

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

In re:)	Chapter 11
)	
)	
FRESH & EASY, LLC, ¹)	Case No. 15-12220 (BLS)
)	
Debtor.)	
)	Re: Docket No. 124

**OBJECTION TO DEBTOR'S MOTION FOR ENTRY OF (I) ORDER
(A)(1) ESTABLISHING BIDDING PROCEDURES FOR CERTAIN UNEXPIRED
LEASES OF NONRESIDENTIAL REAL PROPERTY, (2) AUTHORIZING AND
SCHEDULING AUCTION WITH RESPECT THERETO, (3) APPROVING CURE
PROCEDURES, AND (4) SCHEDULING HEARING WITH RESPECT TO THE
OUTCOME OF THE AUCTION; (B) ESTABLISHING PROCEDURES FOR THE
REJECTION OF CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL
PROPERTY; AND (C) GRANTING RELATED RELIEF; AND (II) ORDER (A)
APPROVING ASSUMPTION AND ASSIGNMENT OF LEASES AND (B) WAIVING
STAY PROVISIONS PURSUANT TO BANKRUPTCY RULE 6006(d)**

EM-50 UAV SLBCO LLC (the “Landlord”), by and through its undersigned counsel, hereby objects to the *Debtor's Motion For Entry Of (I) Order (A)(1) Establishing Bidding Procedures For Certain Unexpired Leases Of Nonresidential Real Property, (2) Authorizing And Scheduling Auction With Respect Thereto, (3) Approving Cure Procedures, And (4) Scheduling Hearing With Respect To The Outcome Of The Auction; (B) Establishing Procedures For The Rejection Of Certain Unexpired Leases Of Nonresidential Real Property; And (C) Granting Related Relief; And (Ii) Order (A) Approving Assumption And Assignment Of Leases And (B) Waiving Stay Provisions Pursuant To Bankruptcy Rule 6006(d) [Dkt. No. 124] (the “Assumption Motion”)*. In support of its Objection, the Landlord respectfully states as follows:

¹ The last four digits of the Debtors’ federal taxpayer identification number are 8906. The Debtor’s mailing address is 20101 Hamilton Avenue, Suite 350, Torrance, California 90502.

PRELIMINARY STATEMENT

The Assumption Motion seeks, among other things, approval of Bidding Procedures (defined below) governing the proposed assumption and assignment of approximately 97 commercial real property sites. Assumption Motion ¶ 8. The Debtor has again failed to alert the Court or parties who may be interested in acquiring the Debtor's sites to two critical facts. First, 12 of the sites at issue are subject to one of two terminated Master Leases (defined below) that were terminated pre-petition.² Second, even if the Debtor's right to lease the sites had not been terminated pre-petition, the 12 sites are subject to two unitary Master Leases that can only be assumed and assigned in their respective entireties. The Debtor has no power to assume and assign interests that have been validly terminated pre-petition, let alone assume and assign individual sites subject to Master Leases without also curing and assuming the entire applicable Master Lease(s).

By failing to account for the pre-petition termination and unitary nature of the Master Leases, the Bidding Procedures proposed by the Debtor attempt to create substantive rights in favor of the Debtor that do not otherwise exist, including by seeking to: (i) authorize the Debtor to assume portions of leases for sites whose Master Leases were terminated prepetition; (ii) authorize the Debtor to assume and assign sites subject to a Master Lease on an individualized basis, and (iii) limit the cure amounts and credit bid rights of the Landlord for each site to an arbitrary "cure amount" for such site rather than the unitary cure amount for all unpaid obligations under each Master Lease. The Bidding Procedures also seek to restrict the

² One of these 12 sites is also the subject of the *Debtor's Motion for an Order (A) Authorizing the Debtor (i) to Assume the Purchase and Sale Agreement with Respect to Certain Leases and Related Property, (ii) to Assume and Assign the Remaining Leases, and (iii) to Sell or Transfer Property Free and Clear of Liens, Claims, and Encumbrances; and (B) Granting Related Relief* (the "CVS Assignment Motion") [Dkt. No. 66] to which Landlord has previously objected ("CVS Objection") [Dkt. No. 152]. Despite its inclusion there, the Debtor is also seeking to auction this same site as part of the Assumption Motion.

Landlord's (and other landlords') right to "credit bid" by requiring any bidding landlord to execute broad one-sided releases and waivers as a condition of "credit bidding" its cure amount. The Debtor appears to be trying to condition participation at the auction by a landlord on the landlord's wholly unrelated waiver of its rejection damage claims. The Debtor is seeking similarly inappropriate relief in its CVS Assignment Motion and Landlord has objected to that relief in the CVS Objection.

For all of the reasons discussed herein, the Assumption Motion, which, mischaracterizes the scope of the Debtor's rights under the now-terminated Master Leases, should be denied as it relates to the sites subject to the Master Leases.

RELEVANT FACTUAL BACKGROUND

Beginning in 2013, the Debtor leased fourteen properties from the Landlord pursuant to two master leases, namely: (i) that certain Master Land and Building Lease (Portfolio 1) between EM-50 UAV SLBCO LLC, a Delaware limited liability company, as Landlord, and Y-OPCO, LLC (n/k/a Fresh & Easy, LLC), a Delaware limited liability company, as Tenant, dated November 25, 2013 (the "Portfolio 1 Master Lease"), and (ii) that certain Master Land and Building Lease (Portfolio 2) between EM-50 UAV SLBCO LLC, a Delaware limited liability company, as Landlord, and Y-OPCO, LLC (n/k/a Fresh & Easy, LLC), a Delaware limited liability company, as Tenant, dated November 25, 2013 (the "Portfolio 2 Master Lease" and, together with the Portfolio 1 Master Lease, the "Master Leases"). True and correct copies of the Portfolio 1 Master Lease and the Portfolio 2 Master Lease are attached as Exhibit A and Exhibit B, respectively, to this Objection.

On or about September 18, 2015, the Debtor and the Landlord entered into that certain First Amendment to Master Land and Building Lease (Portfolio 1), which, among other things,

removed one of the seven original properties covered by the Portfolio 1 Master Lease at the request of, and as an accommodation to, the Debtor (the “Amendment to Portfolio 1 Master Lease”) and that certain First Amendment to Master Land and Building Lease (Portfolio 2), which, among other things, confirmed the earlier removal of one of the seven original properties covered by the Portfolio 2 Master Lease following its sale by the Landlord (the “Amendment to Portfolio 2 Master Lease” and, together with the Amendment to Portfolio 1 Master Lease, the “Master Lease Amendments”). As a result, each Master Lease covered only six sites at the time the Master Leases were terminated. True and correct copies of the Master Lease Amendments are attached hereto as Exhibit C and Exhibit D, respectively. A list of the sites that remained subject to the Master Leases following the Master Lease Amendments is attached hereto as Exhibit E.

In negotiating the Master Leases, the Debtor and the Landlord agreed upon a single set of terms and conditions that governed the Debtor’s lease of all of the sites (defined as “Demised Properties” in the Master Leases)³ covered by the Portfolio 1 Master Lease and a single set of terms and conditions that governed the Debtor’s lease of all of the sites covered by the Portfolio 2 Master Lease. Each of the Master Leases provided for a 20-year initial lease term for all of the Demised Properties collectively and required payment of a unitary fixed amount of Base Rent. Master Leases §§ 2.01(a), 3.02(b).⁴ Base Rent was not apportioned to specific sites and was due on account of the Debtors’ obligations under the entirety of the sites under each applicable Master Lease. Further, each Master Lease provided for the termination of the Master Lease as to

³ Capitalized Terms not otherwise defined herein have the meanings ascribed to them in the Portfolio 1 Master Lease or the Portfolio 2 Master Lease, as applicable.

⁴ Where, in this Objection, reference is made to provisions of the two Master Leases that are substantially identical and are contained in the same section number for each Master Lease, citations to such provisions will be written as “Master Leases § __.”

all Demised Properties upon the occurrence of an Event of Default. Master Leases § 15.02(a). Significantly, each Master Lease expressly provided that it was a “single and indivisible lease” and that “[n]either Landlord nor [the Debtor] would have entered into this Lease except as a single and indivisible lease.” Master Leases at 1.

Among other things, the Portfolio 1 Master Lease obligated the Debtor to pay monthly Base Rent in the amount of \$141,350.72,⁵ in advance, on the first day of each calendar month, and the Portfolio 2 Master Lease obligated the Debtor to pay monthly Base Rent in the amount of \$154,286.72,⁶ in advance, on the first day of each calendar month. However, in each of August 2015, September 2015 and October 2015, the Debtor failed to pay Base Rent when due under both Master Leases.

On October 2, 2015, the Landlord delivered a notice of an Event of Default under both Master Leases resulting from the Debtor’s failure to pay Base Rent for October 2015 when due. A true and correct copy of the Event of Default notice is attached hereto as Exhibit F. On October 28, 2015, based on the continuing Events of Default and pursuant to its rights under Section 15.02(a) of the Master Lease, the Landlord validly terminated the Master Leases. A true and correct copy of the Termination, along with proof of delivery by facsimile consistent with the notice requirements contained in the Master Leases, is attached hereto as Exhibit G.

⁵ Initially, the monthly amount of Base Rent due under the Portfolio 1 Master Lease was \$162,004.47. Portfolio 1 Master Lease § 3.02(b). On December 1, 2014, pursuant to the terms of the Portfolio 1 Master Lease, the monthly Base Rent was adjusted to \$164,434.53 per month. Portfolio 1 Master Lease § 3.02(a), (b). On September 18, 2015, upon the removal of one of the Demised Properties as discussed above, the Base Rent was adjusted to \$141,350.72. Amendment to Portfolio 1 Master Lease § 2.

⁶ Initially, the monthly amount of Base Rent due under the Portfolio 2 Master Lease was \$186,078.87. Portfolio 2 Master Lease § 3.02(b). On December 1, 2014, pursuant to the terms of the Portfolio 2 Master Lease, the monthly Base Rent was adjusted to \$188,870.05 per month. Portfolio 2 Master Lease § 3.02(a), (b). On December 4, 2014, upon the removal of one of the Demised Properties as discussed above, the Base Rent was adjusted to \$154,286.72. Amendment to Portfolio 2 Master Lease § 2.

On October 30, 2015 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On November 5, 2015, the Debtor filed the CVS Assignment Motion, seeking, among other things, authority to assume and assign the Debtor’s (previously terminated) leasehold interest in one of the sites that was part of the Portfolio 2 Master Lease. On November 17, 2015, the Landlord filed its CVS Objection.

On November 13, 2015, the Debtor filed the Assumption Motion at issue in this Objection. That motion seeks, among other things, approval of Bidding Procedures (attached as Exhibit 1 to the proposed “Procedures Order,” which in turn is attached as Exhibit A to the Assumption Motion) [Dkt. No. 124-1] (the “Bidding Procedures”). On November 16, 2015, the Debtor filed Exhibit G to the Assumption Motion [Dkt. No. 138-1], which listed, among the leases to be auctioned, all six of the sites covered by the Portfolio 1 Master Lease and all six of the sites covered by the Portfolio 2 Master lease. Lease Schedule, at 4-6. Of those 12 leases, seven are listed as having no cure amounts associated with their assumption and assignment. Id. The remaining five are listed with inadequate and seemingly arbitrary cure amounts. Specifically, the sites located at 1960 West Baseline Road, 685 E. Bonita Avenue, and 2238 Broad Street, all part of the Portfolio 1 Master Lease, are listed as having cure amounts of \$1,182.25, \$1,077.08, and \$1,143.07, respectively. Id. at 4-5. In fact, the amount required to cure all of the Debtor’s defaults under the Portfolio 1 Master Lease, which would be required to assign a leasehold interest in any of these sites, is no less than \$141,350.72 (i.e. unpaid pre-petition Base Rent), plus applicable fees, costs and expenses due under the Portfolio 1 Master Lease. Similarly, the sites located at 1537 S. Higley Road and 3231 E. University Avenue, both part of the Portfolio 2 Master Lease, are listed as having cure amounts of \$242.00 and \$7,628.00,

respectively. Id. However, the amount required to cure all of the Debtor's defaults under the Portfolio 2 Master Lease, which would be required to assign a leasehold interest in either of these sites, is no less than \$154,286.72 (i.e. unpaid pre-petition Base Rent), plus applicable fees, costs and expenses due under the Portfolio 2 Master Lease.

ARGUMENT

A. The Arguments Raised in this Objection Are Appropriately Considered at the Hearing Seeking Authorization of the Proposed Procedures Order

While the Debtor is not yet seeking authorization for the assumption and assignment of the leases, and the Assumption Motion provides a separate deadline of December 2, 2015 for objections to any actually proposed assumption and assignment that results from the auction, the Landlord feels compelled to submit this Objection now to preserve its rights in the face of the proposed Bidding Procedures and the Debtor's stated goal of auctioning each site independently from its Master Lease. The Bidding Procedures do more than simply establish a timeline and qualifying bid requirements. They contain several provision that affect the substantive rights of the Landlord, and the Landlord objects to those provisions, as set forth in Sections C and D, infra. Further, it would be imprudent for the Landlord not to expressly object to the Bidding Procedures as they provide for the auction of sites for which the Debtor is merely a terminated hold-over tenant and for which it does not have the power to assume the terminated Master Leases, let alone some nonexistent individual lease for any site subject to a Master Lease. Finally, the Bidding Procedures purport to authorize the Debtor to market and assign sites on an individual basis, without regard to the fact that each Master Lease is a unitary contract that, in addition to having been terminated, could only ever be assumed and assigned in its entirety. The Court and potential bidders should be aware of these circumstances from the outset, and the Landlord wants to avoid any argument by the Debtor that it has waived any of its rights with

respect to the two Master Leases. For all these reasons, it is appropriate for the Court to consider the objections raised herein at the November 24, 2015, hearing on approval of the Bidding Procedures. If, notwithstanding the pre-petition termination of the Master Leases and their unitary nature, the Court determines that the Debtor is entitled to market the Master Leases or certain leasehold interests in individual sites that are subject to the Master Leases, the Landlord expressly reserves all rights to object to entry of an order approving the assumption and assignment of any leasehold interest covered by the Master Leases, on the basis of arguments made herein as well as other arguments advanced by the Landlord.

B. The Debtor Cannot Assume and Assign Any Lease that Was Validly Terminated Prepetition

The Debtor has no power to market or assign leasehold interests in the sites governed by the Master Leases, pursuant to the Bidding Procedures or otherwise. It is axiomatic that a debtor cannot assume a lease or contract that has been validly terminated prior to the bankruptcy filing. The Bankruptcy Code explicitly provides that with nonresidential real property leases: “The trustee may not assume or assign any executory contract or unexpired lease of the debtor . . . if . . . such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief.” 11 U.S.C. § 365(c)(3). In re Great Feeling Spas, Inc., 275 B.R. 476, 477 (Bankr. D.N.J. 2002) (“Pursuant to Section 365(c)(3) of the Bankruptcy Code, the debtor may not assume a nonresidential lease that has terminated prepetition.”); In re Key Largo Watersports, Inc., 377 B.R. 738, 740-41 (Bankr. S.D. Fla. 2007) (“[T]he issue of whether or not a lease has been terminated prepetition is often the critical issue in the absence of a prepetition eviction judgment since a terminated lease cannot be assumed.”) (citing 11 U.S.C. § 365(c)(3); In re Foxfire Inn of Stuart Florida, Inc., 30 B.R. 30, 31 (Bankr.

S.D. Fla. 1983) (holding that lease was not assumable because landlord had effectively terminated the lease pursuant to the lease's terms and in accordance with applicable state law).

The Landlord validly terminated both Master Leases two days before the Debtor filed its chapter 11 petition. The Master Leases were terminated when Landlord delivered the written notice of termination to the Debtor. Section 15.02(a) of each Master Lease gave the Landlord an immediate right of termination, "without notice or demand," upon the occurrence of an Event of Default by the Debtor. The Debtor breached Section 3.02(b) of each Master Lease when it failed to pay Base Rent when due for August 2015, September 2015 and October 2015. Although not required to under the Master Leases, the Landlord gave the Debtor notice of the Event of Default under Section 15.01(a) related to the failure to timely pay October rent on October 1, 2015. Then, on October 28, two days prior to the Petition Date, the Landlord terminated the Master Leases. That "express statement in writing" was all that was required under the terms of the Master Leases to terminate both Master Leases and the Debtor's rights thereunder. Master Leases § 15.02(b). Because the Master Leases were terminated pre-petition, the Debtor does not have any power to assume and assign its former leasehold interest in any of the sites that the Debtor leased pursuant to the Master Leases. To the extent the Assumption Motion seeks authority to market and assign the Debtor's former leasehold interest in one or more sites subject to a Master Lease, that relief should be denied because the Master Leases were terminated prepetition.⁷

⁷ The Debtor has not commenced an adversary proceeding (or even filed a motion) seeking to establish that, notwithstanding the valid pre-petition termination, the estate holds any real property interests in the sites or the Master Leases that can be assumed, let alone assigned.

C. The Bidding Procedures Improperly Purport to Allow the Debtor to Market and Assign Leasehold Interests in the Demised Properties on an Individual Basis

The Debtor has drafted Bidding Procedures that, if approved as written, would authorize the Debtor to market and assign leasehold interests in sites that are governed by the Master Leases on an individual basis. However, the Master Leases require the Debtor to assume or reject each Master Lease in its entirety, including all of the Demised Properties covered thereby, as a single unit. Bidding Procedures §§ 4.B (“Bids can be for single Leases or groups of Leases.”),⁸ 7.E (“Upon consultation with the Committee, the Debtor may offer the Leases for bidding individually or in packages.”). The Debtor is attempting to use the procedural mechanism of establishing bidding procedures (on shortened time no less) to secure a substantive right to which it is not otherwise entitled. If this Court were to determine (although it has not been asked by the Debtor) that, notwithstanding the pre-petition termination, the Debtor is entitled to assume and assign either or both of the Master Leases, applicable case law requires assumption and assignment (as well as rejection) to apply to the entirety of each Master Lease and does not allow the Debtor to divvy up the sites under the Master Leases into new leases created out of whole cloth. To the extent the Court desires to permit the Debtor to seek to assign the Master Leases (even though they were validly terminated and the Debtor has not sought to establish that it has any continuing rights), the Court should limit the Debtor to accepting bids for each Master Lease (and the sites within it) as an indivisible whole.

When a debtor elects to assume a lease, “it must generally assume all the terms of the lease and may not pick and choose only favorable terms to be assumed.” In re Buffets Holdings, Inc., 387 B.R. 115, 119 (Bankr. D. Del. 2008) (citing In re Italian Cook Oil Corp., 190 F.2d 994,

⁸ Although the Bidding Procedures speak of “Leases” it appears they are referring to individual sites, whether or not they are subject to a master lease.

997 (3d Cir. 1951) (“The [debtor] may not blow hot and cold. If he accepts the contract, he accepts it cum onere. If he receives the benefits he must adopt the burdens.”)). This rule applies to a master lease agreement governing a debtor’s lease of multiple properties, so long as the agreement represents a single, indivisible contract. Id. at 119-20; In re Dickinson Theatres, Inc., 2012 WL 4867220 at *2, No. 12-22602 (Bankr. D. Kan. Oct. 12, 2012).

The question of whether a contract is an indivisible agreement is governed by applicable state law, here the law of New York. Id. at 120; Master Lease Art. 20. Under New York law, the question is determined by reference to the parties’ intent. DB Structured Prods., Inc. v. Am. Home Mortg. Holdings, Inc. (In re Am. Home Mortg. Holdings, Inc.), 402 B.R. 87, 94 (Bankr. D. Del. 2009) (“[S]everability is a question of the parties’ intent, to be determined from the language employed by the parties, viewed in light of the circumstances surrounding them at the time they contracted.”) (quoting Calyon N.Y. Branch v. Am. Home Mortg. Corp. (In re Am. Home Mortg., Inc.), 379 B.R. 503, 521 (Bankr. D. Del.) (internal quotation marks omitted)); In re AbitibiBowater Inc., 418 B.R. 815, 823 (Bankr. D. Del. 2009) (holding that for a determination of severability under New York law, “the court looks to the parties’ intention, which is determined by the circumstances surrounding the transaction”). Evidence of the parties’ intention is derived from the language of the contract as well as other circumstances of the transaction. AbitibiBowater, 418 B.R. at 824-28 (considering, *inter alia*, whether the agreements were executed at the same time between identical parties, whether the agreements related to the same subject matter, whether termination of one agreement required termination of the other, and whether they had identical provisions governing issues like choice of law and dispute resolution). Where, as here, the parties to an agreement intend that the agreement be a single, unseverable agreement, the agreement must be treated as such and can only be assumed and assigned (or

rejected) in its entirety. Buffets Holdings, 387 B.R. at 128; In re Dickinson Theatres, Inc., 2012 WL 4867220 at *2.

In Buffets Holdings, a case decided under Illinois law, which also turns on the intent of the parties, the Bankruptcy Court for the District of Delaware held that debtors who operated restaurants on several leased properties, could not reject leases of certain properties while retaining interests in other properties subject to the same master leases. 387 B.R. at 121-28. Instead, the master leases, each governing several properties, had to be assumed or rejected “as a whole.” Id. at 128. This conclusion was based on the court’s finding that the parties intended the master leases to be indivisible. To ascertain the intent of the parties, the court first looked to the express terms of the master leases. The court reasoned that provisions prohibiting the merging of individual leases and requiring the landlord’s consent before individual leases could be severed from the master leases indicated the parties’ intent that the master leases were not severable. Id. at 123. The court also found relevant that the tenants’ obligation to pay rent under the master lease was joint and several (i.e. each tenant was liable for the total rent due), that if one property became unavailable all rent would nonetheless remain due, and that the term of the master leases could only be extended if all the ground leases covered by the master leases were extended by the same length of time. Id. Finally, the court found that the purpose of the transaction was for the debtor to monetize its fee and leasehold interests in the properties through a sale-leaseback, that the bundling of the leases was an important component of the transaction because it reduced the risk to the landlord, and that the landlord would not have agreed to the deal if it had been structured as individual leases. Id. at 124, 125, 126-27. For all these reasons, the court concluded that the parties had intended to create indivisible master leases, notwithstanding that each ground lease covered by the master leases had a separate tenant and

that the rent, although due in a lump sum, was allocated among the specific restaurants covered by the master leases. Id. at 121.

Even more factually similar to the case at hand is In re Dickinson Theatres, Inc., where a debtor that was party to a master lease covering four theater locations sought to reject its leasehold interest in just one of the four properties. 2012 WL 4867220 at *1. The applicable law in Dickinson was Kansas law, which, like New York law, makes the intent of the parties paramount. Id. at *2, 5. Accordingly, the Dickinson court began by emphasizing that the parties to the master lease had “expressly and unambiguously” stated in the master lease that the master lease was not divisible. Id. at *2.⁹ This by itself, was dispositive. Id. at * 3. Still, the Dickinson court also noted that several provisions of the master lease were consistent with this stated intention, namely that the same lease term applied to all four properties, the rent for all four properties was due as a lump sum and was not attributed to the specific properties, and nonpayment of any monetary obligation would give rise to a right of termination by the landlord as to all four properties. Id. at *3. The court distinguished cases cited by the debtor¹⁰ as unpersuasive because, in those cases, among other things, rent had been apportioned among the individual leased premises, the initial term of the lease varied by property, there were multiple landlords with several (not joint and several) obligations, and, in at least in one case, the relevant state law placed less of an emphasis on the parties’ intent. Id. at * 3-5. Most importantly, however, the Dickinson court reiterated that, unlike in the cases cited by the parties or any other

⁹ The language used by the parties in Dickinson was strikingly similar to that used by the parties in this case (as discussed below). In Dickinson, the parties recited in the master lease itself that “[i]t is the intent of the parties hereto . . . that . . . this Lease constitutes an unseverable and single lease of all, but not less than all, of the Properties . . . [and] Lessee waives any claim or defense based upon the characterization of this Lease as anything other than . . . a master lease of all of the Properties.” Id. at * 3.

¹⁰ The debtor in Dickinson relied on In re Cafeteria Operators, L.P., 299 B.R. 384 (Bankr. N.D. Tex. 2003) and In re Convenience USA, Inc., 2002 WL 230772, No. 01-81478 (M.D.N.C. Feb 12, 2002).

case the court had been able to identify, the parties to the master lease in Dickinson had, at the time of contracting, expressly articulated their intent that the master lease be a unitary, indivisible agreement. Id. at *3, 5.¹¹

Here, the Debtor and the Landlord intended from the outset that each Master Lease be treated as a unitary, indivisible agreement. The parties here, just as the parties in Dickinson, evidenced that intent by expressly articulating it in the Master Leases. Specifically, in Recital D to each Master Lease, the Parties proclaimed:

[T]his Lease constitutes *a single and indivisible lease* of all the Demised Properties *collectively*, and is not an aggregation of leases for the separate Demised Properties. Neither Landlord nor Tenant would have entered into this Lease except as a single and indivisible lease, and the rental herein has been established on the basis of the specific structure of the subject transaction and the economic benefits and risk profile of *the transaction as a whole*, and not based on the valuation or price of any individual Demised Property.

Master Leases at 1 (emphasis added).

The Debtor and the Landlord recently reaffirmed that Each Master Lease was a unitary master lease when they executed the Master Lease Amendments. There, the parties stated:

“Landlord and Tenant intend that: (i) the Lease constitutes an unseverable, unitary and single lease of all, but not less than all, of the Demised Properties, shall not be subject to severance or division except as expressly set forth in the Lease, and neither the

¹¹ By contrast to the facts of Buffets Holdings and Dickenson, the court in AbitibiBowater did not find a unitary agreement under New York law, where there were two separate contracts entered into by different parties 20 years apart, and the two contracts related to different subject matters, were not interdependent (in that a termination of one contract did not cause the termination of the other), and were governed by distinct choice-of-law and dispute resolution provisions. 418 B.R. at 824-28. Likewise, in American Home Mortgage, the master agreement was found, under New York law, to be divisible into two parts—a loan purchase agreement (and a loan servicing agreement—because the two components of the agreement had distinct purposes, were governed by distinct provisions, were supported by separate consideration (the purchase price paid for the loans, on the one hand, and the servicing fee, on the other hand), and obligated two separate debtors (one who sold loans and another who serviced them) with obligations that were not interrelated. Unlike those cases, the Master Leases at issue here are each comprised of one agreement, executed by only two parties (one lessor and one lessee), that obligated the Debtor to pay Base Rent in a single, unallocated amount for all properties being leased and contained uniform provisions governing each property.

Lease, nor Tenant's obligations or rights under the Lease may be allocated or otherwise divided among any Demised Properties by Tenant."

Amendment to Portfolio 1 Master Lease § 4(a); Amendment to Portfolio 2 Master Lease § 3(a).

In the Master Lease Amendments, the Debtor expressly "waive[d] any claim or defense based upon the characterization of [each Master Lease] as anything other than . . . a master lease of all the Demised Properties." Amendment to Portfolio 1 Master Lease § 4(c); Amendment to Portfolio 2 Master Lease § 3(c). Finally, but of particular relevance here, each Master Lease Amendment made clear:

[F]or the purposes of any assumption, rejection or assignment of the Lease under 11 U.S.C. § 365 . . . this is one indivisible and non-severable lease dealing with and covering one legal and economic unit that must be assumed, rejected or assigned as a whole with respect to all (and only all) of the Demised Properties."

Amendment to Portfolio 1 Master Lease § 4(c); Amendment to Portfolio 2 Master Lease § 3(c).

The operative provisions of the Master Leases are consistent with and further evidence this stated intention. Like the lease at issue in Dickinson, each Master Lease was between a single landlord and a single tenant. Master Leases at 1. Each Master Lease also set forth a single set of provisions applicable to all of the Demised Properties, including, *inter alia*, the initial lease term, choice of law, arbitration procedures, the Events of Default, and the remedies available to the Landlord. Master Leases §§ 2.01(a), 3.02(b), 11.02, 15.01, 15.02, 31.01. The Base Rent required by each Master Lease covered the Debtor's leasehold interest in all of the Demised Properties for that Master Lease and was not allocated among the properties, a fact the Dickinson court found significant. Master Leases § 3.02(b). Moreover, upon the occurrence of an Event of Default, each Master Lease entitled the Landlord to terminate that Master Lease in its entirety and recover possession of all of the Demised Properties, irrespective of whether the Event of Default related to only one (or fewer than all) of the Demised Properties. Id. § 15.02(a).

Because the Debtor and the Landlord intended each Master Lease to be an indivisible agreement covering all of the Demised Properties subject to that Master Lease, the Master Leases cannot be subject to piecemeal assumption and assignment. Again, even though the Master Leases were validly terminated pre-petition, if the Debtor seeks to auction any sites subject to a Master Lease, then it should be required to consider only bids for all sites subject to that Master Lease, as it cannot assume and assign anything less than the entire Master Lease.

