE**

Service was completed upon the parties on the attached list as indicated thereon.

Dated: December 13, 2019



Rebecca A. Zerbe

SWORN AND SUBSCRIBED before me this 13th day December, 2019.



Notary



¹ Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: HRI Holding Corp. (4677), Houlihan's Restaurants, Inc. (8489), HDJG Corp. (3479), Red Steer, Inc. (2214), Sam Wilson's/Kansas, Inc. (5739), Darryl's of St. Louis County, Inc. (7177), Darryl's of Overland Park, Inc. (3015), Houlihan's of Ohio, Inc. (6410), HRI O'Fallon, Inc. (4539), Algonquin Houlihan's Restaurant, L.L.C. (0449), Geneva Houlihan's Restaurant, L.L.C. (3156), Hanley Station Houlihan's Restaurant, LLC (4948), Houlihan's Texas Holdings, Inc. (5485), Houlihan's Restaurants of Texas, Inc. (4948), JGIL Mill OP LLC (0741), JGIL Millburn, LLC (6071), JGIL Millburn Op LLC (N/A), JGIL, LLC (5485), JGIL Holding Corp. (N/A), JGIL Omaha, LLC (5485), HOP NJ NY, LLC (1106), HOP Farmingdale LLC (7273), HOP Cherry Hill LLC (5012), HOP Paramus LLC (5154), HOP Lawrenceville LLC (5239), HOP Brick LLC (4416), HOP Secaucus LLC (5946), HOP Heights LLC (6017), HOP Bayonne LLC (7185), HOP Fairfield LLC (8068), HOP Ramsey LLC (8657), HOP Bridgewater LLC (1005), HOP Parsippany LLC (1520), HOP Westbury LLC (2352), HOP Weehawken LLC (2571), HOP New Brunswick LLC (2637), HOP Holmdel LLC (2638), HOP Woodbridge LLC (8965), and Houlihan's of Chesterfield, Inc. (5073). The Debtors' corporate headquarters and the mailing address is 8700 State Line Road, Suite 100, Leawood, Kansas 66206.

VIA EMAIL & HAND DELIVERY

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