D. The Debtor Has Proposed Wholly Inadequate Cure Amounts for the Master Leases

The Debtor's proffered cure amounts for the Master Leases, as listed in the Lease Schedule, are arbitrary and wholly inadequate. Even taken together, the cure amounts listed on the Lease Schedule do not total anything close to the amount of unpaid prepetition rent due under the Master Leases. The amount of pre-petition unpaid rent due and owing by the Debtor is no less than \$141,350.72 for the Portfolio 1 Master Lease and \$154,286.72 for the Portfolio 2 Master Lease, in each case plus applicable fees, costs and expenses due thereunder. Thus, the cure amount for any Demised Property must include, at a minimum: (i) the amount of pre-petition unpaid rent under the relevant Master Lease, plus applicable fees, costs and expenses due thereunder, (ii) all late fees and penalties due and owing for the prepetition period under the relevant Master Lease, and (iii) any and all other damages under the relevant Master Lease (e.g. environmental liabilities). The Debtor has proposed cure amounts that do not even begin to account for its full cure obligation under section 365 of the Bankruptcy Code.

The appropriate calculation of the cure amount is not only relevant in the event a leasehold interest is assumed by a third party but also impacts a landlord's credit bidding rights because the Bidding Procedures provide that "a Landlord may credit bid only an amount equal to its cure amount, that is acceptable to the Debtor." Bidding Procedures § 6.B. To protect its

rights under Master Leases, the Landlord must have the ability to credit bid the entire amount of the Debtor's cure obligations as to *all* Demised Properties under the relevant Master Lease.

CONCLUSION

For all of the reasons discussed herein, the Landlord respectfully urges the Court to deny the Assumption Motion to the extent that it applies to either or both of the Master Leases or the properties subject thereto.

Dated: November 23, 2015
Wilmington, Delaware

POTTER ANDERSON & CORROON LLP

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EXHIBIT A

**MASTER
LAND AND BUILDING LEASE (PORTFOLIO 1)**

between

**EM-50 UAV SLBCO LLC,
a Delaware limited liability company,**

as LANDLORD

and

**Y-OPCO, LLC,
a Delaware limited liability company**

as TENANT

November 25, 2013

MASTER LAND AND BUILDING LEASE (PORTFOLIO 1)

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**MASTER
LAND AND BUILDING LEASE (PORTFOLIO 1)**

THIS MASTER LAND AND BUILDING LEASE (PORTFOLIO 1) (this “**Lease**”) is made and entered into as of November 25, 2013 (the “**Commencement Date**”), by and between EM-50 UAV SLBCO LLC, a Delaware limited liability company (“**Landlord**”) and Y-OPCO, LLC, a Delaware limited liability company (“**Tenant**”).

R E C I T A L S

A. Landlord owns (i) good and indefeasible title in fee simple to the land described on Exhibit A attached hereto (collectively, the “**Land**”); and (ii) all improvements and other structures located on any of the Land; any rights of way, easements, parking covenants, entitlements, privileges and other rights appurtenant to the Land, including regarding any street adjoining any portion of the Land and any air and development rights related to the Land and any and all fixtures at or on the Land, including all of the machinery, equipment and systems at or on any of the Land (collectively, “**Building Equipment**”), including, without limitation, the following (but specifically excluding any of the following that are not “fixtures” pursuant to applicable Law): built-in equipment; elevators; escalators; compressors; appliances; engines; electrical, telecommunications, plumbing, heating and lighting (including emergency lighting) fixtures, systems and equipment; radio frequency identification fixtures, systems and equipment; ventilating, and air conditioning fixtures, systems and equipment; data and other storage fixtures, systems and equipment; security fixtures, systems and equipment; fire sprinklers and fire suppression fixtures, systems and equipment; private telephone fixtures, systems and equipment; security cameras, systems and other equipment; paging and sound fixtures, systems and equipment; cleaning fixtures, systems and equipment; walk-in coolers and grill hoods; built-in sinks; built-in shelving; awnings, and supports for signs (all of the foregoing in this clause (ii), collectively, “**Improvements**”). The Land and all Improvements thereon are collectively referred to herein as “**Demised Properties**” and each individually as a “**Demised Property**.”

B. The personal property, trade fixtures and equipment owned or leased by Tenant located at any Demised Properties and used in connection with the operation of the business at the Demised Properties (other than the Building Equipment) are referred to herein collectively as the “**Tenant Equipment**.”

C. Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, the Demised Properties so that Tenant may, in accordance with and subject to the terms, conditions and restrictions of this Lease, operate (or cause the operation of) a grocery store or another Permitted Use at each Demised Property.

D. Notwithstanding any other provision of this Lease, this Lease constitutes a single and indivisible lease of all the Demised Properties collectively, and is not an aggregation of leases for the separate Demised Properties. Neither Landlord nor Tenant would have entered into this Lease except as a single and indivisible lease, and the rental herein has been established on the basis of the specific structure of the subject transaction and the economic benefits and risk profile of the transaction as a whole, and not based on the valuation or price of any individual Demised Property. Tenant’s rights to any one Demised Property are dependent on Tenant’s full performance of its obligations as to every other Demised Property, and consideration supporting any agreements under this Lease regarding any Demised Property also supports the agreements under this Lease regarding all other Demised Properties.

NOW, THEREFORE, in consideration of the lease of the Demised Properties and the rents, covenants and conditions herein set forth, and with reference to the definitions of various terms used herein as set forth on Schedule 1 hereto, Landlord and Tenant do hereby covenant, promise and agree as follows:

ARTICLE 1 DEMISE OF PREMISES

Subject to the terms and conditions contained herein, Landlord does hereby lease unto Tenant, and Tenant does hereby hire from Landlord, for the term hereinafter provided in Article 2, the Demised Properties for the use thereof by Tenant, Tenant's employees, customers and invitees.

ARTICLE 2 TERM

Section 2.01

(a) This Lease shall commence on the Commencement Date and terminate on November 25, 2033 (the "**Original Lease Term**") unless sooner terminated as hereinafter set forth. The "**Lease Term**," as such term is used herein, means the Original Lease Term as extended (or as may be extended) pursuant to Section 2.02 below, unless sooner terminated as hereinafter set forth.

(b) This Lease shall be deemed to be in full force and effect upon the Commencement Date. Tenant shall be deemed in possession of the Demised Properties upon the Commencement Date.

Section 2.02

(a) Tenant shall have the option to extend the term of this Lease for up to three (3) separate option periods upon and subject to the terms set forth below in this Section 2.02. The first option period (the "**First Option Period**") shall commence at the expiration of the Original Lease Term. The second option period (the "**Second Option Period**") shall commence at the expiration of the First Option Period. The third option period (the "**Third Option Period**") shall commence at the expiration of the Second Option Period. The First Option Period, the Second Option Period and the Third Option Period are sometimes referred to herein collectively as the "**Option Periods**" and individually as an "**Option Period**." Each of the First Option Period and the Second Option Period shall continue for a period of five (5) years from and after the commencement date of such Option Period, and the Third Option Period shall continue for a period of three (3) years from and after the commencement date of such Option Period. Except as otherwise expressly provided herein, all of the terms and conditions of this Lease applicable to the Original Lease Term shall continue to apply during each Option Period. In no event shall Tenant have any options to extend the term of this Lease except as expressly provided herein. A notice delivered by Tenant to Landlord in order to extend the term of this Lease for any Option Period pursuant to the terms hereof is referred to herein as an "**Extension Notice**".

(b) To validly extend the Lease Term for the First Option Period for all the Demised Properties subject to this Lease at the date of Tenant's delivery to Landlord of an Extension Notice for the First Option Period (i) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the Original Lease Term and not later than ten (10) months prior to the expiration of the Original Lease Term, and (ii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the First Option Period is scheduled to commence there shall be no existing Default or Event of Default under

this Lease. Each Extension Notice shall describe all Portfolio Properties that Tenant proposes to extend for the applicable Option Period under this Lease and the applicable Other Lease Option Periods under the Other Leases (i.e. the Other Lease Option Periods commencing on the same date as such Option Period under this Lease).

(c) To validly extend the Lease Term for the First Option Period for some, but not all, Portfolio Properties subject to this Lease at the date of Tenant's delivery to Landlord of an Extension Notice for the first Option Period (a "**PE First Option Period**" and such option, a "**PE First Option**") (i) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the Original Lease Term and not later than ten (10) months prior to the expiration of the Original Lease Term; (ii) such Extension Notice shall list the Portfolio Properties under this Lease that Tenant desires be subject to such extension (the Portfolio Properties listed on such Extension Notice and subject to this Lease, the "**First Option Extension Properties**") provided, however, that the First Option Extension Properties together with the Other Leases First Option Extension Properties described in such Extension Notice must comprise at least two-thirds (2/3) of all the Portfolio Properties as of the date of Tenant's delivery to Landlord of such Extension Notice (and in no event less than seven (7) Portfolio Properties); and (iii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the First Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease. For the avoidance of doubt, if the seven (7) Portfolio Property minimum for valid extension of the Lease Term as to some, but not all, of the Portfolio Properties under this Lease contained in this clause (c) renders partial extension unavailable to Tenant under this clause (c), then if all other applicable conditions contained in this Lease are met, Tenant may still validly extend the Lease Term for all Portfolio Properties then subject to this Lease pursuant to clause (b) of this Section 2.02 (even if the number of Portfolio Properties subject to this Lease and the Other Leases is less than seven (7) at the time of such extension, and whether or not Tenant elects to exercise its right to extend all Portfolio Properties under any of the Other Leases).

(d) To validly extend the Lease Term for the Second Option Period for all the Demised Properties subject to this Lease at the date of Tenant's delivery to Landlord of an Extension Notice for the Second Option Period (i) Tenant must have validly extended this Lease for the First Option Period (whether such First Option Period is for all Demised Properties under this Lease or a PE First Option Period) (ii) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the First Option Period and not later than ten (10) months prior to the expiration of the First Option Period, and (iii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the Second Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease.

(e) To validly extend the Lease Term for the Second Option Period for some, but not all, Portfolio Properties subject to this Lease at the date of Tenant's delivery to Landlord of an Extension Notice for the Second Option Period (a "**PE Second Option Period**" and such option, a "**PE Second Option**") (i) Tenant must have validly extended this Lease for the First Option Period (whether such First Option Period is for all Demised Properties under this Lease or a PE First Option Period), (ii) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the First Option Period and not later than ten (10) months prior to the expiration of the First Option Period; (iii) such Extension Notice shall list the Portfolio Properties under this Lease that Tenant desires be subject to such extension (the Portfolio Properties listed on such Extension Notice and subject to this Lease, the "**Second Option Extension Properties**") provided, however, that the Second Option Extension Properties together with the Other Leases Second Option Extension Properties described in

such Extension Notice must comprise at least two-thirds (2/3) of all the Portfolio Properties as of the date of Tenant's delivery to Landlord of such Extension Notice (and in no event less than seven (7) Portfolio Properties); and (iv) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the Second Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease. For the avoidance of doubt, if the seven (7) Portfolio Property minimum for valid extension of the Lease Term as to some, but not all, of the Portfolio Properties under this Lease contained in this clause (e) renders partial extension unavailable to Tenant under this clause (e), then if all other applicable conditions contained in this Lease are met, Tenant may still validly extend the Lease Term for all Portfolio Properties then subject to this Lease pursuant to clause (d) of this Section 2.02 (even if the number of Portfolio Properties subject to this Lease and the Other Leases is less than seven (7) at the time of such extension, and whether or not Tenant elects to exercise its right to extend all Portfolio Properties under any of the Other Leases).

(f) To validly extend the Lease Term for the Third Option Period for all the Demised Properties subject to this Lease at the date of Tenant's delivery to Landlord of an Extension Notice for the Third Option Period (i) Tenant must have validly extended this Lease for the Second Option Period (whether such Second Option Period is for all Demised Properties under this Lease or a PE Second Option Period) (ii) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the Second Option Period and not later than ten (10) months prior to the expiration of the Second Option Period, and (iii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the Third Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease.

(g) To validly extend the Lease Term for the Third Option Period for some, but not all, Portfolio Properties subject to this Lease at the date of Tenant's delivery to Landlord of an Extension Notice for the Third Option Period (a "**PE Third Option Period**" and such option, a "**PE Third Option**") (i) Tenant must have validly extended this Lease for the Second Option Period (whether such Second Option Period is for all Demised Properties under this Lease or a PE Second Option Period), (ii) Tenant must and shall deliver to Landlord such Extension Notice not earlier than (15) months prior to the expiration of the Second Option Period and not later than ten (10) months prior to the expiration of the Second Option Period; (iii) such Extension Notice shall list the Portfolio Properties under this Lease that Tenant desires be subject to such extension (the Portfolio Properties listed on such Extension Notice and subject to this Lease, the "**Third Option Extension Properties**"); provided, however, that the Third Option Extension Properties together with the Other Leases Third Option Extension Properties described in such Extension Notice must comprise at least two-thirds (2/3) of all the Portfolio Properties as of the date of Tenant's delivery to Landlord of such Extension Notice (and in no event less than seven (7) Portfolio Properties); and (iv) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the Third Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease. For the avoidance of doubt, if the seven (7) Portfolio Property minimum for valid extension of the Lease Term as to some, but not all, of the Portfolio Properties under this Lease contained in this clause (g) renders partial extension unavailable to Tenant under this clause (g), then if all other applicable conditions contained in this Lease are met, Tenant may still validly extend the Lease Term for all Portfolio Properties then subject to this Lease pursuant to clause (f) of this Section 2.02 (even if the number of Portfolio Properties subject to this Lease and the Other Leases is less than seven (7) at the time of such extension, and whether or not Tenant elects to exercise its right to extend all Portfolio Properties under any of the Other Leases).

(h) Without limiting anything contained in Section 36.02 hereof, time is of the strictest essence in the performance of each provision of this Section 2.02. Either party, upon request of the other, shall execute and acknowledge, in form suitable for recording, an instrument confirming any Option Period, with Tenant paying all applicable recording costs.

ARTICLE 3 RENT

Section 3.01 Rent. Tenant shall pay all Base Rent and Additional Rent, from and after the Commencement Date and thereafter throughout the Lease Term, without offset, deduction, or abatement, except as may be otherwise expressly provided herein. Notwithstanding the foregoing, any amounts due by Tenant to Landlord hereunder for which no due date is expressly specified herein shall be due within twenty-five (25) days following the delivery to Tenant by Landlord of written notice of such amounts due. Except as otherwise expressly provided herein, in the event of nonpayment by Tenant of any Rent, Landlord shall have the same rights and remedies in respect thereof regardless of whether such Rent is Base Rent or Additional Rent. All payments of Rent due to Landlord shall be paid to Landlord (at its election from time to time) in one of the following manners: (a) by electronic deposit into an account designated by Landlord (a "**Landlord's Account**"), (b) by mail at Landlord's address set forth in Article 17, or (c) by mail to any other place in the United States designated by Landlord upon at least thirty (30) days' prior written notice to Tenant.

Section 3.02 Base Rent.

(a) The following terms shall have the following meanings:

(i) "**Base Date**" means (A) if the Commencement Date is the first day of a calendar month, the Commencement Date, and (B) if the Commencement Date is other than the first day of a calendar month, the first day of the first calendar month occurring after the Commencement Date.

(ii) "**Adjustment Dates**" means, collectively, each anniversary of the Base Date.

(iii) "**Base Rent Escalation**" means one and one-half percent (1.5%).

(iv) "**PE Option**" means any of the First PE Option, the Second PE Option or the Third PE Option.

(v) "**PE Option Initial Base Rent**" means, for any PE Option the product of (A) the quotient of (i) the total dollar amount of all sales at all PE Option Extension Properties for the latest consecutive twelve (12) calendar month period for which sales information has been delivered to Landlord under Section 13.02 as of the calculation date, divided by (ii) the total dollar amount of all sales at all Demised Properties for the latest consecutive twelve (12) calendar month period for which sales information has been delivered to Landlord under Section 13.02 as of the calculation date, multiplied by (B) the Base Rent applicable immediately prior to the PE Option Period caused by the exercise of such PE Option, multiplied by (C) 101.5%.

(vi) "**PE Option Extension Properties**" means any of the First PE Option Extension Properties, the Second PE Option Extension Properties or the Third PE Option Extension Properties.

(vii) “**PE Option Period**” means any of the First PE Option Period, the Second PE Option Period or the Third PE Option Period.

(b) The base rent amount for the Demised Properties for each month of the Lease Term shall be \$162,004.47, as increased as hereinafter provided (“**Base Rent**”). Tenant shall pay to Landlord Base Rent, in advance, without demand therefor, on or before the first day of each and every calendar month during the Lease Term and if the Commencement Date is not the first day of a calendar month, Tenant shall pay to Landlord pro-rated Base Rent on the Commencement Date for the partial calendar month in which the Commencement Date occurs.

(c) Subject to the terms of Section 3.02(d) below, on each of the Adjustment Dates, the Base Rent shall increase by the Base Rent Escalation.

(d) Notwithstanding Section 3.02(c) above, Base Rent for the first year of any PE Option Period shall be the PE Option Initial Base Rent. Thereafter, on each of the Adjustment Dates, the Base Rent shall increase by the Base Rent Escalation (subject to a subsequent PE Option Period, whereupon the Base Rent for the first year thereof, and thereafter, shall be as described in the foregoing terms of this Section 3.02(d)). After delivery to Landlord by Tenant of a timely and valid exercise of a PE Option, and not later than thirty (30) days prior to the commencement of the applicable PE Option Period, the parties shall enter into a written agreement setting forth the amount of the PE Option Initial Base Rent.

Section 3.03 Additional Rent.

(a) If by applicable Law, any general or special assessment or like charge may be paid in installments without any penalty whatsoever, then such assessment may be paid in such installments and Tenant shall only be liable for the portion thereof that is allocable or attributable to the Lease Term or any portion thereof. If such assessment or charge may be payable in installments with interest, Tenant may pay such assessment or charge in installments, together with all interest thereon.

(b) Tenant shall pay all Real Estate Taxes directly to the collecting authority no less than five (5) days prior to the delinquency date thereof and shall provide Landlord not less than three (3) Business Days prior to such delinquency date written evidence of payment in full reasonably acceptable to Landlord. Nothing in this Lease shall obligate Tenant to pay any estate, inheritance, franchise, net income or similar taxes of Landlord (other than any rental taxes imposed upon the Landlord that are measured by or based in whole or in part directly upon the Rent payable under this Lease, whether existing at the date hereof or hereinafter imposed by any Governmental Authority) nor shall any of same be deemed Real Estate Taxes, unless the same shall be specifically imposed in substitution for, or in lieu of, Real Estate Taxes. Notwithstanding the first sentence of this clause (b), upon the occurrence of both of the following events, Tenant shall pay Real Estate Taxes to Landlord no less than thirty (30) days prior to the delinquency date thereof in lieu of payment directly to the applicable collecting authority: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) the occurrence and continuance of any Default under this Section 3.03(b) by Tenant, or the occurrence and the continuance of any Event of Default under any provision in this Lease. Real Estate Taxes paid by Tenant to Landlord pursuant to this Section shall be used only for the payment of the Real Estate Taxes. If Tenant fails to pay the appropriate party (Landlord or the collecting authority, as provided herein) all Real Estate Taxes when due hereunder, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and all penalties or interest, or portion thereof, paid or incurred by Landlord as a result of such nonpayment or late payment by Tenant. Without limitation of the foregoing, Tenant shall deposit with

Landlord no later than thirty (30) days prior to the end of the Lease Term an amount sufficient to pay unpaid Real Estate Taxes and other accrued liabilities that will encumber the Demised Properties after the end of the Lease Term to the extent that Real Estate Taxes and such other liabilities have accrued and will accrue through the end of the Lease Term. Landlord shall segregate all such deposits from its other funds and use such deposits solely to pay such accrued liabilities as they come due.

(c) Beginning with the second (2nd) Landlord assignment involving any particular Demised Property located in California, and for each Landlord assignment thereafter involving such particular Demised Property located in California, provided such assignment results in any such Demised Property located in California being reassessed (a “**Reassessment**”) for real estate tax purposes by the appropriate government authority under the terms of Proposition 13 (as adopted by the voters of the State of California in the June 1978 election), Tenant shall not be liable for any increase in Real Estate Taxes solely attributable to such assignment and Reassessment; provided, however, that if the first (1st) Landlord assignment involving any particular Demised Property located in California shall occur in the first two (2) years of the Lease Term and result in a Reassessment, then Tenant shall not be liable for any increase in Real Estate Taxes solely attributable to such assignment and Reassessment from and after such assignment and Reassessment until the end of the second year of the Lease Term, but shall be liable thereafter for any such increase in Real Estate Taxes solely attributable to such assignment and Reassessment. For the avoidance of doubt, Tenant shall be liable for any increase in Real Estate Taxes that would have resulted absent any assignment and Reassessment.

(d) Tenant shall have the right to undertake an action or proceeding against the applicable collecting authority seeking an abatement of Real Estate Taxes or a reduction in the valuation of the Demised Properties and/or contest the applicability of any Real Estate Taxes (including, without limitation, a reduction in the value of any Demised Properties located in California under the terms of Proposition 8 (as adopted by the voters of the State of California in the November 1978 election)); provided, however, that Tenant delivers to Landlord prior written notice of any such action or proceeding by Tenant, and that Tenant has paid timely (and continues to pay timely) all Real Estate Taxes as provided in this Lease to the extent required by applicable Law. In any instance where any such permitted action or proceeding is being undertaken by Tenant, (i) Landlord shall cooperate reasonably with Tenant, at no cost or expense to Landlord, and execute any and all documents approved by Landlord and reasonably required in connection therewith and (ii) Tenant shall provide Landlord with all information reasonably requested by Landlord with respect to such action or proceeding within five (5) days after receipt of Landlord’s written request. Tenant shall be entitled to any refund (after the deduction therefrom of all expenses incurred by Landlord in connection therewith) of any Real Estate Taxes (including penalties or interest thereon) received by Tenant or Landlord, whether or not such refund was a result of actions or proceedings instituted by Tenant, to the extent such refund relates to Real Estate Taxes actually paid by Tenant to Landlord or the collecting authority, as applicable.

(e) Tenant shall be solely responsible for, and shall pay directly to the applicable service providers, the cost of all utility services provided to the Demised Properties throughout the Lease Term. Notwithstanding the foregoing, upon the occurrence of both of the following events, Tenant shall pay to Landlord the cost of any and all utility services provided to the Demised Properties in lieu of payment directly to the applicable service providers: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) any Default under this Section 3.03(d) by Tenant, or any Event of Default. Funds paid by Tenant to Landlord pursuant to the immediately preceding sentence shall be used only for the payment of the cost of utility services to the Demised Properties. If Tenant fails to pay the appropriate party (Landlord or the service providers, as provided herein) all such costs when due hereunder, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and

all penalties or interest, or portion thereof, paid or incurred by Landlord as a result of such nonpayment or late payment by Tenant.

(f) Without limiting any of Tenant's other obligations set forth in this Article, Tenant shall pay to Landlord, with each payment due to Landlord hereunder (and as a part of Rent due hereunder), all sales and excise tax on rental income and all other similar taxes imposed upon Landlord with respect to rental or other payments under this Lease (including Real Estate Taxes paid to Landlord pursuant to Section 3.03(b), or directly to the applicable taxing authority, in each case to the extent deemed includible in Landlord's gross income or gross receipts) in the nature of a gross receipts tax, gross income tax, margins tax, sales tax, occupancy tax, occupation tax, commercial activity tax, commercial rents tax, business and occupation tax, privilege tax or the like, whether imposed by a federal, state or local taxing authority (but, for purposes of clarity, not including any tax imposed on net income or any franchise taxes of Landlord measured by net income or net worth), which, when added to such payment, shall yield to Landlord after deduction of all such tax payable by Landlord with respect to all such payments a net amount which Landlord would have realized from such payment had no such tax been imposed. To the extent permitted by applicable Law, Tenant may pay any such tax directly to the taxing authority, provided Tenant establishes such right to Landlord's satisfaction prior to making any such payment, and Tenant within ten (10) days after any such payment delivers to Landlord written evidence satisfactory to Landlord that such payment has been made.

(g) Any indemnity payments due to Landlord from Tenant hereunder that are attributable to liabilities, fixed or contingent, known or unknown (i) that existed as of the date hereof, or relate to periods prior to and including the date hereof, or (ii) to which the Demised Properties were subject as of the date hereof, or that existed on the date hereof and ran with the Demised Properties and became a liability of the Landlord as the transferee or assignee of the previous owner of the Demised Properties, shall not be treated as additional rent or other gross income of the Landlord for federal income tax purposes, but as an adjustment to the Landlord's adjusted basis in the Demised Properties, which adjusted basis shall prior to the receipt by Landlord of such indemnity payments be deemed to include the amount of such liabilities. Tenant agrees that it will take no position inconsistent herewith for federal income tax purposes.

ARTICLE 4 USE

Section 4.01 Tenant shall use the Demised Properties to operate, and shall not suffer or permit any Person (including any subtenant) to use any of the Demised Properties other than to operate, grocery stores or other Permitted Uses, and the Demised Properties shall be used for no other purpose without the prior written consent of Landlord, which approval may be granted or withheld in the reasonable discretion of Landlord. Subject to applicable Law, Tenant shall open and operate, and shall cause any other Person (including any subtenant) using the Demised Properties to open and operate, a grocery store or another Permitted Use at each of the Demised Properties during all hours that are customary for similarly situated sites of the applicable grocery store or other Permitted Use. This covenant of continuous operation is an additional consideration and a material inducement for Landlord to enter into this Lease. Tenant shall deliver written notice to Landlord within ten (10) days after operation of a grocery store or other Permitted Use at any Demised Property has ceased, which notice shall specify the first date when such operation ceased. Notwithstanding the foregoing covenant of continuous operation, (a) Tenant shall have the right to cease operations at no more than two (2) Portfolio Properties in the aggregate each for not more than a single period not to exceed ninety (90) days during the Original Lease Term and (b) Tenant shall have the right to cease operations at an unlimited number of Portfolio

Properties during any Option Period (for the avoidance of doubt, this Section 4.01 is subject to Article 16 regarding Force Majeure and the last paragraph of Article 6 regarding Alterations).

Section 4.02 Notwithstanding any other provision of this Article, Tenant shall not use, or suffer or permit any Person (including any subtenant) to use, the Demised Properties or any portion thereof for any purpose in violation of any applicable Law, or in violation of any warranties or guaranties, or in violation of any covenants or restrictions of record in effect as of the date of this Lease and any other covenants or restrictions of record encumbering the Demised Properties during the Lease Term, provided such other covenants or restrictions of record are consented to by Tenant (such consent not to be unreasonably withheld, conditioned or delayed) or, without limiting any of the express terms of this Lease, caused by Tenant. From the Commencement Date and thereafter throughout the Lease Term, Tenant shall conduct its business in a commercially reasonable and reputable manner with respect to each of the Demised Properties and in compliance with the terms and provisions of this Lease. The character of the occupancy of the Demised Properties is an additional consideration and a material inducement for the granting of this Lease by Landlord to Tenant.

Section 4.03 Without limiting the foregoing covenants in this Article 4, Tenant hereby agrees that it shall not cause any event or circumstance that triggers any purchase right, termination right, recapture right or option regarding any Third-Party Option Property set forth on Schedule 4.03, provided, however, that with respect to the "Reverter Rights" identified on Schedule 4.03, Tenant shall not be in breach of the foregoing covenant unless such rights are actually exercised. For the avoidance of doubt, Tenant shall not be in breach of the foregoing covenant in this Section by reason of any action of Landlord, including any attempted or actual partial assignment of this Lease by Landlord under Article 30.

Section 4.04 Without limitation, no provision of this Article 4 shall limit any of the covenants of Tenant contained in Article 22.

ARTICLE 5 PERFORMANCE OF OBLIGATIONS; ACCEPTANCE OF DEMISED PROPERTIES

Tenant hereby represents, warrants and covenants to Landlord that Tenant has the right and lawful authority to enter into this Lease and perform Tenant's obligations hereunder. Landlord hereby represents, warrants and covenants to Tenant that Landlord has the right and lawful authority to enter into this Lease and perform Landlord's obligations hereunder. Tenant acknowledges that it has had access to the Demised Properties prior to execution of this Lease and has had the opportunity to perform all tests, studies, inspections and investigations (including any investigations regarding zoning and use issues regarding all Demised Properties) and has in fact evaluated the Demised Properties to the extent required for its operations, that it desires, and that Tenant is accepting each Demised Property in its AS IS condition existing on the date Tenant executes this Lease. Tenant hereby accepts each Demised Property in its condition as of the date of possession hereunder, subject to all applicable Law, as well as private easements and restrictions, governing and regulating the use, operation or maintenance of the Demised Properties, whether or not of record (collectively, the "**Diligence Matters**"), and accepts this Lease subject thereto and to all matters disclosed hereby, and by any exhibits attached hereto. Tenant waives to the fullest extent allowed by Law any rights to notice by Landlord regarding the condition of the Demised Properties, whether at law or in equity, and hereby waives any rights and remedies thereunder based in any alleged or actual failure of Landlord to provide any such notices. Tenant acknowledges that (a) neither Landlord nor any of its Affiliates has made any representation or warranty as to the suitability of any Demised Property for the conduct of the Tenant's business and (b) Tenant is entering into this Lease

solely on the basis of its own investigations and familiarity with the Demised Properties and not on the basis of any representation, warranty, covenant, agreement, undertaking, promise, statement, arrangement or understanding by, on behalf of, or with, Landlord or any of its Affiliates, except as expressly set forth in this Lease.

ARTICLE 6 ALTERATIONS

Subject to the provisions of this Article 6, Tenant shall have no right to make alterations or additions to the Improvements (collectively, “Alterations”) at any single Demised Property that (i) involve structural changes (unless otherwise approved by Landlord), (ii) would reduce the value of the Improvements as they existed prior to the time that said Alterations are made; or (iii) would adversely affect the structural integrity of the Improvements. Tenant shall not install any underground storage tanks and any above ground storage tanks shall include secondary containment sufficient to prevent spills, overfills or tank ruptures from causing a release to the environment. Any and all Alterations made by Tenant shall be at Tenant’s sole cost and expense. Prior to the commencement of construction, Tenant shall deliver promptly to Landlord detailed cost estimates for any such proposed Alterations, as well as all drawings, plans and other information regarding such Alterations (such estimates, drawings, plans and other information are collectively referred to herein as the “Alteration Information”). Landlord’s review and/or approval (if required) of any Alteration Information shall in no event constitute any representation or warranty of Landlord regarding (x) the compliance of any Alteration Information with any applicable Law, (y) the presence or absence of any defects in any Alteration Information, or (z) the safety or quality of any of the Alterations constructed in accordance with any plans or other Alteration Information. Landlord’s review and/or approval of any of the Alteration Information shall not preclude recovery by Landlord against Tenant based upon the Alterations, the Alteration Information, or any defects therein. In the event that Landlord’s consent is required for particular Alterations, Tenant shall request Landlord’s consent to such Alterations in writing, and Landlord will endeavor to respond to such request within ten (10) Business Days following Landlord’s receipt of such request. In the event that Landlord fails to so respond to Tenant’s request within the foregoing ten (10) Business Day period, then Tenant may deliver a second written request for Landlord’s consent to such Alterations containing a sentence in the header of the first page of the request set in at least 14-point bold font, all capital letters, stating “**LANDLORD’S FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS AFTER LANDLORD’S RECEIPT HEREOF SHALL CONSTITUTE LANDLORD’S CONSENT TO THE ALTERNATIONS PROPOSED HEREIN,**” and Landlord will endeavor to respond to such second request within ten (10) Business Days following receipt of the same. In the event that Landlord fails to so respond to Tenant’s second request within the foregoing ten (10) Business Day period, then Landlord shall be deemed to have consented to the Alterations set forth in Tenant’s written request. In making any and all Alterations, Tenant also shall comply with all of the following conditions:

(a) No Alterations shall be undertaken until Tenant shall have (i) procured and paid for, so far as the same may be required, all necessary permits and authorizations of all Governmental Authorities having jurisdiction over such Alterations, and (ii) delivered to Landlord at least five (5) days prior to commencing any such Alterations written evidence acceptable to Landlord, in its reasonable discretion, of all such permits and authorizations. Landlord shall, to the extent necessary (but at no cost, expense, or risk of loss to Landlord), join in the application for such permits or authorizations whenever necessary, promptly upon written request of Tenant.

(b) Any and all structural Alterations of the Improvements shall be performed under the supervision of an architect and/or structural engineer reasonably acceptable to Landlord.

(c) Except for minor, non-structural projects bearing no material risk of any liens for labor and/or materials being filed by third party contractors in connection therewith against Landlord or any applicable Demised Property (but in all cases for any project that is not a Minor Project), Tenant shall notify Landlord at least fifteen (15) days' prior to commencing any Alterations, and Tenant shall permit Landlord access to the relevant Demised Properties in order to post and keep posted thereon such notices as may be provided or required by applicable Law to disclaim responsibility for any construction on the relevant Demised Properties. In addition, Landlord may require Tenant to file or record any such notices, or other similar notices, each in form and substance reasonably satisfactory to Landlord, in accordance with local law or custom.

(d) Any and all Alterations shall be conducted and completed in a commercially reasonable time period, in a good and workmanlike manner, and in compliance with all applicable Law, permits, and requirements of all Governmental Authorities having jurisdiction over the relevant Demised Properties, and of the local Board of Fire Underwriters, if any; and, upon completion of any and all Alterations, Tenant shall obtain and deliver to Landlord a copy of the amended certificate of occupancy for the relevant Demised Properties, if required under applicable Law or by any Governmental Authority. If any Alterations involve the generation, handling, treatment, storage, disposal, permitting, abatement or reporting of Hazardous Materials, Tenant shall prepare and retain any and all records, permits, reports and other documentation necessary or advisable to document and evidence all such Hazardous Materials were handled in compliance with applicable Law.

(e) The cost of any and all Alterations shall be promptly paid by Tenant so that the Demised Properties at all times shall be free of any and all liens for labor and/or materials supplied for any Alterations subject to the next succeeding sentence. In the event any such lien shall be filed, Tenant shall, within ten (10) days after receipt of notice of such lien, deliver written notice to Landlord thereof, and Tenant shall, within forty-five (45) days after Tenant's receipt of notice of such lien, discharge the same by bond or payment of the amount due the lien claimant. Tenant may in good faith contest any such lien provided that within such forty-five (45) day period Tenant provides Landlord with a surety bond or other form of security reasonably acceptable to Landlord, protecting against said lien. Tenant shall provide Landlord promptly with evidence satisfactory to Landlord that all contractors, subcontractors or materialmen have been paid in full with respect to such Alterations and that their lien rights have been waived or released. In the event Tenant fails to either discharge such lien or protect against such lien in accordance with the foregoing, then Landlord shall have the option (but not the obligation) upon not less than fifteen (15) days' prior notice, and Tenant's failure to either discharge such lien or protect against such lien in accordance with the foregoing, to pay such lien or post a bond to protect against such lien and pass through such costs to Tenant as Additional Rent.

(f) The interest of Landlord in the Demised Properties shall not be subject in any way to any liens for improvements to or other work performed to the Demised Properties by or on behalf of Tenant. Tenant shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion, or other interest of Landlord in the Demised Properties. All mechanics, materialmen, contractors, laborers, artisans, suppliers, and other parties contracting with Tenant, its representatives or contractors with respect to the Demised Properties are hereby given notice that they must look solely to Tenant to secure payment for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding any of the Demised Properties through or under Tenant during the term of this Lease. Tenant shall notify every contractor making improvements to the Demised Properties that the interest of Landlord in the Demised Properties shall not be subject to liens for improvements to or other work performed with respect to the Demised Properties by or on behalf of

Tenant. Notwithstanding anything to the contrary set forth in this Lease, no restrictions contained in this Lease as to liens shall apply to Permitted Liens.

(g) Tenant shall discharge any lien filed against the Demised Properties, the Building or the Land, or any part thereof, for work done or materials furnished at Tenant's request with respect to the Demised Properties as provided above in subsection (e) of this Article 6. If Tenant fails to keep this covenant, in addition to any other remedies available to Landlord under this Lease, Tenant agrees to pay Landlord, as Additional Rent, the sum equal to the amount of the lien thus discharged by Landlord, plus all actual and reasonable costs and expenses, including without limitation third party attorney's and paralegal's fees and court costs, incurred by Landlord in discharging such lien.

Notwithstanding anything contained in Section 4.01, so long as Tenant is diligently pursuing completion of an Alteration permitted under this Lease, Tenant may cease operations at the applicable Demised Property, as reasonably required to complete such Alteration, and only to the extent and for a time period reasonably necessary to complete such Alteration, and any such cessation of operations without diligent pursuit of completion of such Alteration or extending beyond such reasonable scope and time to complete such Alteration shall constitute a default under Section 4.01 (subject to the terms thereof).

ARTICLE 7 REPAIRS AND MAINTENANCE

Except as otherwise provided in this Article, Tenant, at its sole cost and expense, shall maintain each of the Demised Properties and each part thereof, structural and non-structural, in good order and condition, including all areas outside of any buildings (including all sidewalks, driveways, landscaping, trash enclosures, and trash compacting and loading areas on the Demised Properties), and including any roof on any buildings, in a neat and clean condition, and ensuring that debris from the operation of each grocery store or other Permitted Use on the Demised Properties is cleaned and removed on a regular basis) and, subject to the terms and conditions of Article 6, shall make any necessary Repairs thereto, interior and exterior, whether extraordinary, foreseen or unforeseen, but subject to Article 11 and Article 12. Without limitation, (a) no Repairs shall result in any structural damage to any Demised Properties or any injury to any persons, (b) Tenant shall ensure that the quality of materials and workmanship of any Repairs meets or exceeds the quality of materials and workmanship of the Improvements prior to the need for such Repairs; (c) all Repairs shall fully comply with applicable Law, the requirements of any covenants, conditions, restrictions or other permitted encumbrances that are of record regarding the applicable Demised Property, and any applicable repair standards and requirements promulgated by Tenant for its (or its subsidiaries' or Affiliates' or franchisees') properties. Tenant promptly shall abate mold in the Demised Properties if such mold creates a material unsanitary or unsightly condition. Landlord shall have no duty whatsoever to maintain, replace, upgrade, or repair any portion of the Demised Properties, including any structural items, roof or roofing materials, or any aboveground or underground storage tanks, and Tenant hereby expressly waives the right to make Repairs at the expense of Landlord, which right may be provided for in any applicable Law now or hereinafter in effect. In addition to Landlord's rights under Section 15.05, if Tenant fails or neglects to commence and diligently proceed with all Repairs or fulfill its other obligations as set forth above within fifteen (15) days after receipt of written notice of the need therefor describing the applicable Repair or other obligation, then Landlord or its agents may, subject to the terms of Article 18 below, enter the Demised Properties for the purpose of making such Repairs or fulfilling those obligations; provided, however, without limiting Landlord's rights pursuant to Article 18 below, in the event that Tenant reasonably disputes Tenant's obligation to make such Repairs or other obligations set forth above, then Landlord's right to enter the Demised Properties for the purpose of making such Repairs or fulfilling those obligations shall be postponed pending a determination of such dispute (however, if in Landlord's

reasonable determination such Repairs or performance of such obligations is necessary to avoid an imminent threat of injury or harm to persons or material damage or loss of value to property, then Landlord may, whether or not such dispute has been resolved, with or without notice (provided, however, that Landlord shall endeavor to give such notice as is practical under the circumstances, if any, which notice may be oral and need not be in writing), and without regard to whether or not any applicable cure period expressly provided herein has expired, elect to perform such Repairs or obligations). All actual and reasonable costs and expenses incurred by Landlord as a consequence of such Landlord's actions, plus an administrative charge of five percent (5%) of such costs and expenses, shall be due to Landlord from Tenant within ten (10) days after written demand from Landlord, which written demand shall include reasonably detailed evidence of such costs and expenses.

ARTICLE 8 COMPLIANCE WITH LAW

Tenant shall, throughout the Lease Term, at its sole cost and expense, comply with, and cause any subtenants or other occupants at the Demised Properties to comply with, applicable Law. Without limiting the foregoing, and as a condition to being permitted hereunder to sell alcoholic beverages at the Demised Properties, Tenant shall maintain, or cause to be maintained, all licenses or permits required by applicable Law in order to sell alcoholic beverages at the Demised Properties and shall deliver to Landlord any information regarding such licenses or permits that Landlord may reasonably request from time to time.

ARTICLE 9 DISCLAIMER AND INDEMNITIES

Section 9.01 To the extent not prohibited by applicable Law, none of the Landlord Parties shall be liable for, under any circumstances, and Tenant hereby releases all Landlord Parties from, any loss, injury, death or damage to person or property (including any business or any loss of income or profit therefrom) of Tenant, Tenant's members, officers, directors, shareholders, agents, employees, contractors, customers, invitees, or any other Person in or about the Demised Properties, whether the same are caused by (a) fire, explosion, falling plaster, steam, dampness, electricity, gas (including methane gas), water, rain; (b) breakage, leakage or other defects of Tenant Equipment, Building Equipment, sprinklers, wires, appliances, plumbing fixtures, water or gas pipes, roof, air conditioning, lighting fixtures, street improvements, or subsurface improvements; (c) theft, acts of God, acts of the public enemy, riot, strike, insurrection, civil unrest, war, court order, requisition or order of governmental body or authority; (d) any act or omission of any other occupant of the Demised Properties; (e) operations in construction of any private, public or quasi-public work; (f) Landlord's reentering and taking possession of the Demised Properties in accordance with the provisions of this Lease or removing and storing the property of Tenant as herein provided; or (g) any other cause, including damage or injury that arises from the condition of the Demised Properties, from occupants of adjacent property, from the public, or from any other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same are inaccessible to Tenant, or that may arise through repair, alteration or maintenance of any part of the Demised Properties or failure to make any such repair, from any condition or defect in, on or about the Demised Properties including any Environmental Conditions or the presence of any mold or any other Hazardous Materials, or from any other condition or cause whatsoever; provided, however, that the foregoing release set forth in this Section 9.01 shall not be applicable to any claim against a Landlord Party to the extent, and only to the extent, that such claim is directly attributable to the gross negligence or willful misconduct of such Landlord Party (provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to Landlord solely by reason of its interest in the Demised Properties or the failure to act by Landlord or anyone acting under its direction or control or on its behalf, in respect of matters that are or were the obligation of Tenant under this Lease).

Section 9.02 In addition to any and all other obligations of Tenant under this Lease (including under any indemnity or similar provision set forth herein), to the extent permitted by applicable Law, Tenant hereby agrees to fully and forever indemnify, protect, defend (with counsel selected by Landlord) and hold all Landlord Parties free and harmless of, from and against any and all Losses (including, subject to the terms of this Section, diminution in the value of the Demised Properties, normal wear and tear excepted and including any Losses resulting from third party claims): (a) arising out of or in any way related to or resulting directly or indirectly from: (i) the use, occupancy, or activities of Tenant, its subtenants, agents, employees, contractors or invitees in or about any of the Demised Properties; (ii) any failure on the part of Tenant to comply with any applicable Law, including any Environmental Laws; (iii) any Default or Event of Default under this Lease or any breach or default by Tenant or any other party (other than Landlord) under any other Transaction Document (including as a result of any termination by Landlord, following an Event of Default, of any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting any of the Demised Properties pursuant to Section 15.08), and including any additional fees and costs, or any increased interest rate or other charges imposed by any Landlord's Lender by reason of such Default or Event of Default (whether or not such Default or Event of Default is a default under any agreements with any Landlord's Lender); (iv) any other loss, injury or damage described in Section 9.01 above; (v) in connection with mold at any Demised Property; (vi) work or labor performed, materials or supplies furnished to or at the request of Tenant or in connection with obligations incurred by or performance of any work done for the account of Tenant in, on or about the Demised Properties; and (b) whether heretofore now existing or hereafter arising out of or in any way related to or resulting directly or indirectly from the presence or Release at, on, under, to or from the Demised Properties of Hazardous Materials. Without limiting the foregoing, (x) Tenant shall pay on demand all actual and reasonable fees and costs of Landlord (including attorneys' fees and costs) in connection with any enforcement by Landlord of the terms of this Lease, and (y) all of the personal or any other property of Tenant kept or stored at, on or about the Demised Properties shall be kept or stored at the sole risk of Tenant. Notwithstanding the foregoing, the indemnity set forth in this Section 9.02 shall not be applicable to any claim against any Landlord Party to the extent, and only to the extent, such claim is directly attributable to the gross negligence or willful misconduct of such Landlord Party (provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to Landlord solely by reason of its interest in the Demised Properties or the failure to act by Landlord or anyone acting under its direction or control or on its behalf, in respect of matters that are or were the obligation of Tenant under this Lease).

Section 9.03 The provisions of this Article 9 shall survive the expiration or sooner termination of this Lease as to breaches or matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article 9 shall also apply to any breaches or matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant). Tenant hereby waives the provisions of any applicable Law restricting the release of claims, or extent of release of claims, that Tenant does not know or suspect to exist at the time of release, that, if known, would have materially affected Tenant's decision to agree to the release contained in this Article 9. In this regard, Tenant hereby agrees, represents, and warrants to Landlord that Tenant realizes and acknowledges that factual matters now unknown to Tenant may hereafter give rise to Losses that are presently unknown, unanticipated and unsuspected, and Tenant further agrees, represents and warrants that the release provided hereunder has been negotiated and agreed upon in light of that realization and that Tenant nevertheless hereby intends to release, discharge and acquit the parties set forth herein above from any such unknown Losses that are in any manner set forth in or related to this Lease, the Demised Properties and all dealings in connection therewith.

ARTICLE 10 INSURANCE

Section 10.01 As of the Commencement Date and throughout the Lease Term, Tenant shall, at its sole expense, obtain, pay for and maintain (or cause to be obtained, paid for and maintained), with financially sound and reputable insurers (as further described in Section 10.03), (a) comprehensive “all risk” insurance covering loss or damage to each Demised Property (including Improvements now existing or hereafter erected thereon) together with all equipment, inventory, contents, personal property, furniture and any fixtures located thereon, caused by fire, lightning, hail, windstorm, hurricane, tidal surge, explosion, vandalism, malicious mischief, leakage of sprinkler systems, and such other losses, hazards, casualties, liabilities and contingencies as are normally and usually covered by “all risk” or special property policies in effect where such Demised Property is located, endorsed to include all of the extended coverage perils and other broad form perils, including the standard “all risks” or special clauses, including building ordinance or law coverage sufficient to provide coverage for costs to comply with building and zoning codes and ordinances including demolition costs and increased cost of construction, (b) business income and interruption insurance to include loss of business at limits sufficient to cover 100% of the annual revenues at the Demised Properties minus any non-fixed expenses payable by Tenant to Landlord with a period of indemnity not less than twelve (12) months from time of loss (such amount being adjusted annually) and an extended period of indemnity of three hundred sixty-five (365) days, (c) flood insurance for all Demised Properties and separately for contents/equipment in amounts acceptable to Landlord and Landlord’s Lender (and Tenant further agrees that any locations in a special flood hazard area (as identified by FEMA) must maintain at a minimum insurance through the National Flood Insurance Program (unless such special hazard areas are covered under a blanket policy reasonably acceptable to Landlord) in addition to Tenant’s blanket property policy at any time sublimits under Tenant’s blanket policy for Demised Properties in special flood hazard areas are less than the total of the maximum amount available under the National Flood Insurance Program for all locations (including separate limits for each Demised Property (including Improvements now existing or hereafter erected thereon) together with all equipment, inventory, contents, personal property, furniture and any fixtures located thereon and any other locations in special flood hazard areas covered under blanket sublimits) with deductibles acceptable to Landlord and Landlord’s Lender in their sole discretion, and (d) terrorism insurance for all Demised Properties. The policy(ies) referred to in clauses (a) and (d) above shall be in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements and the Building Equipment, together with all equipment, inventory, contents, personal property, furniture and any fixtures located on such Demised Property (without any deduction for depreciation), and the policy(ies) referred to in clauses (a), (b), (c) and (d) above shall contain a replacement cost endorsement and an agreed amount or waiver of co-insurance provisions endorsement, provided, however, that with respect to the policy(ies) referred to in clause (c), so long as the applicable Demised Property is not located in whole or in part in a special flood hazard area (as identified by FEMA), in no event shall Tenant be required to maintain policy(ies) for flood insurance relating to such Demised Property and separately for contents/equipment in an amount exceeding \$1,000,000. The deductible under the policies referred to in clauses (a), (b), (c) and (d) above shall not exceed an amount customarily required by institutional lenders for similar properties in the general vicinity of the applicable Demised Property, but in no event in excess of \$200,000 or such greater amount as is approved by Landlord from time to time (and without limiting the parenthetical contained in clause (c) above). A separate named storm wind deductible of up to 1% of the total insurable value for any one Demised Property will be accepted for any locations considered by Landlord to be in a “1st tier” hurricane county. If any Demised Property is located in area prone to geological phenomena, including sinkholes, mine subsidence, earthquakes, the insurance policies referred to in clause (a) and (b), above shall cover such risks and in such amounts (not less than the PML for each Demised Property), in form and substance, as Landlord shall reasonably determine with deductibles not greater than the greater of (i) \$250,000 or (ii) five percent (5%) of the total

insurable value for any one Demised Property. Maximum allowed deductibles in connection with insurance provided for in this Article 10 shall be adjusted annually in proportion to increases in the CPI.

Section 10.02 As of the Commencement Date and throughout the Lease Term, Tenant shall maintain, with financially sound and reputable insurers (as further described in Section 10.03), public liability and other types of insurance with respect to its business and each Demised Property (including all Improvements now existing or hereafter erected thereon) against all losses, hazards, casualties, liabilities and contingencies as customarily carried or maintained by persons of established reputation engaged in similar businesses. Without limiting of the foregoing, Tenant shall maintain or cause to be maintained policies of insurance with respect to each Demised Property in the following amounts and covering the following risks:

(a) Broad form boiler and machinery or breakdown insurance in an amount equal to the full replacement cost of the Improvements at the Demised Property (without any deduction for depreciation) in which the boiler or similar vessel is located, and including replacement cost coverage against loss or damage from (1) leakage of sprinkler systems and (2) damage, breakdown or explosion of steam boilers, electrical machinery and equipment, air conditioning, refrigeration, pressure vessels or similar apparatus and mechanical objects now or hereafter installed at the applicable Demised Property, including loss of inventory, stock and other contents due to spoilage, and (3) business interruption.

(b) During any period of construction, reconstruction, renovation or alteration at any Demised Property, a complete value, "All Risks" Builders Risk form or "Course of Construction" insurance policy in non-reporting form and in an amount reasonably satisfactory to Landlord.

(c) Commercial General Liability insurance covering claims for personal injury, bodily injury, death or property damage occurring upon, in or about each Demised Property on an occurrence form and in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and shall provide coverage for premises and operations, products and completed operations and contractual liability with a deductible in an amount customarily required by institutional owners or institutional lenders (whichever is lower) for similar properties in the general vicinity of the applicable Demised Property, but in no event in excess of \$200,000, and an umbrella liability policy in the amount of \$50,000,000. Liquor Liability insurance, in amounts and subject to terms reasonably approved by Landlord, shall also be maintained by Tenant if alcohol is sold or served at any Demised Property.

(d) Worker's compensation with statutory limits and employer's liability insurance in an amount of \$1,000,000 per accident, per employee and in the aggregate.

(e) Such other insurance (including increased amounts of insurance) and endorsements, if any, with respect to the Demised Properties, including, without limitation, any equipment, inventory, contents, personal property, furniture or any fixtures and the operation thereof as Landlord may reasonably require from time to time and similar to that required for similarly situated properties.

Section 10.03 Each carrier providing any insurance, or portion thereof, required by this Article shall have the legal right to conduct its business in the jurisdiction in which the applicable Demised Property is located, and shall have a claims paying ability rating by S&P of not less than "A-" and an A.M. Best Company, Inc. rating of not less than A and financial size category of not less than IX. Tenant shall cause all insurance that it is required to maintain hereunder to contain a mortgagee clause

and loss payee clause in favor of Landlord's Lender in accordance with this Section to be payable to Landlord's Lender as a mortgagee and not as a co-insured, as its interest may appear.

Section 10.04 All insurance policies required to be maintained by Tenant hereunder and renewals thereof (a) shall be in a form reasonably acceptable to Landlord, (b) shall provide for a term of not less than one year, (c) if the same are insurance policies covering any property (i) shall include a standard non-contributory mortgagee endorsement or its equivalent in favor of and in form acceptable to Landlord's Lender, (ii) shall contain an agreed value clause updated annually (if the amount of coverage under such policy is based upon the replacement cost of the applicable Demised Property) and (iii) shall designate Landlord's Lender as "mortgagee and loss payee." In addition, all property insurance policies (except for flood and earthquake limits) must automatically reinstate after each loss, and the commercial general liability and umbrella policies shall contain an insured endorsement in favor of Landlord and Landlord's Lender, as their interests may appear.

Section 10.05 Any insurance provided for in this Article may be effected by a blanket policy or policies of insurance, or under so-called "all-risk" or "multi-peril" insurance policies, provided that the amount of the total insurance available with respect to the Demised Properties shall provide coverage and indemnity at least equivalent to separate policies in the amounts herein required, and provided further that in other respects, any such policy or policies shall comply with the provisions of this Article. Any increased coverage provided by individual or blanket policies shall be satisfactory, provided the aggregate liability limits covering the Demised Properties under such policies shall otherwise comply with the provisions of this Article.

Section 10.06 Every insurance policy carried or required to be carried by any party with respect to the Demised Properties, equipment, contents, inventory, personal property or fixtures shall include provisions waiving the insurer's subrogation rights against the other party prior to the occurrence of damage or loss. Subject to the above, each party hereby waives any rights of recovery against the other party for any direct damage or consequential loss covered by said policies (or by policies required to be carried hereunder by such party) whether or not such damage or loss shall have been caused by any acts or omissions of the other party, but such waiver shall operate only to the extent such waiving party is so protected by such insurance coverage (or would have been protected by maintaining all policies required to be carried hereunder by such party).

Section 10.07 The policies of insurance required to be maintained by Tenant under this Article 10 shall name Tenant as the insured and Landlord as additional insured and Landlord's Lenders as additional insureds as their interests may appear, with primary coverage in favor of Landlord and all additional insureds (and with provisions that any other insurance carried by any additional insured or Landlord shall be non-contributing and that naming Landlord and the additional parties listed above in this Section as insureds or additional insureds shall not negate any right Landlord or such parties would have had as claimants under the policy if not so designated). The business interruption insurance required pursuant to Section 10.01 shall name Landlord and Landlord's Lenders as loss payees. All insurance policies required under this Article 10 also shall provide that the beneficial interest of Landlord in such policies shall be fully transferable. In the event Tenant fails to procure or maintain any policy of insurance required under Article 10, or if the insurance company or coverages provided fail meet the requirements contained in this Article 10, Landlord may, at its option, purchase such insurance and charge Tenant all costs and expenses incurred in procuring and maintaining such insurance.

Section 10.08 Tenant shall provide to Landlord, beginning on the Commencement Date and continuing annually thereafter with certificates (or other evidence reasonably requested by Landlord)

from all applicable insurance carriers evidencing the payment of premiums or accompanied by other evidence of such payment (e.g., receipts, canceled checks) in form reasonably satisfactory to Landlord. Each insurance policy required to be carried by Tenant hereunder shall include a provision requiring the insurer to provide Landlord with not less than thirty (30) days' prior written notice of cancellation. Upon the occurrence of both of the following events, Tenant shall pay insurance premiums to Landlord no later than thirty (30) days prior to the date such premiums are due in lieu of payment directly to the applicable the insurance carriers: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) the occurrence and continuance of any Default under this Section 10.08 by Tenant, or any occurrence and the continuance of any Event of Default under any provision in this Lease. Any insurance premiums timely paid by Tenant to Landlord pursuant to this Section shall be applied towards payment of the insurance premium next coming due when such premiums are due and payable.

Section 10.09 Tenant may request from time to time changes to the insurance required pursuant to this Article 10 and Landlord shall review such requested changes and may approve or disapprove such changes in its reasonable discretion. Any such changes shall be documented as an amendment to this Lease. Tenant agrees to pay Landlord upon receipt of written notice from Landlord for all reasonable costs and expenses (including reasonable attorneys' fees and costs) incurred by Landlord in connection with any such requested change or amendment.

ARTICLE 11 DAMAGE OR DESTRUCTION

Section 11.01 If at any time during the Lease Term, any of the Demised Properties or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature, Tenant shall promptly apply for and diligently pursue all necessary permits, and, upon issuance of such permits, thereafter diligently proceed to repair, replace or rebuild such Demised Property as nearly as possible to its condition and character immediately prior to such damage with such variations and Alterations as may be permitted under (and subject to the provisions of) Article 6 (the "**Restoration Work**").

Section 11.02 All property and casualty insurance proceeds payable to Landlord or Tenant (except (a) insurance proceeds payable to Tenant on account of the Tenant Equipment or Tenant's inventory; and (b) insurance proceeds payable from comprehensive general public liability insurance, or any other liability insurance) at any time as a result of casualty to the Demised Properties shall be paid jointly to Landlord and Tenant for purposes of payment for the cost of the Restoration Work, except as may be otherwise expressly set forth herein. Landlord and Tenant shall cooperate in order to obtain the largest possible insurance award lawfully obtainable and shall execute any and all consents and other instruments and take all other actions necessary or desirable in order to effectuate same and to cause such proceeds to be paid as hereinbefore provided. The proceeds of any such insurance in the case of loss shall, to the extent necessary, be used first for the Restoration Work (including if completed by Landlord or a third party after any substitution of the applicable Demised Property pursuant to Article 31) with the balance, if any, payable to Tenant (provided, however, that if an Event of Default is continuing, the balance, if any, shall be payable to Landlord). If insurance proceeds as a result of a casualty to the relevant Demised Property are insufficient to complete the Restoration Work necessary by reason of such casualty, then Tenant shall be responsible for the payment of such amounts necessary to complete such work; provided, however, in the event of a casualty (i) that is not required to be insured against by Tenant under this Lease and (ii) the uninsured cost to complete the Restoration Work at the relevant Demised Property is in excess of thirty-five percent (35%) of the replacement cost of such Demised Property (an "**Uninsured Casualty**"), then Tenant may deliver a notice to Landlord within thirty (30) days after concluding that the uninsured cost to complete the Restoration Work at the relevant Demised Property is in excess of thirty-five percent (35%) of the replacement cost of such Demised Property, stating Tenant's

desire to remove the applicable Demised Property from the Lease and Tenant's estimated cost to complete such Restoration Work and estimated replacement cost of such Demised Property, and such Demised Property will be removed from this Lease thirty (30) days following Landlord's receipt of such notice, provided, however, that if Landlord disputes any part of Tenant's estimate, Landlord may deliver notice of such dispute to Tenant within thirty (30) days after receipt of Tenant's notice and such dispute shall be submitted by Landlord and Tenant to the arbitration process set forth in Schedule 4b attached hereto ("**Casualty Removal Arbitration**") (and if Landlord prevails in such Casualty Removal Arbitration, such Demised Property shall not be removed from this Lease). In connection with any such removal, any insurance proceeds in connection with such casualty, and if such insurance proceeds amount to less than thirty-five percent (35%) of the replacement cost of such Demised Property, such additional amounts necessary to equal the uninsured cost to complete the Restoration Work up to thirty-five percent (35%) of the replacement cost of such Demised Property shall be paid by Tenant to Landlord within thirty (30) days after Landlord's receipt of Tenant's removal notice, and the Base Rent payable hereunder shall be reduced by an amount equal to the monthly fair market rental for such Demised Property immediately prior to such casualty as reasonably agreed to by Landlord and Tenant, provided that should Landlord and Tenant fail to reasonably agree on such Base Rent reduction within five (5) Business Days after such release, then Landlord and Tenant shall submit the issue to the arbitration process set forth in Schedule 4a attached hereto ("**Base Rent Reduction Arbitration**"). In the event that a casualty occurs in the last eighteen (18) months of the Lease Term, Tenant may deliver a notice to Landlord within forty-five (45) days after concluding that the cost to complete the Restoration Work at the relevant Demised Property is in excess of twenty percent (20%) of the replacement cost of such Demised Property (a "**End of Term Casualty**"), stating Tenant's desire to remove the applicable Demised Property from this Lease and Tenant's estimated cost to complete such Restoration Work and estimated replacement cost of such Demised Property, and such Demised Property will be removed from this Lease thirty (30) days following Landlord's receipt of such notice, provided, however, that if Landlord disputes Tenant's estimate, Landlord may deliver notice of such dispute to Tenant within thirty (30) days after receipt of Tenant's notice and such dispute shall be settled by Casualty Removal Arbitration (and if Landlord prevails in such Casualty Removal Arbitration, such Demised Property shall not be removed from this Lease). All insurance proceeds in connection with such casualty and the Base Rent payable hereunder shall be reduced by an amount equal to the monthly fair market rental for such Demised Property immediately prior to such casualty as reasonably agreed to by Landlord and Tenant, provided that should Landlord and Tenant fail to reasonably agree within five (5) Business Days after such removal, then Landlord and Tenant shall submit the issue to Base Rent Reduction Arbitration. If the applicable Demised Property is not removed from this Lease in connection with an Uninsured Casualty or a End of Term Casualty, then Tenant shall complete the Restoration Work in accordance with Section 11.01, and, if insurance proceeds as a result of such casualty to the applicable Demised Property are insufficient to complete the Restoration Work, then Tenant shall be responsible for the payment of such amounts necessary to complete such Restoration Work.

Section 11.03 Subject to the terms hereof, this Lease shall not be affected in any manner by reason of the total or partial destruction to any Demised Property or any part thereof and Tenant, notwithstanding any applicable Law, present or future, waives all rights to quit or surrender any Demised Property or any portion thereof because of the total or partial destruction of any Demised Property (prior to the expiration of this Lease). Without limiting the foregoing, no Rent shall abate as a result of any casualty, and the proceeds of all business income and interruption insurance carried by Tenant shall be payable to Tenant.

ARTICLE 12 EMINENT DOMAIN

Section 12.01 Landlord and Tenant hereby agree that in no event shall any taking of any Demised Property for any public or quasi-public use under any statute or by right of eminent domain, or by purchase in lieu thereof, in any way relieve Tenant of any obligations under this Lease (as to the applicable Demised Property or otherwise) except as explicitly provided in this Article.

Section 12.02 If any portion of any Demised Property, or existing access to or from any Demised Property, is taken for any public or quasi-public use under any statute or by right of eminent domain, or by purchase in lieu thereof, and such taking (a) reduces the value of the Demised Property by fifty percent (50%) or more, or (b) prevents, and would prevent after reasonable repair and reconstruction efforts by Tenant, use of the Demised Property for its current permitted use under applicable zoning or other use regulations (including with respect to required parking and access), then such Demised Property shall be removed from this Lease (but not any other Demised Property) as of the date that title to the applicable Demised Property, or portion thereof, actually transfers to the applicable authority.

Section 12.03 Tenant agrees that Landlord has the right in its sole discretion, and at Tenant's sole cost and expense, to oppose any proposed taking regarding any Demised Property. The parties hereto agree to cooperate in applying for and in prosecuting any claim for any taking regarding any Demised Property and further agree that the aggregate net award shall be distributed as follows:

(a) Landlord shall be entitled to the entire award for the condemned Demised Property, except as expressly described in paragraph (b), below.

(b) Tenant shall be entitled to receive fifty percent (50%) of its leasehold value (the excess (if any) of the present value of the fair market rental for the condemned Demised Property (without regard to the Condemnation) for the remainder of the Lease Term over the present value as of the Condemnation Date of the Base Rent reasonably attributable to such Demised Property and payable for the remainder of the Lease Term). Tenant shall also be entitled to (i) the present value of any capital improvement to the extent paid for by Tenant during the Lease Term, multiplied by (ii) the percentage of the remaining useful life of such improvement falling within the Lease Term.

(c) Tenant shall be entitled to any award that may be made exclusively for the taking of Tenant's inventory and personal property, or costs related to the removal and relocation of Tenant's inventory and personal property.

Section 12.04 Except in the case of a removal of a Demised Property from this Lease as described in Section 12.02, in case of a taking of any portion of any Demised Property, (i) Tenant at its own expense shall proceed with diligence (subject to reasonable time periods for purposes of adjustment of any award and unavoidable delays) to repair or reconstruct (or cause to be repaired and reconstructed) the affected Improvements to a complete architectural unit, and all such repair or reconstruction work shall be performed in accordance with the standards and requirements for Alterations set forth in Article 6 and (ii) Landlord shall reasonably make available to Tenant any award due to Landlord in connection with any such taking, to the extent necessary, to be used for such repair or reconstruction work (except if to be completed by Landlord or a third party after any substitution of the applicable Demised Property pursuant to Article 31), provided, however, that if such award is insufficient to complete such repair or reconstruction work, Tenant shall nevertheless proceed to complete such repair or reconstruction work at its own expense as provided in (i).

Section 12.05 Regardless of whether there is a removal of a Demised Property from this Lease in connection with a taking as provided in Section 12.03, in the case of a taking of all or any portion of any Demised Property, the Base Rent payable hereunder shall be reduced by an amount equal to the monthly fair market rental for such Demised Property or applicable portion thereof immediately prior to such condemnation as reasonably agreed to by Landlord and Tenant, provided that should Landlord and Tenant fail to reasonably agree within ten (10) Business Days after such taking, then Landlord and Tenant shall submit the issue to Base Rent Reduction Arbitration.

Section 12.06 Notwithstanding any other provision of this Article, any compensation for a temporary taking shall be payable to Tenant without participation by Landlord, except to the proportionate extent such temporary taking extends beyond the end of the Lease Term, and there shall be no abatement of Rent as a result of any temporary taking affecting any of the Demised Properties.

ARTICLE 13 FINANCIAL AND REPORTING COVENANTS

Section 13.01 Confidentiality. Subject to the terms of this Article 13, Landlord shall maintain as confidential any and all information obtained in connection with this Article 13, and accordingly, Landlord agrees not to disclose all or any portion of such information to any third party, except that Landlord may disclose such information:

(a) to those principals, directors, partners, members, employees, representatives, consultants, counsel, accountants and other professional advisors of Landlord who have a legitimate need to review or know such information;

(b) to lenders (including Landlord's Lenders), prospective lenders, purchasers, prospective purchasers, or otherwise in connection with any sale or financing of any Demised Property or any direct or indirect interest therein;

(c) to any government or self-regulatory agency whose supervision or oversight of Landlord or any of its affiliates may be subject to the extent required by applicable Law, any Governmental Authority or a court of competent jurisdiction, in each case to the extent reasonably necessary to comply with any legal or regulatory requirements to which Landlord or its affiliates may be subject; and

(d) to a court of competent jurisdiction in connection with any enforcement action regarding this Lease or the transactions contemplated hereby.

Except any disclosure pursuant to clause (d) of the immediately preceding sentence, upon disclosing such information to any Person to the extent permitted hereunder, Landlord shall advise such Person of the confidential nature thereof, and shall take all reasonable precautions to prevent the unauthorized disclosure of such information by such Person.

Section 13.02 Books and Records. Tenant shall keep accurate books and records of account of all of the Demised Properties sufficient to permit the preparation of financial statements in accordance with GAAP. Tenant shall provide, or cause to be provided, to Landlord, in addition to any other financial statements required under this Lease, the following financial statements and information, all of which must be prepared in a form reasonably acceptable to Landlord:

(a) promptly and in any event within the earlier of (i) one hundred twenty (120) days after the end of each fiscal year of the Tenant (Tenant's fiscal year constitutes a twelve-month period ending on February 28 of each calendar year) and (ii) within five (5) Business Days of when delivered to any senior lender of Tenant, audited statements of the financial position of Tenant as of the end of each such fiscal year, including a balance sheet and statement of profits and losses, expenses and retained earnings, changes in financial position and cash flows for such fiscal year, which statements shall be duly certified by an officer of Tenant to fairly represent the financial condition of Tenant, as of the date thereof, prepared by Tenant in accordance with GAAP, and accompanied by a statement of a nationally recognized accounting firm reasonably acceptable to Landlord (with Landlord agreeing that any accounting firm approved by any senior lender of Tenant shall be deemed to be acceptable to Landlord) that such financial statements present fairly, in all material respects, the financial condition of Tenant as of the end of its fiscal year being reported on and that the results of the operations and cash flows for such year were prepared, and are being reported on, in conformity with GAAP;

(b) promptly and in any event within sixty (60) days after the end of each calendar quarter, (i) quarterly statements of the financial position of Tenant, including a balance sheet and statement of profits and losses, together with a statement showing the net operating cash flow for the previous twelve (12) month period (and containing supporting documentation necessary to confirm the amount of net operating cash flow), such quarterly statements of financial position to be certified by an officer of Tenant to fairly represent the financial condition of Tenant as of the date thereof and to have been prepared and reported in conformity with GAAP; (ii) a compliance certificate from Tenant, in form and substance reasonably acceptable to Landlord, certifying to such financial information of Tenant as reasonably requested by Landlord, and supporting the statements contained in any such compliance certificate; and (iii) quarterly profit and loss statements in respect of Tenant's operations and trailing twelve (12) month results, certified by an officer of Tenant to be true, correct, and complete in all material respects;

(c) promptly and in any event within fifteen (15) days after the end of each calendar month total retail sales figures in respect of each Demised Property for the applicable calendar month and trailing twelve (12) month results, certified by an officer of Tenant to be true, correct and complete in all material respects;

(d) any financial statements distributed to any senior lender of Tenant within five (5) Business Days after such distribution; and

(e) such other information with respect to the Demised Properties or Tenant that may be reasonably requested from time to time by Landlord, within a reasonable time after the applicable request.

Section 13.03 Litigation. Tenant shall deliver prompt written notice to Landlord of any litigation or governmental proceedings pending or threatened against Tenant that might materially adversely affect the condition of Tenant (financial or otherwise) or the business or operations at any Demised Property. In the event Landlord receives any written notice from any third party of any litigation or governmental proceedings pending or threatened against Tenant or any of the Demised Properties, Landlord shall use commercially reasonable efforts to promptly deliver written notice of the same to Tenant.

ARTICLE 14 INTENTIONALLY OMITTED

ARTICLE 15 EVENTS OF DEFAULT

Section 15.01 Events Of Default. Subject to the terms of this Article, the occurrence of any of the following shall constitute an event of default by Tenant under this Lease ("**Event of Default**"):

(a) **Nonpayment of Base Rent.** Failure to pay any installment of Base Rent on or before the date when due under this Lease. Notwithstanding the foregoing, the first failure to pay any installment of Base Rent on or before the date when due under this Lease in any twelve (12) month period during the Lease Term shall not constitute an Event of Default under this Lease until the third (3rd) Business Day following Landlord's delivery of written notice to Tenant regarding the same.

(b) **Nonpayment of Additional Rent.** Failure to pay any amount of Additional Rent on or before the date when due. Notwithstanding the foregoing, the first failure to pay any Additional Rent on or before the date when due under this Lease in any twelve (12) month period during the Lease Term shall not constitute an Event of Default under this Lease until the fifth (5th) Business Day following Landlord's delivery of written notice to Tenant regarding the same.

(c) **Bankruptcy and Insolvency.** If at any time during the Lease Term, (i) Tenant files a Petition, (ii) any creditor or other Person that is an Affiliate of Tenant files against Tenant any Petition, or any creditor or other Person (whether or not an Affiliate of Tenant) files against Tenant any Petition where Tenant or an Affiliate of Tenant, cooperates or colludes with such creditor or other Person in connection with such Petition or the filing thereof, (iii) any creditor or other Person that is not an Affiliate of Tenant files a Petition against Tenant, where none of Tenant or an Affiliate of Tenant cooperates or colludes with such creditor or other Person in connection with such Petition or the filing thereof, and such Petition is not vacated or withdrawn within ninety (90) days after the filing thereof, (iv) a trustee or receiver is appointed to take possession of any of the Demised Properties, or of all or substantially all of the business or assets of Tenant, and such appointment is not vacated or withdrawn and possession restored to Tenant within ninety (90) days thereafter, (v) a general assignment or arrangement is made by Tenant for the benefit of creditors, (vi) any sheriff, marshal, constable or other duly-constituted public official takes possession of any Demised Property, or of all or substantially all of the business or assets of Tenant by authority of any attachment, execution, or other judicial seizure proceedings, and if such attachment or other seizure remains undismissed or undischarged for a period of ninety (90) days after the levy thereof, (vii) Tenant admits in writing its inability to pay its debts as they become due; or (viii) Tenant files an answer admitting or failing timely to contest a material allegation of any Petition filed against Tenant.

(d) **Misrepresentation.** The discovery by Landlord that any representation, warranty or financial statement given to Landlord by Tenant, or any Affiliate of Tenant, was fraudulently false or misleading when given, including as set forth in any Transaction Document.

(e) **Continuous Operation; Third-Party Option Properties; Insurance; Reporting; Transfers; Other Covenants.** (i) Any default by Tenant under Section 4.01, Section 4.03, Article 10, Article 13 or Article 40, provided such default shall not constitute an Event of Default under this Lease unless Tenant fails to cure such default on or before the thirtieth (30th) day following Landlord's delivery of written notice to Tenant regarding such default and (ii) any default by Tenant under Article 22 or Article 39, unless the same is cured within thirty (30) days thereafter; provided, however, that with respect to (x) any default by Tenant under Section 4.01 during the first two (2) years of the Lease Term,

such default shall constitute an Event of Default unless cured within five (5) days thereafter, (y) any default by Tenant under Section 4.03, any cure must be evidenced by a waiver of the applicable purchase right, termination right, recapture right or option regarding any Third-Party Option Property by the applicable holder(s) of such right in form and substance reasonably satisfactory to Landlord and (z) any material default by Tenant under Article 10 occurring during the Lease Term (including a default that results in, or with the passage of time will result in, Tenant failing to carry any material insurance required under Article 10), such material default shall not constitute an Event of Default under this Lease unless Tenant fails to cure such material default on or before the second (2nd) Business Day following Landlord's delivery of written notice to Tenant regarding such material default (for the avoidance of doubt the cure periods specified in (x) and (z) are in lieu of, and not in addition to, the thirty (30) day cure periods specified in clause (i) above).

(f) Delivery of Notices and Other Documents. The failure by Tenant to deliver any of the notices or other documents required to be delivered to Landlord under this Lease within the time periods required herein (other than any such notices or other documents specifically addressed in another clause of this Section 15.01, for which Tenant will have the grace periods (if any) and notice rights (if any) set forth in such other clause), within the time period stated in this Lease for the delivery by Tenant of any notice or other document to Landlord (or if no time period is so stated then within fifteen (15) days after request), then the failure of Tenant to deliver such notice or document within ten (10) Business Days after written notice to Tenant of such failure.

(g) Liens. Any claim of lien is recorded against any Demised Property and such claim of lien continues for forty-five (45) days after Tenant receives notice thereof without discharge (by bonding or other means available pursuant to applicable Law), or satisfaction being made by or on behalf of Tenant.

(h) Material Judgments. Any final judgment (after any applicable appeals) against Tenant is entered for the payment of uninsured amounts in excess of \$5,000,000 or insured amounts in excess of \$10,000,000, and such judgment remains unsatisfied within sixty (60) days after the rendering of such judgment, unless Tenant enters into an agreement with all applicable claimants in connection with such judgment regarding payment of same, which agreement is reasonably acceptable in form and substance to Landlord, and Tenant does not breach or default under such agreement beyond applicable notice and cure periods during the term thereof. Any such final judgment amount shall be considered insured only if Tenant delivers to Landlord within fifteen (15) days after such final judgment (after any applicable appeals) written evidence both of the applicable Tenant insurance and coverage thereunder regarding such judgment. If Landlord receives actual (not merely constructive) written notice of any judgment, then any default by Tenant under this subsection (h) in connection with such judgment during the Lease Term shall not constitute an Event of Default under this Lease unless Tenant fails to cure such default on or before the tenth (10th) Business Day following Landlord's delivery of written notice to Tenant regarding such default.

(i) Wrongful Denial of Lease. Tenant wrongfully denies that it has any or further liability or obligation under this Lease, or wrongfully purports to revoke, terminate or rescind same (provided that the foregoing shall not limit Tenant's right to assert a good faith defense to any claim by Landlord that an Event of Default has occurred hereunder or that Tenant is liable to Landlord hereunder pursuant to one or more specific provisions hereunder).

(j) Cross Default With Other Leases. Subject to Section 22.08, there is any Other Lease Event of Default by Tenant. However, a default or Event of Default under Section 4.03 shall not

constitute an Event of Default pursuant to Section 15.01(j) of any Other Lease and a default or Event of Default under Section 4.03 of any Other Lease shall not constitute an Event of Default under this Section 15.01(j).

(k) Environmental. Any default under Article 29 or any Holdback Agreement if Tenant fails to cure such default as soon as reasonably practicable, and in any event within thirty (30) days after notice or knowledge of such default; provided, however, that if the default involves an imminent or substantial endangerment, or other worker or public health or safety hazard, the cure shall be effected as soon as possible (and failure to do so shall constitute an Event of Default); provided, further, that if the condition or circumstance is not reasonably susceptible to a cure within thirty (30) days, then Tenant shall have commenced such cure within thirty (30) days and thereafter diligently pursue the cure to completion (and failure to do so shall constitute an Event of Default).

(l) Other Obligations. The failure by Tenant to timely perform any obligation, agreement or covenant under this Lease, other than those matters specified in Sections 15.01(a)-(k) above, and such failure continuing for a period of thirty (30) days after written notice of such failure is delivered to Tenant by Landlord, or such longer period, up to but not exceeding an additional one hundred fifty (150) days (for the avoidance of doubt, in any event, subject to Article 16 regarding force majeure), as is reasonably necessary to remedy such default.

As used in this Lease, “**Default**” means any breach or default under this Lease, whether or not the same is an Event of Default, and also any breach or default under this Lease, that after notice or lapse of time or both, would constitute an Event of Default if that breach or default were not cured within any applicable grace or cure period.

Section 15.02 Remedies Upon Event of Default. If an Event of Default by Tenant occurs, then, in addition to any other remedies available to Landlord at law or in equity or elsewhere hereunder, Landlord shall have the following remedies:

(a) Termination. Landlord shall have the right, with or without notice or demand, immediately upon expiration of any applicable grace period specified herein, to terminate this Lease (or Tenant’s possession of any of the Demised Properties), and at any time thereafter recover possession of all or any portion of the Demised Properties or any part thereof and expel and remove therefrom Tenant and any other Person occupying the same by any lawful means, and repossess and enjoy all or any portion of the Demised Properties without prejudice to any of the remedies that Landlord may have under this Lease. If Landlord elects to terminate this Lease (or to terminate Tenant’s right of possession), Landlord shall also have the right to reenter the Demised Properties and take possession of and remove all personal property of Tenant, if any, in such Demised Properties. If Landlord elects to terminate this Lease and/or Tenant’s right to possession, or if Tenant’s right to possession is otherwise terminated by operation of law, Landlord may recover as damages from Tenant the following: (i) all Rent then due under this Lease through the date of termination; (ii) the Rent due for the remainder of the Lease Term in excess of the fair market rental value of the Demised Properties for the remainder of the Lease Term, including any and all Additional Rent (each discounted by the discount rate of the Federal Reserve Bank of San Francisco plus one percent (1%)); (iii) the cost of reletting the Demised Properties, including the anticipated period of vacancy until such Demised Properties can be re-let at their fair market rental values; and (iv) any other costs and expenses that Landlord may reasonably incur in connection with the Event of Default. Efforts by Landlord to mitigate the damages caused by the Event of Default (or Tenant’s Default under this Lease) shall not waive Landlord’s right to recover damages under the foregoing provisions. Landlord

agrees to use commercially reasonable efforts to mitigate damages, if, and to the extent, required by applicable Law.

(b) Continuation after Event of Default. If Landlord does not elect to terminate this Lease, then this Lease shall continue in effect, and Landlord may enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, and Landlord, without terminating this Lease, may exercise all of the rights and remedies of a landlord at law or in equity, subject to Article 26 hereof. Landlord shall not be deemed to have terminated this Lease except by an express statement in writing. Acts of maintenance or preservation, efforts to relet the Demised Properties, or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate Tenant's right to possession unless such election is expressly stated in writing by Landlord. Notwithstanding any such reletting without such termination, Landlord may at any time thereafter elect to terminate Tenant's right to possession and this Lease. If Landlord elects to relet the Demised Properties for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any and all costs of such reletting (including attorneys' fees, brokers' fees, alterations and repairs to any of the Demised Properties, and tenant improvement costs); second, to the payment of any and all indebtedness other than Rent due hereunder from Tenant to Landlord; third, to the payment of any and all Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If the rent received from the reletting is less than the sum of the costs of reletting, other indebtedness due by Tenant, and the Rent due by Tenant, then Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly.

(c) State-Specific Remedy. Landlord may pursue any other remedy now or hereafter available to Landlord under the Laws of the states in which the Demised Properties are located in addition to and not as an alternative remedy to those provided hereunder.

(d) Damages. Without limiting Tenant's indemnifications of Landlord and the other Landlord Parties under this Lease (including under Article 9 and Article 29 of this Lease) in connection with claims and other actions by third parties against Landlord or other Landlord Parties (which indemnifications include consequential, indirect and punitive damages, if any, payable to third parties making claims being indemnified against), Landlord hereby waives any right to any consequential, indirect or punitive damages against Tenant. Tenant hereby waives any right to any consequential, indirect or punitive damages against Landlord.

Section 15.03 No Cure Rights Following Events of Default. Upon the occurrence of an Event of Default, Landlord shall have all rights and remedies hereunder and under applicable Law. Except only as may be required by applicable Law that cannot be waived lawfully (a) Landlord shall have no obligation to give any notice after an Event of Default as a condition to Landlord's pursuit of any right or remedy; and (b) Landlord shall have no obligation to accept the attempted or purported cure of, or to waive, any Event of Default, regardless of tender of delinquent payments or other performance by Tenant, or any other event or condition whatsoever; and Tenant shall not have any right to cure any Event of Default, and no right to cure shall be implied. Without limiting the foregoing, after the occurrence of any Event of Default (irrespective of whether or not the same consists of an ongoing condition, a one-time occurrence, or otherwise), the same shall be deemed to continue at all times thereafter; unless Landlord executes and delivers a written agreement in which Landlord expressly states that such Event of Default has ceased to continue (and Landlord shall not be obligated under any circumstances whatsoever to execute and deliver any such agreement). Without limitation, this Section shall govern in any case where reference is made in this Lease or otherwise to (x) any "cure" (whether by use of such word or otherwise)

of any Event of Default, (y) “during an Event of Default” or “the continuance of an Event of Default” (in each case, whether by use of such words or otherwise), or (z) any condition or event that continues beyond the time when the same becomes an Event of Default.

Section 15.04 Indemnification. Nothing in this Article shall be deemed to affect or limit Tenant’s obligation to indemnify, defend, protect and hold harmless Landlord and the other Landlord Parties under this Lease (including under Article 9 and Article 29), and such obligation shall survive the termination or expiration of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, such obligations shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

Section 15.05 Performance by Landlord. Notwithstanding any other provision herein, in addition to any other rights of Landlord under this Lease, if Tenant has failed to satisfy any obligation of Tenant set forth herein, whether or not the same constitutes an Event of Default, and in Landlord’s reasonable determination such failure by Tenant constitutes an imminent threat of injury or harm to persons, or a material damage or loss of value to property, then Landlord may, with or without notice (provided, however, that Landlord shall endeavor to give such notice as is practical under the circumstances, if any, which notice may be oral and need not be in writing), and without regard to whether or not any applicable cure period expressly provided herein has expired, elect to perform such obligation for the account and at the expense of Tenant. If Landlord pays any sums of money or incurs any expense in connection with performing any such obligation (including attorneys’ fees, consultant fees, testing and investigation fees, expert fees and court costs), such sums so paid or expenses so incurred by Landlord, plus an administrative charge of five percent (5%) of such sums or expenses, shall be due to Landlord from Tenant within ten (10) days after written demand therefor from Landlord, in addition to any other amounts to be paid by Tenant to Landlord under this Lease, which written demand shall include reasonably detailed evidence of such costs and expenses.

Section 15.06 Late Fee. In addition to any interest charged to Tenant under Section 15.07, if any payment of Base Rent or Additional Rent is not received by Landlord from Tenant when such payment is due to Landlord hereunder, such payment shall be deemed delinquent and cause Tenant to incur a late fee of five percent (5%) of each such delinquent payment (the “**Late Fee**”), due and payable immediately with the delinquent Base Rent or delinquent Additional Rent, as the case may be; provided, however, that the first such delinquent payment in any twelve (12) month period shall not be subject to a Late Fee.

Section 15.07 Interest. Tenant hereby acknowledges that late payment by Tenant of Base Rent or Additional Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, in addition to any Late Fee due from Tenant hereunder, any sum due by Tenant under this Lease that is not paid when due shall bear interest at the lesser of five percent (5%) per annum of such sums, or the maximum rate allowed under applicable Law, from the date such sum becomes due and payable by Tenant hereunder until paid, unless otherwise expressly provided in this Lease, provided, however, that the first such late payment in any twelve (12) month period shall not be subject to such interest until the fifth (5th) Business Day following Landlord’s delivery of written notice to Tenant regarding the same.

Section 15.08 Tenant’s Subleases. If Landlord elects to terminate this Lease on account of any Event of Default, then Landlord may terminate any sublease and any license, concession, or other

consensual arrangement for possession entered into by Tenant and affecting any of the Demised Properties (subject to the terms of any applicable nondisturbance agreement executed by Landlord and subject to the terms of any sublease in existence as of the Commencement Date), or choose to succeed to Tenant's interest in any such arrangement. Absent a nondisturbance agreement between Landlord and any such subtenant, no payment by a subtenant with respect to a sublease shall entitle such subtenant to possession of any Demised Property after termination of this Lease and Landlord's election to terminate the sublease. If Landlord elects to succeed to Tenant's interest in such arrangement, then Tenant shall, as of the date of notice given by Landlord to Tenant of such election, have no further right to, or interest in, any rent or other consideration due under that arrangement.

Section 15.09 Form of Payment After Default. Without limiting any other obligation of Tenant under this Lease, if Tenant fails, on two or more occasions, to pay any amount due to Landlord under this Lease within the applicable notice and cure periods set forth in this Lease, or if Tenant attempts to pay any such amount by drawing a check on an account with insufficient funds, then Landlord shall have the right to require that any and all subsequent amounts paid by Tenant to Landlord under this Lease (to cure a default or otherwise) be paid in the form of cashier's or certified check drawn on an institution acceptable to Landlord, by wire transfer or any other form approved by Landlord in its sole and absolute discretion, notwithstanding that Landlord may have previously accepted payments from Tenant in a different form.

Section 15.10 Acceptance of Rent Without Waiving Rights. No endorsement or statement by Tenant on any check or any letter accompanying any payment by Tenant to Landlord will be deemed an accord and satisfaction of any amount in dispute between Tenant and Landlord or otherwise. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord, may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement. Landlord may accept any and all of Tenant's payments without waiving any right or remedy under this Lease, including the right to commence and pursue an action to enforce rights and remedies under a previously served notice of default, without giving Tenant any further notice or demand.

Section 15.11 Post-Event of Default Sales. If Landlord elects (in its sole discretion) to sell any of the Demised Properties pursuant to an arms-length, third party sale following any Events of Default in order to mitigate damages resulting from such Events of Default, the Base Rent payable under this Lease (but not any Landlord Assignment Lease Agreements, if applicable, the Base Rent for each of which shall be as set forth in each such Landlord Assignment Lease Agreement) from and after the date of such sale shall be reduced by the lesser of the following: (a) the product of (i) eight and one-half percent (8.5%), multiplied by (ii) the proceeds received by Landlord in connection with such sale, less any and all costs incurred by Landlord in connection with such sale (including attorneys' fees and brokers' fees), or (b) the product of (i) the Base Rent immediately preceding such sale, divided by the total number of Demised Properties immediately preceding such sale, multiplied by (ii) the number of Demised Properties sold in such sale. In no event shall the reduction described in the immediately preceding sentence reduce any obligation of Tenant that came due prior to the date of such sale. For the avoidance of doubt, if all Demised Properties are sold, then this Lease (but not any Landlord Assignment Lease Agreements, if applicable) shall be deemed terminated.

Section 15.12 Licenses and Permits. In connection with any repossession of any Demised Property by Landlord or its designee, Tenant and its Affiliates shall reasonably cooperate with Landlord in transferring to Landlord or its designee any entitlements, certificates, emissions credits, licenses or permits then held or maintained by Tenant or its Affiliates and required by applicable Law in order to

operate such Demised Property as a grocery store or other applicable Permitted Use, including any such licenses or permits required in order to serve alcoholic beverages at such Demised Property.

Section 15.13 Remedies Cumulative. All rights, privileges, elections, and remedies of Landlord are cumulative and not alternative with all other rights and remedies hereunder, at law or in equity to the fullest extent permitted by applicable Law. The exercise of one or more rights or remedies by Landlord shall not impair Landlord's rights to exercise any other right or remedy to the fullest extent permitted by applicable Law.

Section 15.14 Affirmance of Lease. In the event that, following of the filing of any Petition regarding Tenant, under applicable Law, the trustee in bankruptcy or Tenant has the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant shall, within such time period as may be permitted by the bankruptcy court having jurisdiction, so affirm this Lease, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease, and provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations under this Lease.

Section 15.15 Survival. The remedies available to Landlord pursuant to this Article shall survive expiration or termination of this Lease.

ARTICLE 16 FORCE MAJEURE

If either party is prevented or delayed from timely performance of any obligation or satisfying any condition under this Lease by any event or circumstance beyond the reasonable control of such party, exclusive of financial inability of a party, but including any of the following if beyond the reasonable control of such party: casualty or condemnation, strike, lockout, labor dispute, civil unrest, inability to obtain labor, materials or reasonable substitutes thereof, acts of God, present or future governmental restrictions, regulations or control, insurrection, and sabotage, then the time to perform such obligation or satisfy such condition shall be extended on a day for day basis for each day of delay caused by such event or circumstance, but only for a reasonable period of time not to exceed, in any event, one hundred twenty (120) days. The provisions of this Article shall in no event operate to delay the Commencement Date or to excuse Tenant from the payment of all Rent as and when due under this Lease. For the avoidance of doubt, the inclusion of casualty and condemnation in this Article 16 does not supersede or limit the requirements of Article 10, Article 11 or Article 12 with respect thereto or lengthen any time periods with respect to Tenant's obligations thereunder (unless a new casualty or condemnation occurs which new casualty or condemnation, however, shall be subject to the requirements of Article 10, Article 11 or Article 12, as applicable).

ARTICLE 17 NOTICES

(a) Any notice, demand or other communication to be given under the provisions of this Lease by either party hereto to the other party hereto shall be effective only if in writing and (i) personally served, (ii) mailed by United States registered or certified mail, return receipt requested, postage prepaid, (iii) sent by a nationally recognized courier service (such as Federal Express) for next-day delivery, to be confirmed in writing by such courier, or (iv) sent by facsimile (with answer back acknowledged), addressed as follows:

To Tenant: c/o The Yucaipa Companies, LLC
9130 West Sunset Boulevard
Los Angeles, California 90069
Attention: Legal Dept.
Facsimile: 310-789-1791

with a copy to: Pircher, Nichols & Meeks
1925 Century Park East
Suite 1700
Los Angeles, California 90067-2512
Attention: Real Estate Notices (SAH #5602.3)
Facsimile: 310-201-8922

To Landlord: c/o Drawbridge Special Opportunities Fund LP
1345 Avenue of the Americas, 46th Floor
New York, New York 10020
Attention: Constantine M. Dakolias, CCO
and Glenn P. Cummins, CFO
Facsimile: (212) 798-6131

with a copy to: Fortress Investment Group LLC
10250 Constellation Boulevard, Suite 1600
Los Angeles, CA 90067
Attention: Joshua Pack
Facsimile: (310) 228-3031

and a copy to: Fortress Investment Group LLC
5221 N. O'Connor Boulevard, Suite 700
Irving, Texas 75039
Attention: Andy Osborne
Facsimile: (214) 260-0938

and a copy to: Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013-1010
Attention: Marc I. Hayutin, Esq.
Facsimile: (213) 896-6600

and a copy to: Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013-1010
Attention: Edward C. Prokop, Esq.
Facsimile: (213) 896-6600

(b) Subject to the terms of this subsection (b), all notices, demands and other communications sent in the foregoing manner shall be deemed delivered when actually received or refused by the party to whom sent, unless (i) mailed, in which event the same shall be deemed delivered on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the

expiration of the third (3rd) Business Day after the date of mailing, whichever first occurs, or (ii) sent by facsimile, in which event the same shall be deemed delivered only if a duplicate notice sent pursuant to a method described in subsection (a)(i), (a)(ii) or (a)(iii) of this Article 17 is delivered within two (2) Business Days after such facsimile is received by the recipient. Notwithstanding the foregoing, if any notice, demand or other communication is not received during business hours on a Business Day, such notice, demand or other communication shall be deemed to have been delivered at the opening of business on the next Business Day.

(c) Either Landlord or Tenant may from time to time change its address for receiving notices under this Lease by providing written notice to the other party in accordance with this Article 17.

ARTICLE 18 ACCESS

Landlord and its designees shall have the right upon not less than twenty-four (24) hours' prior written notice to Tenant (except in the event of an emergency that poses an immediate and material danger to persons or property within any of the Demised Properties, where no prior notice shall be required) to enter upon any of the Demised Properties at reasonable hours to inspect such Demised Properties or, during the period commencing one year prior to the end of the Lease Term, for the purpose of exhibiting same to prospective tenants and posting "for lease" or similar signage at the Demised Properties, all in Landlord's discretion. Any such entry and/or inspection by Landlord shall not unreasonably interfere with Tenant's ability to conduct its business operations at the Demised Properties. Tenant may elect to have a representative of Tenant accompany Landlord during all such entries (but in no event shall the availability of a representative to accompany Landlord or Tenant's election or failure to inform Landlord of its election to have a representative accompany Landlord be a condition to Landlord's rights under this Article 18).

ARTICLE 19 SIGNS

Tenant may, at Tenant's sole cost and expense, install or erect, at or on any Demised Property, signs of any height or dimensions and bearing such inscriptions as Tenant shall reasonably determine; provided, however, that no sign shall be installed or erected by Tenant at or on any Demised Property until all governmental approvals and permits required therefor have been obtained, all fees pertaining thereto have been paid by Tenant, and Tenant has delivered written evidence of such approvals, permits and payment to Landlord. Landlord shall use commercially reasonable efforts to assist Tenant, upon Tenant's request, in obtaining all necessary governmental permits and approvals for such signs. Upon the termination of this Lease following an Event of Default or upon a rejection of this Lease in any bankruptcy or similar proceeding, Landlord shall have the right, at its sole option, to retain and use the signage structures (but not the signs) in the future operation of the Demised Properties without payment of any compensation to Tenant, or to require Tenant to remove such signage structures at Tenant's sole cost and expense (and, if such removal is not accomplished by Tenant promptly after notice from Landlord, Landlord may undertake such removal at Tenant's sole cost and expense). This Article shall survive termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 20 IMPROVEMENTS, BUILDING EQUIPMENT AND TENANT EQUIPMENT

Section 20.01 Any Building Equipment and other Improvements at the Demised Properties on the Commencement Date shall be the property of Landlord. In the event that Tenant installs or erects any fixtures or other Improvements to the Demised Properties after the Commencement Date, such fixtures or other Improvements shall be the property of Landlord and remain upon and be surrendered with the Demised Properties; provided, however, that Tenant shall be required to remove any underground storage tanks or otherwise close such tanks in accordance with applicable Law, unless Landlord expressly consents in writing to the continued presence of any such underground storage tanks. Notwithstanding the foregoing provisions, Tenant shall be liable for all property taxes, assessments, and similar charges assessed against or allocable to any property at the Demised Properties (irrespective of whether such property is Building Equipment owned by Landlord or Tenant Equipment or other personal property owned by Tenant) and that are attributable to any period of time during the Lease Term.

Section 20.02 During the Lease Term, Tenant shall be entitled to use the Building Equipment in Tenant's operations at the Demised Properties. Tenant shall keep the Building Equipment in good working order and repair, shall not remove the Building Equipment from the Demised Properties (subject to the terms of this Section) and shall not permit any lien or other encumbrance to attach to any Building Equipment except as may be caused by Landlord, and except any such liens that are being contested by Tenant in good faith by appropriate proceedings and that have been bonded over by Tenant to the reasonable satisfaction of Landlord or for which Tenant provides alternative security to the reasonable satisfaction of Landlord. Tenant shall keep (or cause to be kept) the Building Equipment insured and shall be responsible for any casualty or other loss to Building Equipment or occasioned by Building Equipment. Tenant shall at all times have a system in place to identify the Building Equipment from the Tenant Equipment or any of Tenant's personal property, and any items of equipment not so identified shall conclusively be presumed to be Building Equipment and shall be the property of Landlord. Tenant may, from time to time, retire or replace Building Equipment with new items of equipment of equal or greater value purchased by Tenant, in which event such replaced equipment shall constitute Building Equipment; provided, however that Tenant shall provide Landlord prompt written notice after any such replacement together with reasonable evidence as to the value and quality of the new Building Equipment. Promptly after Landlord's receipt of such written notice in connection with any such replacement (or written notice of any Capital Alterations) made during the final twelve (12) months of the Lease Term (or the final twelve (12) months of the applicable Option Period if an Option shall have been exercised), the useful life of which extends beyond the Lease Term, Landlord shall pay to Tenant an amount equal to (i) the quotient of (x) the portion of the useful life of such replacement or Capital Alteration not falling within the Lease Term divided by (y) the total useful life of such replacement or Capital Alteration, multiplied by (ii) the value of such replacement or Capital Alteration, provided, that, should the Lease Term thereafter be extended, the amount shall be recalculated so that the applicable Option Period is included within the Lease Term and any amounts due Landlord pursuant to such recalculation shall be paid by Tenant to Landlord promptly after such recalculation. All Building Equipment shall be the property of Landlord, and Tenant shall execute such instruments and documents as Landlord may require to evidence such ownership by Landlord.

Section 20.03 Tenant shall at all times maintain sufficient Tenant Equipment at each Demised Property to be able to fully operate a grocery store or other applicable Permitted Use at each Demised Property (whether or not Tenant has ceased operations at such Demised Property as described in Article 4). In the event of any replacement of any Tenant Equipment with new items of equipment, such new items of equipment shall thereafter constitute Tenant Equipment. Tenant shall keep the Tenant

Equipment fully insured and shall be responsible for any casualty or other loss to any Tenant Equipment or occasioned by any Tenant Equipment.

ARTICLE 21 END OF TERM; HOLDING OVER

Section 21.01 Upon the expiration or earlier termination of this Lease, Tenant shall peaceably and quietly quit and surrender the Demised Properties, and all Alterations that are then part of the Demised Properties, broom clean and in good order and condition. Tenant shall within thirty (30) days prior to the expiration of this Lease (or within thirty (30) days after written notice from Landlord upon any earlier termination of this Lease) transfer to Landlord all plans, drawings, other Alteration Information, and technical descriptions of the Demised Properties in Tenant's possession or control, and shall assign to Landlord, without warranty or representation, all assignable permits, licenses, authorizations and warranties necessary for the operation of the Demised Properties (in each case to the extent not previously transferred or assigned to Landlord). Upon the expiration or earlier termination of this Lease, Tenant shall have the obligation to remove all Tenant Equipment, trade fixtures and personal property from the Demised Properties, except that, with the prior written consent of Landlord (which consent Landlord may withhold in its sole discretion), Tenant may elect to abandon any such Tenant Equipment, trade fixtures and personal property. Any Tenant Equipment, trade fixtures or personal property that is not removed upon the expiration or earlier termination of this Lease within the time periods set forth above in this Section 21.01 shall be deemed abandoned and may be removed, stored, disposed of or used by Landlord without payment of any compensation to Tenant (and any costs incurred by Landlord in connection with any such removal, storage or disposal shall be paid by Tenant to Landlord immediately upon demand). Tenant agrees to deliver, within three (3) Business Days after the date of this Lease, written notice of the covenant in the immediately preceding sentence to any lender with a security interest in any of the Tenant Equipment and any equipment lessor that owns any of the Tenant Equipment, which notice shall specifically state that any Tenant Equipment, trade fixtures or personal property remaining on any of the Demised Properties at the time of termination or expiration of this Lease shall be deemed abandoned and the property of Landlord, subject to any direct agreements between Landlord and any lender or owner with an interest in such Tenant Equipment, trade fixtures and personal property. Tenant shall deliver a copy of such notice to Landlord contemporaneously with its delivery to such lender or equipment lessor.

Section 21.02 If Tenant holds over in possession after the expiration of the Lease Term, then such holding over shall not be deemed to extend the Lease Term or renew this Lease, but rather the tenancy thereafter shall continue as a tenancy at sufferance pursuant to the terms and conditions contained in this Lease, at one hundred fifty percent (150%) of the Base Rent otherwise then applicable (in addition to all Additional Rent); and Tenant shall be responsible for the consequences of any unauthorized holdover and shall indemnify, defend, protect (with counsel selected by Landlord) and hold Landlord Parties wholly free and harmless from any and all Losses arising therefrom. If Tenant is obligated under Article 29 to undertake Remedial Activities, Tenant shall be permitted to access the Demised Properties to conduct the Remedial Activities and such access shall not be deemed holding over in possession unless the Remedial Activities materially interfere with surface uses, or materially compromise the quiet enjoyment of the Demised Properties, in which case Tenant shall be deemed to be holding over until such time as surface uses may resume without undue impairment.

Section 21.03 This Article 21 shall survive the expiration or termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article 21 shall also survive as to

matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 22 TENANT ASSIGNMENT AND SUBLETTING

Section 22.01

(a) Except as otherwise explicitly provided in this Article 22 and Article 23, neither Tenant, nor Tenant's successors or assigns, shall assign or transfer, in whole or in part, by operation of law or otherwise, this Lease, or sublet the Demised Properties, in whole or in part, or permit the Demised Properties or any portion of any of them to be used or occupied by third parties, or enter into a management contract or other arrangement whereby the Demised Properties shall be managed or operated by anyone other than the owner of the Tenant's leasehold estate (other than customary property-level agreements for landscaping, maintenance and other similar services), without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall request Landlord's consent to a proposed assignment or sublease in writing, and Landlord will endeavor to respond to such request within ten (10) Business Days following receipt thereof. In the event that Landlord fails to so respond to Tenant's request within such ten (10) Business Day period, then Tenant may deliver a second written request for Landlord's consent to such proposed assignment or sublease containing a sentence in the header of the first page of the request set in at least 14-point bold font, all capital letters, stating "**LANDLORD'S FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS AFTER LANDLORD'S RECEIPT HEREOF SHALL CONSTITUTE LANDLORD'S CONSENT TO THE ASSIGNMENT OR SUBLEASE PROPOSED HEREIN,**" and Landlord shall endeavor to respond to such second request within ten (10) Business Days following Landlord's receipt of such request. In the event that Landlord fails to so respond to Tenant's second request within such ten (10) Business Day period, then Landlord shall be deemed to have consented to the proposed assignment or sublease set forth in Tenant's written request. Any response by Landlord that withholds consent to any proposed assignment or sublease and does not contain a reasonably detailed explanation of the reasonable grounds for Landlord's withholding of its consent shall be deemed a failure to respond. No assignment or transfer of any direct or indirect ownership interest in Tenant, in whole or in part, by operation of law or otherwise, privately or publicly, regardless of the number of tiers of ownership, and regardless of whether there is a change of control, shall be deemed an assignment hereunder or otherwise require Landlord's consent. No assignment to any entity with which Tenant may merge, consolidate or to an entity that purchases (i) all the assets of Tenant (including Tenant's leasehold interest in all Portfolio Properties and Tenant's interest in all the Additional Tenant Properties), or (ii) at least ninety percent (90%) of the value of all of the assets of Tenant (including Tenant's non-real property assets as well as Tenant's leasehold interest in all Portfolio Properties then owned by Tenant) shall require Landlord's consent. The sale or assignment of assets other than Tenant's leasehold interest in the Portfolio Property shall not be deemed an assignment or otherwise require Landlord's consent. No encumbrance, pledge or hypothecation, in whole or in part, by operation of law or otherwise, of this Lease or any interest in the leasehold estate created by this Lease, or of any direct or indirect ownership interest in Tenant, regardless of the number of tiers of ownership, shall be deemed an assignment or otherwise require Landlord's consent, nor shall the foreclosure or transfer in lieu of foreclosure thereof. Any such encumbrance, pledge or hypothecation of this Lease or any interest in the leasehold estate created by this Lease shall be subject to the provisions of Section 23.03.

(b) After any assignment or sublease permitted by Landlord hereunder (including any assignment or sublease described in Sections 22.02, 22.03, 22.04 and 22.05), and except as expressly provided herein, (i) Tenant (unless it is no longer in existence in connection with a merger, consolidation

or sale of all of its assets) shall remain liable for all its obligations under this Lease, and Tenant shall, promptly after request, execute and deliver to Landlord a guaranty in form and substance reasonably acceptable to both Landlord and Tenant, whereby Tenant explicitly guarantees all of the assignee's obligations under this Lease, and (ii) Landlord may condition its consent to any sublease regarding the Demised Properties upon the sublease containing the following provisions (or the subtenant separately agreeing), in form and substance reasonably acceptable to Landlord and Landlord's Lender (collectively, the "**Subordination and Attornment Provisions**"): (A) that the sublease is subordinate in all respects to this Lease provided that Landlord and Landlord's Lender agree to accept the attornment described in the immediately succeeding clause (B) and agree not to disturb the rights of the subtenant pursuant to a commercially reasonable non-disturbance agreement; (B) that in the event of the cancellation or termination of this Lease for any reason whatsoever or of the surrender of this Lease by operation of law prior to the expiration date of the sublease, the subtenant shall make full and complete attornment to Landlord under the terms of the sublease for the balance of the term of the sublease; (C) that subtenant waives the provisions of any Law then or thereafter in effect that may give subtenant any right of election to terminate the sublease or to surrender possession of the Demised Properties in the event any proceeding is brought by Landlord to terminate this Lease; and (D) that all of the foregoing provisions in (A) through (C) are for the benefit of both Tenant and Landlord and Landlord is a third party beneficiary thereof. Notwithstanding the foregoing, upon the reasonable request of Landlord or Landlord's Lender, Landlord, Tenant and the subtenant shall execute and deliver to each other a separate subordination and attornment agreement regarding the sublease, in form and substance reasonably acceptable to Landlord and Landlord's Lender. Tenant shall submit current financial statements of any proposed assignee or sublessee together with Tenant's request for Landlord's approval of any proposed assignment or sublease. Tenant shall reimburse Landlord for all reasonable costs and expenses actually paid by Landlord in connection with any requested consent to an assignment or sublease; including reasonable legal fees and costs in reviewing sublease or assignment documents and in preparing or reviewing consents. Without in any way limiting Landlord's right to reasonably withhold consent to any proposed assignment or sublease by Tenant, Tenant shall deliver to Landlord written notice of any assignment or sublease of this Lease promptly after the effective date of any such assignment or sublease.

(c) If this Lease is assigned or transferred, or if all or any part of the Demised Properties is sublet or occupied by any party other than Tenant, Landlord may collect rent from the assignee, transferee, or, after the occurrence of an Event of Default, subtenant or similar occupant, and apply the net amount collected to the Rent reserved in this Lease, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any covenant or condition of this Lease, or the acceptance of the assignee, transferee, subtenant or occupant as tenant, or a release of Tenant from the performance or further performance by Tenant of its obligations under this Lease. Without limiting the generality of the foregoing, Tenant expressly acknowledges and agrees that, in the event of any assignment of this Lease, Tenant shall (if it remains liable pursuant to the provisions of this Article 22) remain jointly and severally liable with the assignee for all of the obligations under this Lease, and in all other cases of any transfer of Tenant's interest under this Lease, Tenant shall remain primarily liable for such obligations. Subject to the foregoing, the consent by Landlord to an assignment, transfer, management contract or subletting shall not in any way be construed to relieve Tenant from obtaining the express written consent of Landlord in each instance to any subsequent similar action that Tenant may desire to take.

Section 22.02 Notwithstanding anything contained in Section 22.01, Tenant may sublease up to two (2) of the Portfolio Properties in the aggregate, at any time, in the ordinary course of business hereunder without Landlord's prior written consent, provided all of the following conditions are satisfied: (a) the subtenant is commercially and financially sound; (b) the permitted use under the sublease is limited to the operation of a Permitted Use (and with any change in use to a use which is not a Permitted

Use subject to the prior written consent of each of Landlord and Tenant, which approval each may withhold in its reasonable discretion), in compliance with all applicable Laws and the covenants set forth in Section 4.02, (c) the sublease contains a covenant whereby the subtenant agrees, subject to all applicable Laws, to continuously operate at the applicable Demised Property during all hours that are customary for similarly situated sites; provided, however, that if there are not similarly situated sites, then the sublease shall contain a covenant whereby the subtenant agrees, subject to all applicable Laws, to continuously operate at the applicable Demised Property during all hours that are customary for similar Permitted Uses in the same geographic location as the applicable Demised Property (for the avoidance of doubt, this continuous operation requirement is applicable to the two (2) permitted subleases of Portfolio Properties under this Section 22.02 and not applicable to the permitted subleases of less than twenty percent (20%) of the useable square feet of the applicable Demised Property contained in Section 22.03), (d) the sublease contains the Subordination and Attornment Provisions (provided, however, that such provisions shall subordinate the applicable sublease in all respects to the Lease without any condition that Landlord or Landlord's Lender agree to accept the subtenant's attornment or agree not to disturb the rights of the subtenant pursuant to a commercially reasonable subordination, non-disturbance and attornment agreement, or otherwise, unless Landlord consents in writing to the applicable sublease), if required by Landlord in its sole and absolute discretion; (e) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term, and (f) the subtenant has not refused to deliver to Landlord and any Landlord's Lender, promptly after request, a subordination, non-disturbance and attornment agreement in form and substance described in Section 22.01(b).

Section 22.03 Notwithstanding anything contained in Section 22.01, Tenant may sublease space within any Demised Property hereunder subject to Landlord's consent not to be unreasonably withheld (provided, however, that Landlord's consent shall not be required for such subleases of less than twenty percent (20%) of the useable square feet of the applicable Demised Property, but Landlord's consent (not to be unreasonably withheld) shall be required for any such sublease if twenty percent (20%) or more in the aggregate of the useable square feet of the portion of the applicable Demised Property is already subject to such subleases or would be subject to such subleases with the inclusion of any additional such sublease, it being agreed that any usable space at any Demised Property not being occupied by Tenant on the Commencement Date (as set forth on Schedule 22.05) shall not be included in any of the foregoing calculations, regardless of whether any such space is later sublet, provided all of the following conditions are satisfied: (a) the subtenant is commercially and financially sound; (b) the permitted use under the sublease is limited to the operation of customary in-store, grocery store (which may include, but which shall not be limited to, the operation of a pharmacy, bank or coffee kiosk) or other customary in-store Permitted Uses (and with any change in use to a use which is not a Permitted Use subject to the prior written consent of each of Landlord and Tenant, which approval each may withhold in its reasonable discretion) and the covenants set forth in Section 4.02 are included in the sublease as obligations of the subtenant (although the covenants set forth in Section 4.01 may be expressly excluded from the sublease), (c) the applicable sublease contains the Subordination and Attornment Provisions and prohibits the subtenant from effecting or permitting any Alterations other than a Subtenant Minor Project without the prior written consent of Tenant and Landlord; (d) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term, and (e) the subtenant has not refused to deliver to Landlord and any Landlord's Lender, promptly after request, a subordination, non-disturbance and attornment agreement in form and substance described in Section 22.01(b).

Section 22.04 Notwithstanding anything to the contrary contained in Section 22.01, Tenant may assign the Lease in its entirety without Landlord's prior written consent, but with prior written notice to Landlord, and provided an Event of Default does not exist as of the delivery of Tenant's notice to Landlord and as of the effective date of the applicable assignment, if such assignment or sublease is to the following (a "**Permitted Assignee**"): an entity that along with any guarantor of such entity's obligations

under the Lease (pursuant to a guaranty in form and substance acceptable to Landlord) has a net worth at the time of such assignment equal to or greater than the greater of (x) the net worth of Tenant immediately before the assignment (but in no event shall such assignee and guarantor be required to have a combined net worth greater than \$150,000,000) and (y) \$10,000,000. In addition, Tenant may assign its rights to the entire Lease without consent to any entity, including any Tenant Affiliate, so long as Tenant remains liable pursuant to a guaranty in form and substance acceptable to Landlord. In the event of any assignment to a Permitted Assignee, Tenant shall be released from any liability accruing under this Lease after the date of such assignment. Any Permitted Assignee or other assignee permitted under this Section 22.04 shall be subject to all of the provisions of this Lease, including the operation requirements set forth in Article 4. For the avoidance of doubt, in no event shall Tenant be permitted to assign less than all of its interest in this Lease.

Section 22.05 Notwithstanding anything contained in Section 22.01, Tenant shall use commercially reasonable efforts to sublease the unoccupied portions of the Demised Properties described in Schedule 22.05 pursuant to subleases in form and substance reasonably acceptable to Landlord, and agrees that all of the following conditions shall be satisfied with regard to any such subleases: (a) the subtenant is commercially and financially sound; (b) the sublease contains the Subordination and Attornment Provisions and prohibits the subtenant from effecting or permitting any Alterations other than Subtenant Minor Projects without the prior written consent of Tenant and Landlord; (c) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term, and (d) the subtenant has not refused to deliver to Landlord and any Landlord's Lender, promptly after request, a subordination, non-disturbance and attornment agreement in form and substance described in Section 22.01(b). Landlord and Tenant shall reasonably cooperate in locating appropriate subtenants in connection with each such unoccupied portion of the Demised Properties.

Section 22.06 Upon any sublease or assignment permitted as provided in this Article 22 Tenant shall deliver to Landlord copies of such sublease or assignment agreement in form and substance reasonably satisfactory to Landlord (including assumption language reasonably satisfactory to Landlord in any assignment agreement) promptly after the execution thereof by Tenant. Tenant shall provide Landlord with at least ten (10) Business Days written notice of its intent to assign or sublet this Lease with Landlord's consent or as otherwise permitted hereunder and shall deliver such assignment or sublease containing, if an assignment, an agreement, in recordable form, executed by the assignor and the assignee, in which the assignee assumes the performance of the obligations of the assignor under this Lease throughout the Lease Term within ten (10) Business Days of such assignment. Tenant shall be entitled to redact any confidential business terms (other than the terms Landlord is otherwise entitled to see under this Lease) not applicable to Landlord. In no event shall Tenant be entitled to amend, extend or otherwise modify any sublease or assignment agreement (except with respect to such redacted material) without the prior written consent of Landlord, which consent Landlord may withhold in its reasonable discretion. Landlord agrees to enter into a commercially reasonable subordination, non-disturbance and attornment agreement with any subtenant under any sublease approved by Landlord in writing hereunder and any sublease for less than twenty percent (20%) of the useable square feet at a Demised Property, as described in Section 22.03, but shall not have any obligation to deliver a subordination, non-disturbance and attornment agreement to any other subtenant.

Section 22.07 Subject to the terms of this Lease, this Lease shall be binding upon, enforceable by, and inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns. Without limiting Landlord's rights to reimbursement for fees and costs payable to third parties contained in this Lease, including in connection with its review of any Tenant request for Landlord's consent in connection with an assignment or sublet pursuant to this Article 22.

Landlord agrees not to charge Tenant any additional amount as a condition to its consent to any assignment or sublease hereunder.

Section 22.08 Following an assignment of this Lease regarding which Tenant remains liable pursuant to a guaranty in form and substance acceptable to Landlord, as permitted under Section 22.04 without Landlord's prior consent, an Event of Default under this Lease (as assigned) shall not constitute an Event of Default pursuant to Section 15.01(j) of any Other Lease that has been previously assigned (or may in the future be assigned) by Tenant pursuant to Article 22 (whether such assignment requires Landlord's consent or not) and an Event of Default pursuant to Section 15.01(j) of any Other Lease (whether or not assigned at any time) shall not constitute an Event of Default under Section 15.01(j) of this Lease (as assigned). Following an assignment of this Lease to a Permitted Assignee, an Event of Default under this Lease (as assigned) shall not constitute an Event of Default pursuant to Section 15.01(j) of any Other Lease (whether or not assigned at any time) and an Event of Default under any Other Lease (whether or not assigned at any time) shall not constitute an Event of Default under Section 15.01(j) of this Lease (as assigned). In connection with an assignment of this Lease by Tenant requiring Landlord's consent pursuant to Article 22, Tenant may request of Landlord that an Event of Default pursuant to Section 15.01(j) of any Other Lease previously assigned (or may in the future be assigned) by Tenant shall not constitute an Event of Default under Section 15.01(j) of this Lease (as assigned), or a similar request regarding Section 15.01(j), and Landlord shall approve or disapprove such request in its reasonable discretion..

ARTICLE 23 FINANCINGS

Section 23.01 This Lease shall be subject and subordinate to all present and future ground or underlying leases of any of the Demised Properties and to the lien of any mortgages or trust deeds, now or hereafter in force against any of the Demised Properties, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages or trust deeds, or the lessors under such ground or underlying leases, require in writing that this Lease be superior thereto; and Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any mortgage or deed of trust to which this Lease is subordinate, or in the event of any termination of any ground or underlying lease to which this Lease is subordinate, to attorn to the purchaser upon any such foreclosure sale, if so requested to do so by such purchaser, and to the ground or underlying lease lessor, if so requested to do so by such ground or underlying lease lessor, and to recognize such purchaser, or ground or underlying lessor, as the case may be, as the lessor under this Lease; provided, however, that the foregoing subordination to present and future ground or underlying leases of the Demised Properties and to the lien of any future mortgages or trust deeds in force against the Demised Properties shall be conditioned upon Landlord providing Tenant with a subordination, non-disturbance and attornment agreement in favor of Tenant in the form attached hereto as Exhibit B, or other commercially reasonable, mutually reasonably acceptable form requested by Landlord that provides, without limitation, that this Lease and the rights of Tenant hereunder shall control over any contrary provisions in such mortgage, deed of trust or ground lease and shall survive any foreclosure proceeding brought under such mortgage or deed of trust, or termination of such ground or underlying lease (as applicable), provided an Event of Default is not continuing under this Lease (either, an "SNDA"). Without limiting the foregoing, (a) as of the Commencement Date, each of Landlord, Landlord's Lender, and Tenant shall execute and deliver to each other a subordination, non-disturbance and attornment agreement in the form attached hereto as Exhibit B, or a substantially similar form proposed by Landlord, and (b) Tenant shall, and shall use commercially reasonable efforts to cause any subtenant, other than an existing subtenant, from time to time, within seven (7) days after any request by Landlord, to execute and deliver such other instruments

or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease (at Landlord's election) to any such mortgages, trust deeds, ground or underlying leases (including, at Landlord's election, one or more additional SNDAs requested by Landlord's Lender). For the avoidance of doubt, the rights afforded Landlord pursuant to Section 34.02 shall be available to any Landlord's Lender becoming Landlord under this Lease (itself or through a wholly-owned subsidiary) through foreclosure, deed-in-lieu or other similar process.

Section 23.02 Tenant shall cooperate with Landlord and execute, subject to Tenant's reasonable approval which shall not be unreasonably withheld, any and all instruments reasonably requested by Landlord (including, if necessary, the execution of a reasonable amendment to this Lease), in the establishment and maintenance of cash management procedures reasonably requested by any Landlord's Lender with respect to payment of Base Rent and other amounts payable by Tenant directly to Landlord as and when the same are due and payable hereunder; provided, however, that Tenant shall not be obligated to agree to any requested action or execute any requested instrument if the same would have a material adverse effect upon Tenant, unless Tenant is reasonably compensated therefor by Landlord. In addition, Tenant agrees to cooperate in good faith with Landlord, any Landlord's Lender and any Landlord's Mortgagee, in connection with any sale or transfer of the any of the Demised Properties by Landlord or any transfer, participation, syndication and/or securitization of any loan secured by any of the Demised Properties, or any or all servicing rights with respect thereto, including (a) by providing such documents, financial and other data, and other information and materials (the "**Disclosures**") that would typically be required with respect to a similarly situated tenant (and typically acceptable to a significant tenant) by a purchaser of the any of the Demised Properties and/or a purchaser, transferee, assignee, servicer, participant, co-lender, investor or Rating Agency involved with respect to any transfer, participation, syndication and/or securitization of any loan secured by any of the Demised Properties, as applicable (collectively, the "**Transfer Parties**" and each, a "**Transfer Party**"); and (b) by amending the terms of this Lease, subject to Tenant's reasonable approval which shall not be unreasonably withheld, to the extent reasonably necessary so as to satisfy the requirements of the Transfer Parties involved in any such transfer, participation, syndication or securitization; provided, however, that Tenant shall not be obligated to agree to any requested action, or execute any requested amendment, if the same would have a material adverse effect upon Tenant, unless Tenant is reasonably compensated therefor by Landlord

Section 23.03 Notwithstanding Section 22.01 above, but subject to the terms of this Article, Landlord agrees that Tenant shall have the right to encumber, pledge or hypothecate Tenant's interest in the leasehold estate created by this Lease. All proceeds from any Leasehold Mortgage shall remain the property of Tenant. Landlord shall not be obligated to subordinate any or all of Landlord's right, title or interest in and to the Demised Properties and this Lease to the lien of any Leasehold Mortgage. A Leasehold Mortgage shall encumber only Tenant's leasehold interest in the Demised Properties, and shall not encumber Landlord's right, title or interest in the Demised Properties. Landlord shall have no liability whatsoever for the payment of any obligation secured by any Leasehold Mortgage or related obligations. A Leasehold Mortgage shall be, and hereafter shall continue at all times to be, subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and junior, subject and subordinate, in each and every respect, to all rights and interests of any Landlord's Mortgagee now or hereafter affecting any of the Demised Properties. Should there be any conflict between the provisions of this Lease and the provisions of any Leasehold Mortgage, the provisions of this Lease shall control. No Leasehold Mortgage shall be for a term longer than the Original Lease Term. Either prior to or concurrently with the recordation of any Leasehold Mortgage, Tenant shall cause a fully conformed copy thereof and of the financing agreement secured thereby to be delivered to Landlord and Landlord's Mortgagee, together with a written notice containing the name and post office address of Tenant's Lender. Upon written request from Tenant, Landlord agrees to deliver an estoppel certificate in favor of Tenant's Lender

regarding this Lease, in form and substance reasonably acceptable to Landlord and Tenant's Lender. Tenant agrees that a condition precedent to its granting a Leasehold Mortgage to any Tenant's Lender shall be the execution and delivery by such Tenant's Lender to Landlord and Landlord's Lender of a subordination, non-disturbance and attornment agreement, in form and substance reasonably acceptable to Landlord and Landlord's Lender, that shall provide, without limitation, that upon a default under the Leasehold Mortgages, Tenant's Lender may foreclose only on this Lease as an entirety, applicable to all, but not less than all (even if otherwise possible under applicable Law) of the Demised Properties. Tenant hereby acknowledges and agrees (a) that it is Landlord's intent to pledge the Demised Properties to Landlord's Lender on or about the Commencement Date, (b) that any instruments effecting or evidencing such pledge shall at all times be prior in interest to any Leasehold Mortgage and (c) if requested by Landlord's Lender, Tenant shall cause Tenant's Lender to enter into an agreement in form and substance reasonably acceptable to Landlord's Lender confirming that Tenant's Lender has no interest in the Demised Properties other than in Tenant's interest under this Lease and that any Leasehold Mortgage is subject and subordinate to any such instruments effecting or evidencing such pledge. In addition, in the event that any Landlord's Lender requires that the Leasehold Mortgage be terminated of record and re-recorded in order to ensure priority of any such instrument effecting or evidencing such pledge, Tenant shall cause the same to occur promptly after written request, and at Landlord's expense. Tenant hereby agrees not to grant any Leasehold Mortgages against the Demised Properties unless and until instruments securing or evidencing Landlord's pledge of the Demised Properties to Landlord's Lender are recorded against such Demised Properties. If Landlord delivers to Tenant a Default notice under this Lease, Landlord shall notify any Tenant's Lender (without any liability for failure to provide such notification) that has delivered to Landlord a prior written request for such notice, and Landlord shall recognize and accept the performance of any obligation of Tenant hereunder by Tenant's Lender (provided said performance occurs within the same cure periods as provided to Tenant under this Lease); provided, however that nothing contained herein shall obligate Tenant's Lender to take any such actions. Any act by Tenant or Tenant's Lender in violation of this Section 23.03 shall be null and void and of no force or effect. Tenant shall, without charge, at any time and from time to time, within ten (10) days after any request by Landlord, obtain from Tenant's Lender and deliver to Landlord or any other Person specified by Landlord, duly executed and acknowledged, an estoppel certificate certifying (x) copies of the documents creating, evidencing and securing the debt secured by any Leasehold Mortgage, (y) whether, to the knowledge of Tenant's Lender, any default exists under such Leasehold Mortgage and (z) such other matters relating to such Leasehold Mortgage as Landlord may reasonably request (and any Leasehold Mortgage shall contain an express obligation by Tenant's Lender to deliver such an estoppel certificate upon request from time to time). Landlord also hereby agrees, upon request by Tenant or Tenant's Lender, to enter into a commercially reasonable agreement with Tenant's Lender that may provide, without limitation (a) without limiting any express rights of Landlord under this Lease, Landlord's waiver of any Landlord's lien against any property of Tenant, (b) that Landlord shall not amend the Lease without the prior written consent of Tenant's Lender, (c) that Tenant's Lender shall have the right, but not the obligation, to pay and perform all obligations of Tenant under this Lease subject to any additional cure periods reasonably agreed to by Landlord and Tenant's Lender, (d) that upon any termination of the Lease, Tenant's Lender shall have the right to a new lease with Landlord, for the remainder of the Lease Term, and otherwise with the same covenants, conditions and agreements as are contained in the Lease subject to such reasonable conditions as Landlord may impose, and (e) that Tenant's Lender shall have rights upon written notice to Landlord to enter upon the Demised Properties to remove Tenant's personal property following any default under the Leasehold Mortgage, provided, however that Tenant's Lender shall maintain adequate insurance (and deliver written evidence of the same to Landlord) and satisfy Tenant's obligation to pay Base Rent during such period of possession, not to exceed thirty (30) days, which thirty (30)-day period will be tolled in the event of an applicable bankruptcy proceeding. For the avoidance of doubt, the rights afforded Tenant pursuant to Section 34.01

shall be available to Tenant's Lender becoming Tenant under this Lease (itself or through a wholly-owned subsidiary) through foreclosure, deed-in-lieu or other similar process. This Section shall survive termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this section shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 24 ESTOPPEL CERTIFICATES

Tenant shall, without charge, at any time and from time to time, within ten (10) days after any request by Landlord, deliver to Landlord or any other Person specified by Landlord, duly executed and acknowledged, a completed Estoppel Certificate in substantially the form as set forth on Exhibit C attached hereto, or other commercially reasonable estoppel certificate confirming such information regarding this Lease and Tenant as Landlord may request (either, an "Estoppel Certificate"). Landlord shall, without charge, at any time and from time to time, within ten (10) days after any request by Tenant, deliver to Tenant or any other Person specified by Tenant, duly executed and acknowledged, a commercially reasonable estoppel certificate confirming such information regarding this Lease and Landlord as Tenant may reasonably request.

ARTICLE 25 RECORDING

Neither Landlord nor Tenant shall record this Lease; however, upon the request of either party hereto, the other party shall join in the execution and recordation of a memorandum of lease (or similar instrument) in a form substantially similar to the form attached hereto as Exhibit D prior to the recordation of any mortgage or deed of trust encumbering the applicable Demised Property. If the recordation of such memorandum of lease (or similar instrument) is requested by Tenant, Tenant shall pay all costs charged by the applicable local recorder in connection therewith.

ARTICLE 26 APPLICABLE LAW; WAIVER OF JURY TRIAL

This Lease shall be construed in accordance with, and this Lease and all matters arising out of or relating to this Lease (whether in contract, tort or otherwise) shall be governed by, the law of the State of New York without regard to conflicts of law principles; provided, however, that any forcible entry and detainer action or similar proceeding shall be governed by the laws of the state in which the applicable Demised Property is located. If any provision of this Lease or the application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by applicable Law.

TENANT AND LANDLORD, EACH HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK, AND EACH IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LEASE SHALL BE LITIGATED IN SUCH COURTS (EXCEPT FOR FORCIBLE ENTRY AND DETAINER ACTIONS, OR SIMILAR PROCEEDINGS, WHICH SHALL BE LITIGATED IN COURTS LOCATED WITHIN THE COUNTY AND STATE IN WHICH THE APPLICABLE DEMISED PROPERTY IS LOCATED). TENANT AND LANDLORD EACH ACCEPTS, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS (EXCEPT AS PROVIDED ABOVE IN THIS PARAGRAPH) AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND

IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS LEASE.

EACH OF TENANT AND LANDLORD, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS LEASE.

TENANT AND LANDLORD EACH ACKNOWLEDGES THAT THE PROVISIONS OF THIS ARTICLE ARE A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS LEASE.

ARTICLE 27 LIABILITY OF PARTIES

Section 27.01 The obligations of Landlord under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord. Tenant shall look solely to the Demised Properties for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord. Whenever Landlord transfers its interest in any Demised Property, Landlord shall be automatically released from further performance under this Lease with respect to such Demised Property and from all further liabilities and expenses hereunder related to such Demised Property whether occurring prior to or after any such assignment provided the applicable assignee assumes all obligations under this Lease whether occurring prior to or after any such assignment.

Section 27.02 The obligations of Tenant under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant. Landlord shall not seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant.

ARTICLE 28 ATTORNEYS' FEES; EXPENSES

Without limiting any other obligation of Tenant to timely indemnify or reimburse Landlord hereunder (including under Article 9 and Article 29):

(a) If any party to this Lease shall bring any action or proceeding for any relief against the other, declaratory or otherwise, arising out of this Lease, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs incurred in bringing or defending such action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs, separate from the judgment, incurred in enforcing such judgment. The prevailing party shall be determined by the trier of fact based upon an assessment of which party's major arguments or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues. For the purposes of this clause, attorneys' fees shall include fees incurred in the following: (i) post-judgment motions; (ii) contempt proceedings; (iii) garnishment, levy,

and debtor and third party examinations; (iv) discovery; and (v) bankruptcy litigation. This clause is intended to be expressly severable from the other provisions of this Agreement, is intended to survive any judgment and is not to be deemed merged into the judgment.

(b) Tenant agrees to pay or, if Tenant fails to pay, to reimburse, Landlord upon receipt of written notice from Landlord for all reasonable costs and expenses (including reasonable attorneys' fees and costs) incurred by Landlord in connection with (i) any request by Tenant to Landlord (including any amendment to this Lease requested by Tenant), including Landlord's actions in response thereto, provided, however, the foregoing shall not include costs and expenses incurred by Landlord in connection with any request by Tenant to Landlord under Article 29, Schedule 29.08 or any Holdback Agreement, Article 4 (unless Landlord reasonably determines that it needs to engage an attorney in connection therewith), or Section 34.02 (except to the extent any of the foregoing requests is in connection with an amendment to this Lease) (for the avoidance of doubt, the cost of arbitration under Section 31.01 shall be apportioned as provided in clause (6) of Section 31.01 and expenses paid or incurred by Landlord pursuant to Section 31.01 shall be paid as set forth in the final paragraph of Section 31.01); (ii) securing Tenant's compliance with any requests made pursuant to the provisions of this Lease or other Transaction Documents; and (iii) enforcing any obligations of or collecting any payments due from Tenant under this Lease, the other Transaction Documents or with respect to any Demised Property.

ARTICLE 29 ENVIRONMENTAL

Section 29.01 Tenant acknowledges that Landlord makes no warranties or representations of any kind, or in any manner or in any form whatsoever, as to the status of Environmental Conditions or Hazardous Materials at the Demised Properties. Tenant shall conduct at its own expense any and all investigations regarding Environmental Conditions of the Demised Properties and will satisfy itself as to the absence or existence of Hazardous Materials contamination of the Demised Properties and the suitability of the Demised Properties for Tenant's operations. Tenant's entry into this Lease shall be made at its sole risk. [Pursuant to California Health & Safety Code § 25359.7, Landlord has provided written notice to Tenant prior to the date hereof that a release of "Hazardous Substances," as that term is defined pursuant to the California Health & Safety Code § 25339.7, has come to be located on or beneath the real property located at the following addresses:

- (1) 21815 Hawthorne Blvd., Torrance, CA.
- (2) 2238 Broad St., San Luis Obispo, CA
- (3) 685 E. Bonita Ave., San Dimas, CA

Tenant acknowledges the receipt and adequacy of this notification.

Section 29.02 Tenant shall comply with all Environmental Laws and cause and ensure the Demised Properties and all operations thereon comply with all applicable Environmental Laws. Tenant shall not suffer or permit any loss, on, at, under or affecting the Demised Properties of any source if the same pose a health or safety risk to invitees or employees. From and after the Commencement Date, Tenant shall not be entitled to the Use of any Hazardous Materials at the Demised Properties other than De Minimis Amounts, which shall be performed in full compliance with all Environmental Laws and any other applicable Laws. Tenant shall be prohibited from conducting or allowing the Release of Hazardous Materials onto, on, about, under or from the Demised Properties, the exception being sewer or other permitted discharges or Releases or other De Minimis Amounts, in full compliance with all Environmental Laws and any other applicable Laws. From and after the date of this Lease, Tenant covenants to, and shall, undertake all Remedial Activities necessary to comply with Environmental Laws

and, additionally, to address any Use or Release of Hazardous Materials after the date of this Lease, by Tenant or its agents, employees, representatives, invitees, licensees, subtenants, customers or contractors (“**Other Parties**”), or a Release by any third party, adversely affecting the Demised Property at Tenant’s sole cost and expense. A Use or Release of Hazardous Materials shall be deemed to adversely affect the Demised Property if such conditions or circumstances require Remedial Activities under Environmental Laws or Environmental Guidance Standards. Tenant shall give immediate written notice to Landlord of any Remedial Activities, including the abatement of any mold or fungi that constitute Hazardous Materials, even if no applicable Law compels such abatement. If any Remedial Activities are required to be performed at any location other than the Demised Properties, Tenant shall use its commercially reasonable efforts to obtain any required access agreements from third parties.

Section 29.03 In addition to any other obligation herein, during the Lease Term Tenant shall be liable for or responsible for: (a) the violation of any Environmental Law by Tenant or due to any fact, condition, circumstance, operation or activity at the Demised Property, including any Existing Environmental Conditions, or any new Environmental Conditions caused or permitted by Tenant during the Lease Term, including Releases by Tenant or by third parties; and (b) Hazardous Materials or Environmental Conditions at, on, under, about or from the Demised Properties during the Lease Term (and in the event of any holding over by Tenant, during any period that Tenant occupies the relevant Demised Property) whether or not the same constitute a violation of any Environmental Law, provided the same require Remedial Activities under any Environmental Guidance Standards. If Tenant voluntarily conducts, or is required under this Lease to conduct, any Repairs, Alterations or Restoration Work, Tenant shall be responsible for handling all disturbed Hazardous Materials (including lead-based paint or asbestos) in accordance with Environmental Laws and Environmental Guidance Standards. Tenant shall not be obligated under this Lease to undertake Remedial Activities unless during the Lease Term any Environmental Conditions (including Existing Environmental Conditions) constitute or create a violation of Environmental Laws, or create or constitute a public or worker health or safety risk, or a threat to the indoor or outdoor environment, under Environmental Guidance Standards. All Remedial Activities undertaken shall be to achieve unrestricted use standards; provided, however, Tenant may petition for closure under a commercial use standard with the applicable Governmental Authority, but if such Governmental Authority requires achievement of an unrestricted use standard then Tenant shall achieve that standard. If case closure under a commercial use standard is pursued, Landlord shall be entitled to review prior to final approval any activity and use limitations and/or any proposed deed restrictions. Landlord may refuse to consent to any activity and use limitations or deed notices which impose operations and maintenance obligations unacceptable to Landlord on current or future surface users of the Demised Properties, or which raise repair, operating or maintenance costs. Landlord agrees that a prohibition on use of ground water underlying a Demised Property is an acceptable onsite activity and use restriction. The definition of the term “commercial use standards,” or “unrestricted use standards” (also known as “residential use standards”) shall be the most stringent of the applicable definitions used in Environmental Guidance Standards in use in the State of the Demised Property, including Maximum Contaminant Levels for ground water, if the Remedial Activities are self-directed. If a Governmental Authority is exercising jurisdiction over the Remedial Activities, the Environmental Guidance Standards actually selected by the Governmental Authority shall be the applicable standards for that project. The foregoing sentence does not determine whether commercial use standards or unrestricted use standards apply at a Demised Property, but only how the standards, once selected and determined to be applicable, are to be defined.

Section 29.04 Tenant shall promptly inform Landlord in writing of (a) any and all enforcement actions, initiation of Remedial Activities where no Remedial Activities are currently being conducted upon receipt of such notification, or other Governmental Authority or regulatory actions

(excluding routine actions such as permit renewals) instituted, completed (including “case closure” or “no further action” determinations) or threatened by any Person pursuant to any Environmental Laws affecting the Demised Properties; (b) all claims made or threatened by any Person against Tenant or the Demised Properties relating in any way whatsoever to Hazardous Materials or Environmental Conditions (the matters set forth in clauses (a) and (b) are hereinafter referred to as “**Environmental Claims**”); (c) Tenant’s knowledge of any material Release of Hazardous Materials at, on, in, under to or from the Demised Properties or on, in or under any adjoining property, including any previously undetected Existing Environmental Conditions. Tenant shall also supply to Landlord within ten (10) Business Days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, asserted violations or other material communications relating to the matters described in this Section.

Section 29.05 (1) In addition to any other obligations herein, Tenant shall be solely responsible for and shall indemnify, protect, save, defend, and hold harmless all Landlord Parties from and against any and all Losses directly or indirectly arising out of or associated in any manner whatsoever with any actual or alleged violation of Environmental Law, and/or with Tenant’s Use, or the presence of Hazardous Materials, or the Release by any Person of Hazardous Materials at, on, under, about or from the Demised Properties during the Lease Term (and in the event of any holding over by Tenant, during any period that Tenant occupies the relevant Demised Property) or any Environmental Conditions, including Existing Environmental Conditions. The indemnities and releases contained in this Article 29 include: (a) the costs associated with Remedial Activities, including all necessary plans and reports, incurred by the U.S. Environmental Protection Agency, or any other federal, state or local governmental agency or entity or by any other Person, incurred pursuant to the CERCLA, RCRA, or any other applicable Environmental Laws; (b) any oversight charges, fines, damages or penalties arising from the presence or Release of Hazardous Materials, and any related Remedial Activities, incurred pursuant to the provisions of CERCLA, RCRA, or any other applicable Environmental Laws; (c) any liability to third parties arising out of the presence or Release of Hazardous Materials for personal injury, bodily injury, or property damage arising under any statutory or common law theory, including damages assessed for the maintenance of a public or private nuisance, the costs of Remedial Activities, or for the carrying on of an abnormally dangerous activity; (d) all damages arising out of any claim based on the presence or Release of Hazardous Materials or damage or threatened damage to Environmental Conditions; (e) any and all reasonable costs, fees and expenses of attorneys, consultants and experts incurred or sustained in making any investigation on account of any claim, in prosecuting or defending any action brought in connection therewith, in obtaining or seeking to obtain a release therefrom, or in enforcing any of the agreements herein contained; (f) Rent during any period of Remedial Activities if such Remedial Activities substantially interfere with the surface use of the Demised Properties and then only to the portion of the surface use substantially interfered with and such Rent shall be based on the Base Rent then in effect, or if this Lease has terminated, the Base Rent that was in effect on the Termination Date; and (g) any action or omission or use of the Demised Properties by any subtenant. (A subtenant shall not be deemed an offsite third party hereunder with respect to the Demised Property.) The foregoing indemnity shall apply to Tenant’s Use of Hazardous Materials irrespective of whether any of Tenant’s activities were or will be undertaken in accordance with Environmental Laws or other applicable Laws. This indemnity is intended to be operable under 42 U.S.C. 9607(e)(1). Tenant specifically agrees that it shall not seek contribution from any Landlord Party in any matter relating to any Hazardous Material liability. All costs and expenses paid or incurred by Landlord for which Tenant is obligated to indemnify Landlord under this Section shall be paid promptly by Tenant to Landlord.

(2) This Section shall survive termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this section shall also survive as to matters

occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant), and Tenant's obligations shall not terminate with respect to any Environmental Conditions caused or permitted by Tenant, or by any other Person, which first arose during the Lease Term.

(3) Notwithstanding the foregoing, Tenant's obligations under this Section 29.05 shall terminate two (2) years after the end of the Lease Term exclusively as to Losses arising from or related to Existing Environmental Conditions and Environmental Conditions created by an offsite third party, unless Tenant has commenced Remedial Activities, or is obligated hereunder to have done so, in which case Tenant shall diligently pursue those specific Remedial Activities to achieve "case closure" or a "no further action" determination or, if applicable to the Demised Property, Tenant exhausted the monetary cap set forth in Section 29.07. At Tenant's option, in lieu of termination two (2) years from the end of the Lease Term, the termination date shall be at the termination of the Lease Term (excepting ongoing Remedial Activities being diligently pursued, as described above) if Tenant has prepared and submitted a Phase I in accordance with then-current ASTM standards, within six (6) months prior to the end of the Lease Term (but no later than three (3) months prior to the end of the Lease Term), and if necessary also completes Phase II work, using only experienced and reputable consultants, and submitted a completion report for the Phase II work prior to one (1) month before the Lease Term termination. Landlord shall have the right to disapprove the first recommended consultant in its sole discretion, in which case Tenant shall suggest a second consultant. If Landlord disapproves the second consultant it shall set forth good cause for doing so, in which case Tenant shall recommend a third consultant, subject again to Landlord's disapproval only for good cause shown. Landlord shall have fifteen (15) Business Days to review and approve or comment on the submittals, Landlord's approval not to be unreasonably withheld. If Landlord's approval is not tendered, the parties shall meet and confer to develop a resolution of the identified issues within thirty (30) calendar days. All indemnity obligations under this Article 29 shall continue until Landlord shall approve the Phase I and/or Phase II reports, such approval not to be unreasonably withheld. Upon Landlord's approval, the subject indemnity obligations shall terminate as to Losses arising from or related to Existing Environmental Conditions and Environmental Conditions created by an offsite third party, but not as to other Losses covered under this Section 29.05. For the sake of clarity, the parties acknowledge that the subset of Tenant's indemnification obligations under this Section 29.05 concerning the costs of Remedial Activities to address Existing Environmental Conditions and Environmental Conditions created by an offsite third party may have terminated previously pursuant to the provisions of 29.07 below, if Tenant previously reached the monetary cap on such expenditures applicable to the Demised Properties.

Section 29.06 Without limiting the foregoing or anything contained in Article 8, Tenant acknowledges that Governmental Authorities have imposed, and from time to time may impose, obligations affecting some or all of the Demised Properties, or operations thereon, in response to climate change including energy efficiency mandates, water conservation mandates, restrictions on sales or use of certain fuels, mandates for alternative fuels, permitting obligations, restrictions on or a duty to inventory and report green house gas emissions, requirements to purchase carbon credits, construction, operational or other measures to mitigate risks of drought, fire, flood, rising sea levels, storm surge risks, so-called "extreme weather" risks and other legal obligations, whether adopted pursuant to Environmental Laws or other Laws. Tenant at its sole cost and expense shall ensure the Demised Properties, and operations thereon, comply with any such applicable Laws, permits, and requirements of all Governmental Authorities having jurisdiction over the relevant Demised Properties during the term of the Lease. Moreover, Tenant agrees that the cost or disruption to operations imposed by any such applicable Laws, permits, and requirements of all Governmental Authorities having jurisdiction over the relevant Demised Properties shall not excuse full performance of this Lease by Tenant. Tenant shall not be obligated by

this Lease to undertake the energy efficiency and similar measures set forth in this Section 29.06 unless compelled by applicable Law.

Section 29.07 (1) Notwithstanding anything contained herein to the contrary, with respect to Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term, Tenant's liability under this Article 29 and Schedule 29.08 for the cost of Remedial Activities to address such Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term shall be limited to a maximum amount of \$210,000 for each Demised Property.

(2) Tenant shall advise Landlord in writing as soon as Tenant knows, or reasonably should have known, such monetary cap for the applicable Demised Property is likely to be met or exceeded. Without limiting Section 36.02, time is of the essence for this covenant. The parties then shall meet and confer at the earliest practicable time (not to exceed fifteen (15) Business Days after Tenant's notice) to develop a plan to manage such costs for Remedial Activities to address Existing Environmental Conditions and/or Environmental Conditions created by an offsite third party during the Lease Term, which are projected to exceed the monetary cap. Tenant shall advise Landlord on the date that the monetary cap is reached for the Demised Property, and on that date the obligations in Section 29.02, Section 29.03, Section 29.05, Section 29.06 and Schedule 29.08 (if applicable) shall terminate as to Existing Environmental Conditions and as to Environmental Conditions created by an offsite third party during the Lease Term; provided, however, that although the contractual indemnification obligations in Section 29.05 shall have terminated, thereafter the parties shall bear the costs of their respective obligations regarding such Existing Environmental Conditions and as to Environmental Conditions created by an offsite third party during the Lease Term, if any, as determined under applicable Law. If the monetary cap is reached as to the costs of Remedial Activities to address Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term, then as between Landlord and Tenant, Tenant shall not be liable for sums exceeding the applicable cap at the applicable Demised Property for the costs of Remedial Activities to address Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term.

Section 29.08 Tenant hereby agrees to undertake and perform those obligations set forth in the Environmental Covenant at Schedule 29.08 attached hereto and the parties hereby incorporate the terms of the Environmental Covenant as though set forth in full herein. The obligations in Schedule 29.08 are subject to the terms of this Article 29.

ARTICLE 30 LANDLORD ASSIGNMENT

Section 30.01 This Lease shall be fully assignable by Landlord or its successors and assigns, in whole or in part, subject to the terms of Article 27 and this Article. In the event that from time to time Landlord desires to partially assign its interest in this Lease with respect to one or more of the Demised Properties (including to one or more Affiliates of Landlord), then (a) Landlord shall determine in its sole discretion, the Base Rent allocated to any Demised Properties covered by the partial assignment (the "Allocated Base Rent Amount") which Allocated Base Rent Amount when taken together with the Base Rent payable under this Lease and any other Allocated Base Rent Amounts shall be economically neutral to Tenant, (b) Landlord, at its cost and expense (other than incidental attorneys' fees or costs incurred by Tenant which shall be paid solely by Tenant), shall prepare a landlord assignment lease agreement (or landlord assignment lease agreements, in Landlord's discretion) in the form attached hereto as Exhibit E with respect to any such Demised Properties (each, a "Landlord Assignment Lease Agreement"); (c) upon the assignment by Landlord, this Lease shall be amended to exclude any such Demised Properties

from this Lease, the Base Rent hereunder shall be reduced by the Allocated Base Rent Amount; and (d) the Base Rent payable under the Landlord Assignment Lease Agreement (or Landlord Assignment Lease Agreements) shall equal the Allocated Base Rent Amount. In such event, Tenant shall execute any such new Landlord Assignment Lease Agreement within seven (7) Business Days after delivery to Tenant of an execution version thereof. In addition, Tenant shall execute and deliver (or cause to be executed and delivered, as applicable) to Landlord any other instruments and documents requested by Landlord and reasonably approved by Tenant in connection with the assignment and any commercially reasonable subordination, non-disturbance and attornment agreement that may be requested by Landlord's assignee's lenders and reasonably approved by Tenant. Without limiting the foregoing, Tenant agrees to cooperate reasonably with Landlord in connection with any such assignment. From and after the effective date of any such Landlord Assignment Lease Agreement, Landlord shall be automatically released (without need for any further agreement or other document) from any liability thereafter arising with respect to the Demised Properties covered thereby. In no event shall Landlord have any liability under any Landlord Assignment Lease Agreement. Without limiting the foregoing, (x) Tenant agrees that Landlord may agree in its sole discretion with any purchaser or assignee of any Demised Property covered by a Landlord Assignment Lease Agreement to provide (or have a Landlord's Affiliate provide) asset management and/or act as servicer regarding such Demised Property; (y) Tenant acknowledges that any Landlord Assignment Lease Agreement may be, in Landlord's sole discretion, a "master lease" agreement covering multiple Demised Properties (which Landlord Assignment Lease Agreement may include, in Landlord's sole discretion, (i) language materially identical to that contained in Recital C and Section 30.03 of this Lease, even if such language does not appear in the form of Landlord Assignment Lease Agreement attached hereto as Exhibit E, and (ii) a provision regarding applicable law and waiver of jury trial materially identical to Article 26 of this Lease in lieu of the language in Article 26 of the form of Landlord Lease Assignment Agreement attached hereto as Exhibit E); and (z) any Landlord assignee that is a Landlord's Affiliate may, in its sole discretion, elect to conform the terms of such Landlord Assignment Lease Agreement (other than Base Rent) to this Lease rather than to the form of Landlord Assignment Lease Agreement attached hereto as Exhibit E.

Section 30.02 Landlord and Tenant agree that this Lease constitutes a true lease and not a financing or other form of transaction (including for federal income tax purposes). In furtherance of the foregoing, Landlord and Tenant each irrevocably waives any claim or defense based upon the characterization of this Lease as anything other than a true lease and irrevocably waives any claim or defense that asserts that this Lease is anything other than a true lease. Landlord and Tenant covenant and agree that they will not assert that this Lease is anything but a true lease. Landlord and Tenant each stipulate and agree not to challenge the validity, enforceability or characterization of this Lease of the Demised Properties as a true lease and further stipulate and agree that nothing contained in this Lease creates or is intended to create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like. Landlord and Tenant each shall support the intent of the parties that the lease of the Demised Properties pursuant to this Lease is a true lease and does not create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like, if, and to the extent that, any challenge occurs. Landlord and Tenant agree to treat this Lease as an operating lease (rather than a capital lease) for federal, state and local income tax purposes, unless required to do otherwise pursuant to a final resolution as determined by an applicable taxing authority that this Lease is not properly classified as an operating lease. Landlord shall claim all depreciation for United States federal, state and local income tax purposes with respect to the Demised Properties, other than the costs for Alterations, replacements, Remedial Activities and other capital expenditures in connection with the Demised Properties as permitted or required under this Lease that are incurred by the Tenant after the Commencement Date but during the term of this Lease, which costs may be deducted, amortized, or depreciated by Tenant for United States

federal, state and local income tax purposes to the extent permitted under the Code and the Treasury Regulations promulgated thereunder (and corresponding provisions of state and local tax law), and which costs of Alterations, replacements, Remedial Activities and other capital expenditures (or the value thereof) are not intended to be in substitution for additional rent payable to Landlord; provided, however, that notwithstanding the foregoing, any such Alterations, replacements, benefits of Remedial Activities and other capital expenditures shall immediately become the property of the Landlord for all purposes other than to the extent set forth herein for United States federal, state, and local income tax purposes. Upon any Lease assignment pursuant to Section 30.01, Landlord shall endeavor to reasonably cooperate with Tenant in any attempt by Tenant to obtain from Tenant's auditors a written acknowledgment that, after giving effect to such assignment, the Lease as so modified together with any Landlord Assignment Lease Agreement qualifies for operating lease treatment for accounting and tax purposes. In no event shall failure of Tenant to obtain any such written acknowledgment affect Landlord's right to assign pursuant to Section 30.01 or constitute a breach of this Lease by Landlord.

Section 30.03 Landlord and Tenant agree that this Lease constitutes a single and indivisible lease as to all of the Demised Properties collectively, and shall not be subject to severance or division unless and to the extent, pursuant to Section 30.01, Landlord elects to effect a partial assignment of this Lease. In furtherance of the foregoing, and except as may result from the amendment of this Lease to eliminate certain properties and reduce Base Rent in conjunction with the execution of Landlord Assignment Lease Agreements pursuant to the terms of Section 30.01, Landlord and Tenant each (a) waives any claim or defense based upon the characterization of this Lease as anything other than a master lease of all the Demised Properties and irrevocably waives any claim or defense that asserts that this Lease is anything other than a master lease, (b) covenants and agrees that it will not assert that this Lease is anything but a unitary, unseverable instrument pertaining to the lease of all, but not less than all, of the Demised Properties, (c) stipulates and agrees not to challenge the validity, enforceability or characterization of this Lease of the Demised Properties as a unitary, unseverable instrument pertaining to the lease of all, but not less than all, of the Demised Properties, and (d) shall support the intent of the parties that this Lease is a unitary, unseverable instrument pertaining to the lease of all, but not less than all, of the Demised Properties, if, and to the extent that, any challenge occurs. To the extent that legal, tax or title insurance requirements in consummating the purchase of the Demised Properties by Landlord or leasing the Demised Properties to Tenant, may require, or may have required, individual purchase price allocations (including allocations of values for individual state transfer tax purposes and title insurance coverage amounts) or individual rent allocations (including allocations of rents in certain states for tax purposes), Landlord and Tenant agree that such individual allocations are solely to comply with legal, tax or title insurance requirements, and shall not be used or construed, directly or indirectly, to vary the intent of Landlord and Tenant that this Lease constitutes a single and indivisible lease of all the Demised Properties collectively, and is not an aggregation of separate leases. This Section 30.03 does not limit in any way Tenant's express rights under this Lease, including, without limitation, Tenant's rights pursuant to Article 31.

ARTICLE 31 REPLACEMENTS

Section 31.01 Property Replacements. Tenant, at its election, may substitute up to an aggregate of three (3) of the Portfolio Properties (each a "**Replaced Property**") with tracts of similar real property on which Tenant operates another grocery store or other Permitted Use (each a "**Replacement Property**"), provided, however, that in no event shall Tenant have the right to substitute more than three (3) Portfolio Properties in the aggregate. Tenant shall submit for Landlord's review at least thirty (30) days prior to any substitution (such period, the "**Consideration Period**"), evidence of the fair market value of the proposed Replacement Property reasonably satisfactory to Landlord and any Landlord's

Lender and compliant with Landlord's Lender's regulatory requirements, as well as current survey, current environmental report, records of any administrative proceedings or environmental claims involving the proposed Replacement Property, current title report and profit/loss statements for the previous two years of the Replacement Property and similar data with respect thereto, as well as evidence of the fair market value of the proposed Replaced Property reasonably satisfactory to Landlord and any Landlord's Lender and compliant with Landlord's Lender's regulatory requirements, and other information with respect to the Replaced Property as Landlord and Landlord's Lender may reasonably request. Provided that (a) Landlord, in its reasonable discretion, and Landlord's Lenders and Landlord's Mortgagees, in their reasonable discretion acting in accordance with prudent institutional lender standards relating to transactions similar to the transactions contemplated by this Lease, approve the substitution (such approval rights encompassing, without limitation, Landlord's reasonable determination as to whether the substitution will qualify as a like-kind exchange in which no gain is recognized pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended), and (b) if any Landlord's Lender has transferred all or any portion of its loan to a "real estate mortgage investment conduit" ("**REMIC**") such substitution is in compliance with all the provisions of the federal income tax law relating to REMICs, which appear in Sections 860A through 860G of the Internal Revenue Code of 1986, as amended from time to time ("**Code**"), then such substitution of the Replacement Property for the Replaced Property shall be permitted hereunder. Without limiting the foregoing, upon the written request of Landlord or Landlord's Lenders or Landlord's Mortgagees, as the case may be, Tenant shall deliver to Landlord as a condition precedent to any approval of the substitution of a Replacement Property for a Replaced Property, a legal opinion, in form and substance acceptable to Landlord or Landlord's Lenders or Landlord's Mortgagees, as the case may be, in its reasonable discretion, to the effect that, with respect to any REMIC trust that holds any loan secured by a mortgage on the Demised Properties, the release of the Replaced Property and the substitution of the Replacement Property will not cause (x) such loan to fail to be a "qualified mortgage" within the meaning of Section 860G(a)(3) of the Code, (y) any failure of such REMIC trust to qualify as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code for federal income tax purposes, or (z) the imposition of any tax upon the REMIC trust or any of such REMIC trust's assets, including, without limitation, any tax on "prohibited transactions" imposed under Section 860F(a)(2) of the Code. Subject to the foregoing, in the event that there is a failure to approve the proposed substitution, Landlord shall deliver to Tenant a written notice within ten (10) days following the expiration of the Consideration Period, disapproving the proposed substitution and describing which of Landlord's and/or Landlord's Lenders' or Landlord's Mortgagees' conditions have not been satisfied. In the event of any such disapproval, Tenant shall have an additional fifteen (15) day period from and after the date Landlord's disapproval notice is delivered to Tenant to submit any additional information or documentation to Landlord regarding satisfaction of the foregoing conditions. In the event all the foregoing conditions are still not satisfied, then Landlord shall deliver to Tenant a second written notice within ten (10) days following the expiration of such fifteen (15) day period disapproving the proposed substitution and describing which of said conditions have not been satisfied. If all other reasonable conditions of Landlord, Landlord's Lenders and Landlord's Mortgagees regarding the proposed substitution have been satisfied except that Landlord believes that the Replacement Property does not have equivalent or greater fair market value to the Replaced Property, then Tenant may, by written notice delivered to Landlord within twenty (20) days after Landlord delivers to Tenant Landlord's second written notice of Landlord's disapproval of the proposed substitution, invoke the following arbitration procedure to determine whether the Replacement Property has an equivalent or greater fair market value to the Replaced Property (in which event the proposed substitution shall be deemed approved), or a fair market value less than the Replaced Property (in which event the proposed substitution shall remain disapproved). The date when such Tenant's notice invoking the arbitration is delivered to Landlord is referred to in this Section as the "**Notice Date**"). For the avoidance of doubt

Landlord will reasonably cooperate with Tenant in the event a substitution is required by judicial or other governmental requirement applicable to Tenant.

(1) Submission of Proposed Value. Within five (5) days after the Notice Date, (a) Landlord shall deliver to Tenant an MAI fair market value appraisal for each of the Replacement Property and the Replaced Property supporting its assertion that the fair market value of the Replacement Property is less than the fair market value of the Replaced Property, and (b) Tenant shall deliver to Landlord an MAI fair market value appraisal for each of the Replacement Property and the Replaced Property supporting its assertion that the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property. If either party (as referred to this Section, a “**Failing Party**”) fails to deliver its appraisals to the other party on or before the last day of such five (5)-day period, but the other party delivers its appraisals to the Failing Party on or before the last day of such five (5)-day period, the assertion supported by such other party’s appraisals delivered pursuant to subsection (1), above (i.e. that the fair market value of the Replacement Property is less than, or equal to or greater than (as the case may be), the fair market value of the Replaced Property) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such five (5)-day period.

(2) Appointment and Qualifications of Arbitrator. If the arbitration is not deemed concluded pursuant to subsection (1), above, then within fifteen (15) days after the Notice Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous ten-year (10-year) period in the appraisal of grocery stores or other applicable Permitted Uses within the county in which the applicable Replacement Property is located (each such appraiser chosen pursuant to this subsection (2), an “**Arbitrator**”). Each of Landlord and Tenant shall notify the other party, in writing, of its Arbitrator (and the business address thereof) within two Business Days after the appointment thereof (collectively, the “**Arbitrator Appointment Notices**”). Each of Landlord and Tenant agrees that any Arbitrator may be (but is not required to be) an appraiser who prepared one or both of the fair market value appraisals delivered by Landlord and Tenant pursuant to subsection (1), above.

(3) Appointment of Third Arbitrator. If each party appoints an Arbitrator and notifies the other party in accordance with subsection (2), above, then the two Arbitrators shall, within ten (10) days after delivery of the later of the two Arbitrator Appointment Notices, agree on and appoint a third Arbitrator (whom shall be a licensed real estate appraiser with all other qualifications for the initial two Arbitrators chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Arbitrator and the business address thereof. If the two Arbitrators fail to agree on and appoint a third Arbitrator within such ten (10) day period, then either Landlord or Tenant may elect to have the third Arbitrator selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Arbitrator and the parties shall cooperate reasonably with each other and the AAA (including by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Arbitrator. If any fees of the third Arbitrator or the AAA are required to be paid in advance (prior to the completion of the arbitration procedure described in this Section) in order for such Arbitrator, or the AAA, as the case may be, to commence or continue its work in connection with the arbitration described in this Section, each party shall promptly pay one-half of such fees as and when due, and if either Landlord or Tenant fails to pay its one-half share of

any such fees as and when due (such party is referred to in this Section as the “**Delinquent Party**”), and the other party does pay its one-half share of any such fees as and when due, then if the Delinquent Party fails to pay its one-half share of all such fees within ten (10) days after written notice from the other party, the assertion supported by such other party’s appraisals delivered pursuant to subsection (1) (i.e. that the fair market value of the Replacement Property is less than, or equal to or greater than (as the case may be), the fair market value of the Replaced Property) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such ten (10)-day period.

(4) **Arbitrators’ Decision.** If the arbitration is not previously deemed concluded pursuant to subsection (3), above, then within thirty (30) days after the appointment of the third Arbitrator, the three Arbitrators shall decide whether the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property and shall notify Landlord and Tenant in writing of each Arbitrator’s decision. The determination of each Arbitrator shall be limited to the sole issue of, and each Arbitrator shall have neither the right nor the power to determine any issue other than, whether the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property, as determined by such Arbitrator. The decision of the majority of the three Arbitrators shall be binding on Landlord and Tenant (subject to subsection (5), below), and the arbitration shall be deemed concluded upon delivery to Landlord and Tenant of such notifications of the Arbitrators’ decisions.

(5) **If Only One Arbitrator Is Appointed.** If the arbitration is not previously deemed concluded pursuant to subsection (1), and if either Landlord or Tenant fails to appoint an Arbitrator within fifteen (15) days after the Notice Date or fails to deliver an Arbitrator Appointment Notice in accordance with subsection (2), above, and the other party does appoint an Arbitrator within such fifteen (15) day period and delivers an Arbitrator Appointment Notice in accordance with subsection (2), above, then the Arbitrator timely appointed by such other party shall reach a decision regarding whether the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property, as determined by such Arbitrator, and notify Landlord and Tenant of that decision within thirty (30) days after such Arbitrator’s appointment. Such decision of the Arbitrator shall be binding on Landlord and Tenant, and the arbitration shall be deemed concluded upon delivery of such notification of the Arbitrator’s decision.

(6) **Cost of Arbitration.** If the Arbitrators (or Arbitrator, pursuant to subsection (5), above) determine that the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property, then Tenant shall be deemed the “**Winning Party**” under this subsection (6) and Landlord shall be deemed the “**Losing Party**” under this subsection (6). If the Arbitrators (or Arbitrator, pursuant to subsection (5), above) determine that the fair market value of the Replacement Property is less than the fair market value of the Replaced Property, then Landlord shall be deemed the “**Winning Party**” under this subsection (6) and Tenant shall be deemed the “**Losing Party**” under this subsection (6). In addition, in the event the arbitration is deemed concluded due to a Failing Party not timely delivering its appraisals as described in subsection (1), or a Delinquent Party failing to pay its share of fees after written notice as described in subsection (3), such Failing Party or Delinquent Party (as the case may be) shall be deemed the “**Losing Party**” under this subsection (6), and the party that is not the Failing Party or Delinquent Party (as the case may be) shall be deemed the “**Winning Party**” under this subsection (6). Each party shall initially pay the fees and expenses

of its legal counsel, appointed arbitrator, any written reports prepared by any appraiser in connection with its duties under this Section, one-half of the fees of the third arbitrator, and one-half the fees of the AAA (if applicable), provided, however, that the Losing Party shall be obligated to reimburse the Winning Party for all such fees and expenses of the arbitration paid by the Winning Party promptly upon the completion of the arbitration procedure described in this Section.

In the event Landlord approves the substitution of the Replacement Property for the Replaced Property, Tenant shall execute and deliver to Landlord such instruments and documents as Landlord shall reasonably require in connection therewith, including a special warranty or similar deed, an amendment to this Lease, and an amended or new memorandum of lease (or similar instrument) covering the Replacement Property, and Landlord shall convey the Replaced Property to Tenant (or Tenant's designee) as is, with all faults, without any express or implied warranties. Any substitution of a Replacement Property for a Replaced Property shall not alter any of the other obligations of Landlord or Tenant under this Lease, including the Base Rent due from Tenant hereunder. Without limitation, Tenant shall be responsible for all Additional Rent (including real property taxes) regarding the Replaced Property up to the date of transfer. Tenant shall pay all reasonable out-of-pocket expenses paid or incurred by Landlord pursuant to this Section, including, (i) Landlord's, Affiliates of Landlord's and Landlord's Lenders' legal fees and expenses, the costs of any title policies (owner's and/or lender's) on the Replacement Property, recording costs, and, without limiting any of Tenant's obligations set forth in Article 3 of this Lease, any sales, transfer, and other taxes and recording fees, and any taxes required to be withheld, which may be payable in connection with the conveyance of Replacement Property by Tenant or Replaced Property to Tenant (including any interest or penalties imposed with respect to the late payment of any such taxes), and (ii) such amount, which, when added to such payment, shall yield to Landlord (after deduction of all expenses payable by Landlord with respect to all such payments) a net amount which Landlord would have realized from such payment had no such expenses been incurred; provided, however, that so long as no Event of Default has occurred and is continuing, if an arbitration has been completed under subsections (1) through (6) of this Section, and if Tenant was the Winning Party (as defined above in subsection (6)), then Tenant shall not be obligated to reimburse Landlord for fees and expenses incurred by Landlord in connection with such arbitration, and Landlord shall be obligated to reimburse Tenant for fees and expenses incurred by Tenant in connection with such arbitration.

ARTICLE 32 INTENTIONALLY OMITTED

ARTICLE 33 LANDLORD'S RIGHTS UNDER LEASE

Any and all rights of Landlord under this Lease shall inure to the benefit of Landlord's successors and assigns, as well as Landlord's Lenders and/or any Landlord's Mortgagees and their respective successors and assigns as third party beneficiaries.

ARTICLE 34 RIGHT OF FIRST OFFER

Section 34.01 Tenant's Right of First Offer. Landlord hereby grants Tenant a right of first offer to purchase one or more Demised Properties, subject to the terms and conditions set forth in this Section 34.01. Provided that no Default or Event of Default has occurred and is continuing under this Lease, Landlord shall not sell a Demised Property to any third party without first providing written notice to Tenant describing the material terms that Landlord intends to offer to a prospective buyer along with a written offer to sell the applicable Demised Property to Tenant upon the same terms and conditions, including, the purchase price and any other economic terms (except that such offer from Landlord to

Tenant shall be deemed not to include any obligation by Tenant, as buyer, to enter into any leases regarding the applicable Demised Property, even if such offer references a lease between a prospective buyer, as landlord, and Tenant, as tenant, regarding the applicable Demised Property). Tenant shall have ten (10) Business Days after receipt of Landlord's written offer (such period, the "**Tenant Review Period**") in which to exercise its right of first offer with respect to the applicable Demised Property being offered to such third party by delivering written notice thereof to Landlord. During the Tenant Review Period, Landlord shall provide Tenant all property related due diligence reasonably requested by Tenant and any other commercially reasonable diligence items or rights requested by Tenant. After exercise of the right of first offer, the Demised Property shall be sold to Tenant on the terms described in the written offer to Tenant (and excluding any lease regarding the Demised Property, as described above), or on such other terms as Tenant and Landlord may mutually agree, and the closing of such sale shall occur no later than the forty-fifth (45th) day after Tenant exercises its right of first offer pursuant to a purchase and sale agreement reasonably acceptable to Landlord and Tenant. If Tenant does not exercise in a timely manner its right of first offer as provided herein, then (a) Tenant's right of first offer with respect to Landlord's written offer of the applicable Demised Property shall be deemed waived, (b) Tenant shall have no further right to purchase the applicable Demised Property pursuant to such written offer (but shall have the right provided under this Section 34.01 as to any subsequent written offers from Landlord involving such Demised Property not sold by Landlord pursuant to clause (c) until Tenant exercises or waives such right as to such written offer), and (c) Landlord may offer to sell the Demised Property pursuant to its intended offer to any third party, provided that such sale is on the same material terms contained in Landlord's written offer to Tenant (except that the purchase price need only be ninety-five percent (95%) or greater than the purchase price set forth in Landlord's offer to Tenant pursuant to such written offer and this Section 34.01) and is documented pursuant to a binding purchase and sale agreement entered into within one hundred eighty (180) days after the expiration of the Landlord Review Period. Without limiting the foregoing, if Tenant does not exercise in a timely manner its right of first offer as provided herein, then Tenant shall deliver a written notice to Landlord expressly acknowledging Tenant's waiver of its right of first offer, within five (5) Business Days after Landlord's request for such notice. Notwithstanding the foregoing, Tenant's right of first offer shall not apply to any of the following: (1) the contribution of any Demised Property to a trust, partnership, limited liability company, corporation or other entity in which Landlord, its trustees, successor trustees or one or more of its beneficiaries or in the case of individuals or individual beneficiaries, their heirs hold a controlling material interest; (2) a foreclosure sale, trustee sale, deed in lieu of foreclosure or similar process with respect to any mortgage or deed of trust encumbering any Demised Property (provided, however, that Tenant's right of first offer shall apply to a transfer of a Demised Property from a Landlord's Mortgagee to a third party transferee or other purchaser at a foreclosure sale to a third party transferee (and subsequent transfers, as applicable) following a foreclosure sale, trustee sale, deed in lieu of foreclosure or similar process with respect to any mortgage or deed of trust encumbering any Demised Property); (3) any sale of any Demised Property (A) by Landlord to any affiliated company in Landlord's own consolidated tax group, (B) in connection with a merger, consolidation, or acquisition involving the entirety of Landlord, or (C) to any entity acquiring all or a majority of the value of all of Landlord's assets (including Landlord's non-real property assets as well as Landlord's interest in all Demised Properties); or (4) any transfer of a Demised Property to a Governmental Authority in connection with (or under threat of) an eminent domain proceeding regarding such Demised Property. Notwithstanding the foregoing, in the event of a contribution or transfer described in clause (1) above, or any of the events described in clause (3) above, Tenant's right of first offer shall continue to apply to the applicable Demised Property and Landlord's interest in this Lease following any such contribution or event. Notwithstanding any other provision in this Article 34, if Landlord proposes to sell more than one Portfolio Property in a single transaction, Tenant's right of first offer hereunder shall be subject to Tenant exercising its right of first offer with respect to all of the Portfolio Properties being sold in such single transaction. For the avoidance of doubt, if any such

Portfolio Property is part of another proposed sale by Landlord, then Tenant shall have a right of first offer as to all such Portfolio Properties being sold in such single transaction (for example, if a Portfolio Property is offered in a proposed sale of more than one of the Portfolio Properties, Tenant waives or is deemed to have waived its right of first offer in connection with such sale, such sale is not consummated and such Portfolio Property is again offered in a proposed sale on its own or together with other Portfolio Properties (i.e., not the same package of Portfolio Properties), then Tenant shall maintain its right of first offer as to that subsequent offer involving such Portfolio Property or Portfolio Properties).

Section 34.02 Landlord's Right of First Offer. Tenant hereby grants Landlord a right of first offer to purchase any of the properties listed on Schedule 34.02 (the "**Additional Tenant Properties**") subject to the terms and conditions set forth in this Section 34.02 and Tenant shall execute and cause to be recorded a memorandum of such right of first offer regarding each Additional Tenant Property in the form of the memorandum attached hereto as Exhibit H in each county where an Additional Tenant Property is located prior to the recordation of any mortgage or deed of trust encumbering such Additional Tenant Property. Tenant shall not sell an Additional Tenant Property to any party without first providing written notice to Landlord describing the material terms that Tenant intends to offer to a prospective buyer along with a written offer to sell the applicable Additional Tenant Property to Landlord upon the same terms and conditions, including, the purchase price and any other economic terms (except that such offer from Tenant to Landlord shall be deemed not to include any obligation by Landlord, as buyer, to enter into any leases regarding the applicable Additional Tenant Properties, even if such offer references a lease between a prospective buyer, as landlord, and Tenant, as tenant, regarding the applicable Additional Tenant Property). Landlord shall have ten (10) Business Days after receipt of Tenant's written offer (such period, the "**Landlord Review Period**"), in which to exercise its right of first offer with respect to the applicable Additional Tenant Property being offered to such party by delivering written notice thereof to Tenant. During the Landlord Review Period, Tenant shall provide Landlord all Due Diligence Items reasonably requested by Landlord, commercially reasonable access to the applicable Additional Tenant Property to conduct its due diligence and any other commercially reasonable diligence items or rights requested by Landlord. After exercise of the right of first offer, the applicable Additional Tenant Property shall be sold to Landlord on the terms described in the written offer to Landlord (and excluding any lease regarding the applicable Additional Tenant Property, as described above), or on such other terms as Tenant and Landlord may mutually agree, and the closing of such sale shall occur no later than the forty-fifth (45th) day after Landlord exercises its right of first offer pursuant to a purchase and sale agreement reasonably acceptable to Landlord and Tenant. If Landlord does not exercise in a timely manner its right of first offer as provided herein, then (a) Landlord's right of first offer with respect to Tenant's written offer with respect to the applicable Additional Tenant Property shall be deemed waived, (b) Landlord shall have no further right to purchase the applicable Additional Tenant Property pursuant to such written offer (but shall have the right provided under this Section 34.02 as to any subsequent written offer from Tenant involving such Additional Tenant Property not sold by Tenant pursuant to clause (c) until Landlord exercises or waives such right as to such written offer), and (c) Tenant may offer to sell the applicable Additional Tenant Property to any party, provided that such sale is on the same material terms contained in Tenant's written offer to Landlord (except that the purchase price need only be ninety-five percent (95%) or greater than the purchase price set forth in Tenant's offer to Landlord pursuant to such written offer and this Section 34.02) and is documented pursuant to a binding purchase and sale agreement entered into within one hundred eighty (180) days after the expiration of the Tenant Review Period. Without limiting the foregoing, if Landlord does not exercise in a timely manner its right of first offer as provided herein, then Landlord shall deliver a written notice to Tenant expressly acknowledging Landlord's waiver of its right of first offer, within five (5) Business Days after Tenant's request for such notice. Notwithstanding the foregoing, Landlord's right of first offer shall not apply to any of the following: (1) the contribution of any Additional Tenant Property to a trust, partnership, limited liability

company, corporation or other entity in which Tenant, its trustees, successor trustees or one or more of its beneficiaries or in the case of individuals or individual beneficiaries, their heirs hold a controlling material interest; (2) a foreclosure sale, trustee sale or deed in lieu of foreclosure with respect to any mortgage or deed of trust encumbering any Additional Tenant Property (provided, however, that Landlord's right of first offer shall apply to a transfer of an Additional Tenant Property from a Tenant's Lender or other purchaser at a foreclosure sale to a third party transferee (and subsequent transfers, as applicable) following a foreclosure sale, trustee sale, deed in lieu of foreclosure or similar process with respect to any mortgage or deed of trust encumbering any Additional Tenant Property); (3) any sale of any Additional Tenant Property (A) by Tenant to a Person directly or indirectly controlling, controlled by, or under common control with Tenant (for purposes of this clause (A), "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with") means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise), (B) in connection with a merger, consolidation, or acquisition involving the entirety of Tenant, or (C) to any entity acquiring all of Tenant's assets or a majority of the value of all of Tenant's assets (including Tenant's non-real property assets as well as Tenant's leasehold interest in all Portfolio Properties then owned by Tenant), or (4) any transfer of an Additional Tenant Property to a Governmental Authority in connection with (or under threat of) an eminent domain proceeding regarding such Additional Tenant Property. Notwithstanding the foregoing, in the event of a contribution or transfer described in clause (1) above, or any of the events described in clause (3) above, Landlord's right of first offer shall continue to apply to the applicable Additional Tenant Property following any such contribution or event. Notwithstanding any other provision in this Article 34, if Tenant proposes to sell more than one of the Additional Tenant Properties in a single transaction, Landlord's right of first offer hereunder shall be subject to Landlord exercising its right of first offer with respect to all of the Additional Tenant Properties being sold in such single transaction. Without limiting Tenant's continuing obligation under this Section 34.02, no Permitted Assignee or other Tenant assignee consented to by Landlord shall be obligated under this Section 34.02 except to the extent such Permitted Assignee or other assignee owns any Additional Tenant Properties. This Section 34.02 shall survive any expiration or termination of this Lease. For the avoidance of doubt, (i) if any Additional Tenant Properties are part of another proposed sale by Tenant, then Landlord shall have a right of first offer as to all such Additional Tenant Properties being sold in such single transaction (for example, if an Additional Tenant Property is offered in a proposed sale of more than one Additional Tenant Property, Landlord waives or is deemed to have waived its right of first offer in connection with such sale, such sale is not consummated and such Additional Tenant Property is again offered in a proposed sale on its own or together with other Additional Tenant Properties (i.e., not the same package of Additional Tenant Properties), then Landlord shall maintain its right of first offer as to that subsequent offer involving such Additional Tenant Property or Additional Tenant Properties) and (ii) after a Tenant assignment pursuant to Article 22 of this Lease, the rights of Landlord under this Section 34.02 shall not apply to such assignee so long as such assignee is not an owner of any Additional Tenant Property but shall continue as to the owner or owners of the Additional Tenant Properties and survive any such assignment with respect to such Additional Tenant Properties.

ARTICLE 35 LIQUOR

Landlord may require Tenant to obtain Commercial General Liability insurance regarding liquor liability (in amounts and otherwise consistent with the requirements set forth in Article 10) for any sites that serve liquor or other alcoholic beverages, and in connection with any repossession of the Demised Properties pursuant to Article 15, Tenant (on behalf of itself and any Tenant's Affiliate holding liquor licenses with respect to the Demised Properties) shall provide reasonable cooperation to Landlord in transferring any liquor licenses to Landlord, or in assisting Landlord in obtaining a liquor license, where necessary or

advisable in Landlord's reasonable discretion. This Article shall survive any termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 36 INTERPRETATION; MISCELLANEOUS

Section 36.01 For purposes of this Lease, (a) the words "include", "includes" and "including" shall be deemed to be followed by the words "without limitation" (unless already expressly followed by such phrase), and (b) the words "herein", "hereof", "hereby", "hereto" and "hereunder" refer to this Lease as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Exhibits, and Schedules mean the Articles and Sections of, and the Exhibits and Schedules attached to, this Lease; (y) to a lease, instrument or other document means such lease, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Lease; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Lease to the same extent as if they were set forth verbatim herein. Titles to Articles and headings of Sections are inserted for convenience of reference only and shall not be deemed a part of or to affect the meaning or interpretation of this Lease. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any one or more of the members of the relevant class. All references in this Lease to sums denominated in dollars or with the symbol "\$" refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. Where a provision of this Lease requires that that consent of a party shall not be unreasonably withheld, or that such consent is in such party's reasonable discretion, such provision shall be deemed to require that such consent not be unreasonably withheld, conditioned, or delayed, and unless a party is expressly given hereunder the right to consent in its sole discretion, any consent required hereunder shall not be unreasonably withheld, conditioned or delayed.

Section 36.02 This Lease may be executed in counterparts and shall be binding on all the parties hereto as if one document had been signed. The delivery of an executed copy of this Lease by facsimile transmission shall have the same force and effect as the delivery of the original, signed copy of this Lease. Time is of the essence of every provision of this Lease. Any provision of this Lease explicitly providing for the performance by Tenant of obligations upon or after the expiration or termination of this Lease shall survive any such expiration or termination as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, such obligations shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant), unless otherwise provided. This Lease and the Exhibits attached hereto, all of which form a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Demised Properties, and there are no covenants, promises, agreements, conditions or understandings heretofore made, either oral or written, between them other than as herein set forth. No modification, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party. The captions, section numbers, and index 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 nor in any way affect this Lease. Nothing contained in this Lease shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of landlord and tenant. Except as

explicitly set forth in this Lease, there shall be no third party beneficiaries of this Lease or any of the agreements contained herein. The failure of Landlord or Tenant to insist upon strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any rights or remedies that party or any other such party may have, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

ARTICLE 37 QUIET ENJOYMENT SUBJECT TO DILIGENCE MATTERS

From and after the Commencement Date until the expiration or termination of the Lease Term, and provided no Event of Default has occurred, Landlord covenants that Tenant shall have quiet enjoyment of the Demised Properties, subject however, to all Diligence Matters.

ARTICLE 38 NO MERGER OF TITLE

There shall be no merger of this Lease with any of the leasehold estates created hereunder with any fee estate or other leasehold interest in any of the Demised Properties, whether by reason of the fact that the same Person may acquire, hold or own, directly or indirectly more than one or all of such legal interests in any Demised Property unless and until (a) under applicable Law such estates may be merged, and (b) all Persons having any leasehold interest or fee estate in any of the Demised Properties, or any part thereof sought to be merged, shall enter into a written agreement effecting such a merger under applicable Law and shall duly record same; provided, however, no such merger shall occur unless in each instance Landlord (if Landlord is a party to such estates) and any Landlord's Lender (if Landlord is a party to such estates) shall be a party to such agreement.

ARTICLE 39 ADDITIONAL CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES

(a) Tenant hereby represents, warrants and certifies to Landlord as follows: Tenant is not a "foreign person" within the meaning of Section 1445(f) of the Internal Revenue Code and, after making due inquiry, no person who owns a controlling interest in or otherwise controls Tenant is, (a) listed on the Specially Designated Nationals and Blocked Persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists") and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (b) a person (a "Designated Person") either (i) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (ii) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "Executive Orders"). Neither Tenant nor any person or entity who owns a controlling interest in or otherwise controls Tenant (x) is a person or entity with which Landlord is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law or (y) is a person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Orders or (z) is affiliated or associated with a person or entity listed in the preceding clause (x) or clause (y). To Tenant's knowledge, Tenant does not (I) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders or (II) engage in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. As used herein, "Anti-Terrorism Law" means the OFAC Laws and Regulations, the Executive Orders and the Uniting and Strengthening

America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as amended.

(b) Landlord hereby represents, warrants and certifies to Tenant as follows: Landlord is not a “foreign person” within the meaning of Section 1445(f) of the Internal Revenue Code and, after making due inquiry, no person who owns a controlling interest in or otherwise controls Landlord is (a) listed on any of the Lists; or (b) a Designated Person. Neither Landlord nor any person who owns a controlling interest in or otherwise controls Landlord is (x) a person or entity with which Tenant is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law or (y) a person or entity that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Orders or (z) is affiliated or associated with a person or entity listed in the preceding clause (x) or clause (y). To Landlord’s knowledge, Landlord does not (I) deal in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders or (II) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(c) Tenant hereby represents that, as of the Commencement Date, the organizational chart of Tenant attached hereto as Exhibit G is a true, correct and complete depiction of all direct and indirect equity interests in Tenant and its subsidiaries.

(d) Each of Tenant and Landlord hereby represents that it does not intend to apply the constant rental accrual method (within the meaning of section 1.467-3(d) of the Treasury Regulations promulgated under the Internal Revenue Code of 1986) to any Rent paid by Tenant under this Lease, unless required to do so pursuant to a final resolution of liability for any tax as determined by an applicable taxing authority.

ARTICLE 40 NO PLAN ASSETS; NO GOVERNMENT PLAN

Tenant represents that it is not and shall not at any time during the Lease Term become (1) an employee benefit plan defined in Section 3(3) of ERISA which is subject to ERISA, (2) a plan as defined in Section 4975(e)(1) of the Code which is subject to Section 4975 of the Code, (3) a “governmental plan” within the meaning of Section 3(32) of ERISA or (4) an entity any of whose underlying assets constitute “plan assets” of any such employee benefit plan, plan or governmental plan for purposes of Title I or ERISA, Section 4975 of the Code or any state statutes applicable to Persons regulating investments of governmental plans.

ARTICLE 41 BROKERS

Landlord and Tenant each (a) represents to the other party that such representing party has dealt with no broker or brokers in connection with the negotiation, execution and delivery of this Lease and (b) agrees to indemnify, defend, protect (with counsel selected by the indemnified party, subject to the approval of the indemnifying party (unless the indemnifying party is the Tenant and an Event of Default has occurred)) and hold such other party free and harmless of, from and against any and all Losses arising from (including all brokerage commissions and/or finder’s fees due or alleged to be due as a result of) any agreement or purported agreement made by such indemnifying party.

ARTICLE 42 INDEMNITIES NOT LIMITED

In no event shall any indemnification by Tenant of Landlord or any Landlord Party under this Lease or any other Transaction Document be limited by the existence or policy limits of any insurance carried by Tenant. In no event shall any indemnification by Landlord of Tenant under this Lease or any other Transaction Document be limited by the existence or policy limits of any insurance carried by Landlord (for the avoidance of doubt, Landlord is not required to carry any insurance pursuant to this Lease).

ARTICLE 43 STATE SPECIFIC PROVISIONS

Section 43.01 California. Without limiting the choice of law provision set forth in Article 26, the following provisions shall apply to the extent that the laws of the State of California govern the interpretation or enforcement of this Lease with respect to any Demised Properties located in the State of California:

(a) **Effect of Waivers.** Each of Landlord and Tenant hereby waives the benefits of California Civil Code Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

(b) **Eminent Domain.** The provisions of this Lease, including those in Article 12, constitute an express agreement between Landlord and Tenant that applies in the event there is any taking of any part of the Demised Property for any public or quasi-public use under any statute or by right of eminent domain or by purchase in lieu thereof (collectively, "Condemnation"). Tenant and Landlord each hereby waives all rights it may have under California Code of Civil Procedure Section 1265.130, or otherwise, to terminate this Lease based on a total or partial Condemnation.

(c) **Damage and Destruction.** The provisions of this Lease, including those in Article 11, constitute an express agreement between Landlord and Tenant that applies in the event that any Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature. Landlord and Tenant, each therefore, fully waives the provisions of any statute or regulation, including California Civil Code Sections 1932(2) and 1933(4), relating to any rights or obligations concerning any such fire or other casualty.

(d) **Notices.** When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by California Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Article 17 shall replace and satisfy the statutory service-of-notice procedures, including those required by California Code of Civil Procedure Section 1162 or any similar or successor statute.

(e) **Remedies.** It is intended that Landlord shall have the remedy described in California Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign, the landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any

default by Tenant, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all rent as it becomes due.

Section 43.02 Nevada. With respect to any Demised Properties located in the State of Nevada:

(a) Prior to commencing any Alterations, Tenant shall (a) provide five Business Days prior written notice to Landlord, so that Landlord may post notices on and about the Demised Properties with respect to Landlord's non-responsibility for mechanics' liens (which Tenant shall not permit to be defaced or removed) and (b) at its expense either: (1) obtain and record with the Office of the County Recorder of the county in which the affected Demised Properties are located a surety bond that satisfies the requirements Nevada Revised Statutes ("NRS") §108.2403(2) or (2) establish a construction disbursement account as required by NRS §108.2403(1), and do each of the following: (i) notify each person who gives Tenant a notice of right to lien of the recording of the surety bond or establishment of the construction disbursement account as required by NRS §108.2403(2)(f); (ii) record a notice of posted security satisfying the requirements of NRS §104.2403; (iii) serve the notice of posted security upon persons in accordance with NRS §108.2403(2)(f); (iv) otherwise comply with all requirements of Chapter 108 of the NRS applicable to the construction of any such Alterations; and (v) provide evidence satisfactory to Landlord that Tenant has complied with the foregoing requirements.

(b) PURSUANT TO NRS §108.234(3)(e), LANDLORD HEREBY NOTIFIES TENANT THAT TENANT IS REQUIRED TO COMPLY WITH THE PROVISIONS OF NRS CHAPTER 108 APPLICABLE TO A LESSEE, WHICH PROVISIONS INCLUDE, AMONG OTHERS, OBTAINING SECURITY FOR MECHANICS' AND MATERIALMEN'S LIENS AND RECORDING A NOTICE OF POSTED SECURITY BEFORE CAUSING A WORK OF IMPROVEMENT TO BE CONSTRUCTED, ALTERED OR REPAIRED UPON PROPERTY THE LESSEE IS LEASING IN ACCORDANCE WITH NRS §108.2403. TENANT ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THE EFFECT OF THIS PROVISION AND NRS §108.2403.

Section 43.03 Arizona. Without limiting the choice of law provision set forth in Article 26, the following provisions shall apply to the extent that the laws of the State of Arizona govern the interpretation or enforcement of this Lease with respect to any Demised Properties located in the State of Arizona:

(a) Waiver. The provisions of this Lease, including those in Article 11, constitute an express agreement between Landlord and Tenant that applies in the event that any Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature. Each of Landlord and Tenant, therefore, fully waives the provisions of any statute or regulation, including Arizona Revised Statutes ("A.R.S.") Section 33-343, relating to any rights or obligations concerning any such fire or other casualty.

(b) Indemnity. In any instance in this Lease where the phrase "harmless of, from and against" or the phrase "harmless from and against" appears, such phrase is amended to read in its entirety as follows: "harmless of, for, from and against".

(c) Effective Rate of Interest. Tenant agrees to pay an effective rate of interest equal to the rate stated in this Lease and in any other documents evidencing the obligations of Tenant to Landlord, plus any additional rate, if any, resulting from any charge or fee in the nature of interest paid or

to be paid by Tenant in connection therewith, or any benefit received or to be received by Landlord in connection therewith.

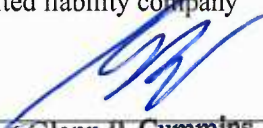
(d) Environmental Laws. The definition of “**Environmental Laws**” shall include, without limitation, the Arizona Hazardous Waste Management Act, A.R.S. Section 49-921 *et seq.*; and the Arizona Environmental Quality Act, A.R.S. Section 49-1001 *et seq.*

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the date first above written.

LANDLORD:

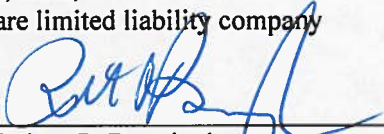
EM-50 UAV SLBCO LLC,
a Delaware limited liability company

By: 
Name: Glenn P. Cummins
Title: Treasurer

TENANT:

Y-OPCO, LLC,
a Delaware limited liability company

By:



Robert P. Bermingham
Vice President & Secretary

Signature Page

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

ACKNOWLEDGMENTS

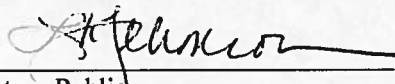
STATE OF California)
) ss.
COUNTY OF Los Angeles)

November

Robert P.

On this 21st day of , before me, the undersigned, personally appeared Bermingham , personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)



Notary Public

My commission expires: 1/3/2016



[ACKNOWLEDGMENTS CONTINUE ON NEXT PAGE]

Acknowledgment

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

STATE OF New York)
COUNTY OF New York) ss.

On this 26th day of , before me, the undersigned, personally appeared Glenn P. Cummins personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)

Kathleen A. Halvey
Notary Public

My commission expires:
1/6/16

KATHLEEN A. HALVEY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01HA6179532
Qualified in New York County
My Commission Expires January 06, 2016

Acknowledgment

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

SCHEDULE 1

DEFINED TERMS

The following capitalized terms used in this Lease have the following meanings.

“AAA” means the American Arbitration Association or any successor thereto.

“Additional Tenant Properties” is defined in Section 34.02.

“Additional Rent” means any and all fees, expenses, taxes and charges of every kind and nature arising in connection with or relating to the Demised Properties that Tenant is obligated to pay under the terms of this Lease (other than Base Rent), including (i) any and all taxes (including Real Estate Taxes), fees, utility service charges, insurance premiums, and other costs, and any amounts owed by Tenant under any indemnity to Landlord hereunder, including as set forth in Article 9 and Article 29; (ii) all fees and penalties that may accrue on any amounts due from Tenant hereunder if Tenant fails to pay such amounts in a timely manner; and (iii) all other Losses that Landlord may suffer or incur in enforcing this Lease (whether or not any formal action is brought by Landlord against Tenant) or in otherwise taking actions permitted under this Lease following a Default (as hereinafter defined) by Tenant (including making Repairs (as hereinafter defined) and fulfilling other obligations of Tenant as provided in Article 7, and purchasing insurance required to be maintained by Tenant under this Lease, as provided in Article 10), or as a result of, arising out of, or in connection with any notice, request or other action by Tenant, whether or not expressly permitted by the terms of this Lease. In addition, “Additional Rent” includes any rent or other income received by Tenant from any subtenant of any Demised Property to the extent applicable to periods after the expiration or termination of this Lease as to such Demised Property.

“Adjustment Dates” is defined in Section 3.02(a).

“Affiliate” means in relation to any Person, any other Person: (i) directly or indirectly controlling, controlled by, or under common control with, the first Person; (ii) directly or indirectly owning or holding five percent or more of any equity interest in the first Person; or (iii) five percent or more of whose voting stock or other equity interest is directly or indirectly owned or held by the first Person. For purposes of this definition, “control” (including with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Without limiting the foregoing, the Affiliates of any Person that is an entity shall include all natural persons who are officers, agents, directors, members, partners, or employees of the entity Person.

“Allocated Base Rent Amount” is defined in Section 30.01.

“Alteration Information” is defined in Article 6.

“Alterations” is defined in Article 6.

“Arbitrator” is defined in Section 31.01.

“Arbitrator Appointment Notices” is defined in Section 31.01.

“**Base Date**” is defined in Section 3.02(a).

“**Base Rent**” is defined in Section 3.02(b).

“**Base Rent Escalation**” is defined in Section 3.02(a).

“**Base Rent Reduction Arbitration**” is defined in Section 11.02.

“**Base Rent Reduction Arbitration Date**” is defined in Schedule 4a.

“**Base Rent Reduction Arbitrator**” is defined in Schedule 4a.

“**Base Rent Reduction Arbitrator Appointment Notices**” is defined in Schedule 4a.

“**Base Rent Reduction Delinquent Party**” is defined in Schedule 4a.

“**Beneficial Owner**” is defined in Article 39.

“**Building Equipment**” is defined in the Recitals to this Lease.

“**Business Day**” means any day excluding (i) Saturday, (ii) Sunday, (iii) any day that is a legal holiday under the Laws of the State of New York or the State in which any of the Demised Properties is located, and (iv) any day on which banking institutions located in the State of New York or the State in which any of the Demised Properties is located are generally not open for the conduct of regular business.

“**Capital Alteration**” means an Alteration that consists of a capital repair and/or replacement to maintain or improve a Demised Property, including structural repairs, roof replacements, material HVAC repairs and replacements, material mechanical and plumbing repairs and replacements and material boiler repair and replacements.

“**Casualty Removal Arbitration**” is defined in Section 11.02.

“**Casualty Removal Arbitration Date**” is defined in Schedule 4b.

“**Casualty Removal Arbitrator**” is defined in Schedule 4b.

“**Casualty Removal Arbitrator Appointment Notices**” is defined in Schedule 4b.

“**Casualty Removal Delinquent Party**” is defined in Schedule 4b.

“**Code**” is defined in Section 31.01.

“**Commencement Date**” is defined in the first paragraph of this Lease.

“**Condemnation Date**” means, as to any Demised Property subject to condemnation, the earliest of (a) the date on which the applicable authority takes possession of such Demised Property, or portion thereof, or (b) the date on which title to such Demised Property, or portion thereof, is vested in the applicable authority.

“**Consideration Period**” is defined in Section 31.01.

SCHEDULE 1-2

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items (1982-84=100), published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI is not published for any month during the Lease Term, Landlord, in its reasonable discretion, shall substitute a comparable index published by the Bureau of Labor Statistics of the U.S. Department of Labor. If such an index is not published by the Bureau of Labor Statistics, Landlord, in its reasonable discretion, shall select a comparable index published by a nationally recognized responsible financial periodical.

“De Minimis Amounts” means, with respect to any given level of Hazardous Materials, that level or quantity of Hazardous Materials in any form or combination of forms, the use, storage or release of which does not constitute a violation of, or require regulation, remediation, reporting or monitoring under, any Environmental Laws and is customarily employed in the ordinary course of, or associated with, similar businesses located in the states in which the relevant Demised Property is located.

“Deeds” has the meaning set forth in the F&E Agreement.

“Default” is defined in Section 15.01.

“Delinquent Party” has the meaning set forth in Section 31.01.

“Demised Properties” is defined in the Recitals to this Lease.

“Designated Person” is defined in Article 39.

“Diligence Matters” is defined in Article 5.

“Disclosures” is defined in Section 23.02.

“Due Diligence Information” means (a) all studies, reports, agreements, leases, tax statements, zoning and other land use information, engineering and construction drawings, reports (including, without limitation, geotechnical reports, soils reports, and environmental reports) surveys, documents, plans, specifications, maps, permits, certificates of occupancy, and entitlements concerning or relating to any applicable Additional Tenant Property and (b) all audited and unaudited profit and loss statements of Tenant regarding such Additional Tenant Property for the most recent two (2) full calendar years and (c) such other information regarding or relating to Tenant or such Additional Tenant Property as may be reasonably requested by Landlord and in the possession or control of Tenant.

“End of Term Casualty” has the meaning set forth in Section 11.02.

“Environmental Claims” is defined in Section 29.04.

“Environmental Conditions” means the conditions of Environmental Media and the conditions of any part of the Demised Properties, including building or structural materials, that affect or may affect Environmental Media. Environmental Conditions include the Release of Hazardous Materials to Environmental Media.

“Environmental Guidance Standards” means guidance documents, health and safety screening standards, policy manuals, remedial action guidelines, public health goals, risk screening levels, vapor intrusion investigation and mitigation guidance, and similar policy or procedure documents which a

Governmental Authority has published, made publicly available, and which a reputable, experienced and credentialed environmental professional likely would consult or employ in undertaking a voluntary project, or which a Governmental Authority likely would employ if overseeing an investigation, risk assessment, abatement, remediation, monitoring, or longer term “operations and maintenance” work at the applicable Demised Property. Examples, without limitation, are US EPA Region IX Preliminary Remediation Goals, the LUFT Fuel Manual, California Regional Water Quality Control Board Risk Based Screening Levels and Cal EPA, DTSC’s Final Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion into Indoor Air.

“Environmental Laws” means any federal, state or local law, statute, ordinance, permit condition, regulation or written policy pertaining to public or worker health or safety, natural resources, climate change, or the regulation or protection of the indoor or outdoor environment, the regulation or reporting of Hazardous Materials, including the following: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq. as amended (“CERCLA”), the Solid Waste Disposal Act, 42 U.S.C. §§ 6901, et seq. as amended (“RCRA”), the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C. §§ 1251, et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601, et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001, et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 USC §§ 7401, et seq.; the National Environmental Policy Act of 1970, as amended, 42 USC §§ 4321, et seq.; the Rivers and Harbors Act of 1899, as amended, 33 USC §§ 401, et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. §§ 801, et seq. the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531, et seq.; the Occupational Safety and Health Act of 1970, as amended 29 U.S.C. §§ 651, et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f), et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq. as amended, and all regulations, published governmental policies, and administrative or judicial orders promulgated under or implementing or enforcing said laws; and (ii) all state or local laws which implement the foregoing federal laws or which pertain to public health and safety, occupational health and safety, natural resources or environmental protection, or the regulation or reporting of Hazardous Materials, all as amended from time to time, and all regulations, published governmental policies, and administrative or judicial orders promulgated under the foregoing laws; (iii) all federal and state common law, including the common law of public or private nuisance, trespass, negligence or strict liability, where such common law pertains to public health and safety, occupational health and safety, natural resources, and environmental protection.

“Environmental Media” means soil, fill material, or other geologic materials at all depths, groundwater at all depths, surface water including storm water and sewerage, indoor and outdoor air, and all living organisms, including all animals and plants, whether such Environmental Media are located on or off the Demised Properties. For purposes of this Lease groundwater underlying any Demised Property shall be deemed part of such Demised Property even if such groundwater is owned by a third party.

“ERISA” means the Employee Retirement Income Security Act of 1974, and all rules and regulations promulgated thereunder.

“Estoppel Certificate” is defined in Article 24.

“Event of Default” is defined in Section 15.01.

“Excluded Personal Property” is defined in the Recitals to this Lease.

“Executive Orders” is defined in Article 39.

“Existing Environmental Conditions” means those Environmental Conditions which exist as of the Commencement Date, due to an act or omission by any person at any time prior to the Commencement Date, in, on, under at, about any Demised Property, or any Hazardous Materials migrating to or from such Demised Property. Existing Environmental Conditions include any “daughter” or “breakdown” Hazardous Materials for any original Release that pre-dates the Lease Term. Existing Environmental Conditions shall not include Environmental Conditions which are the subject of a final “case closure” or “no further action” determination by a Governmental Authority, unless during the Lease Term: (1) a Governmental Authority reopens the matter, or (2) Tenant or any person fails to comply with any applicable activity and use limitations respecting the Environmental Conditions, or (3) changes in Law, including Environmental Law, require the Existing Environmental Conditions be addressed.

“Extension Notice” is defined in Section 2.02(a).

“F&E Agreement” means that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of November 21, 2013 by and among Fresh & Easy Neighborhood Market, Inc., a Delaware corporation and Fresh & Easy Property Co. LLC, a Delaware limited liability company and Landlord.

“Failing Party” has the meaning set forth in Section 31.01.

“First Option Extension Properties” is defined in Section 2.02(c).

“First Option Period” is defined in Section 2.02(a).

“GAAP” means generally accepted accounting principles as in effect in the United States of America from time to time.

“Governmental Authority” means (i) any international, foreign, federal, state, county or municipal government, or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (iii) any court, administrative tribunal or public utility.

“Hazardous Materials” means any ignitable, reactive, explosive, corrosive, carcinogenic, mutagenic, toxic or radioactive material, whether virgin material, secondary material, by-product, waste or recycled material, defined, regulated or designated as a contaminant, pollutant, hazardous or toxic substance, material, waste, contaminant or pollutant under any Environmental Laws or any other federal, state or local law, statute, regulation, ordinance, or governmental policy presently in effect or as amended or promulgated in the future, and shall specifically include: (i) those materials included within the definitions of “hazardous substances,” “extremely hazardous substances,” “hazardous materials,” “toxic substances” “toxic pollutants,” “hazardous air pollutants” “toxic air contaminants,” “solid waste,” “hazardous waste,” “pollutants,” contaminants,” “greenhouse gasses” or similar categories under any Environmental Laws; and (ii) specifically including any material, waste or substance that contains: (A) petroleum or petroleum derivatives byproducts, including crude oil and any fraction thereof and waste oil; (B) asbestos; (C) polychlorinated biphenyls; (D) formaldehyde; (E) radon; and (F) any methane. If not already defined as a Hazardous Material under any of the foregoing terms, mold and fungi of any type or concentration shall be deemed a Hazardous Material hereunder if present in any Improvements under such conditions or circumstance as to represent a condition hazardous to human health or safety. Hazardous Materials may be man-made or naturally occurring.

“**Holdback Agreement**” has the meaning set forth in the Omnibus Agreement.

“**Improvements**” is defined in the Recitals to this Lease.

“**Land**” is defined in the Recitals to this Lease.

“**Landlord**” is defined in the first paragraph of this Lease.

“**Landlord Assignment Lease Agreement**” is defined in Section 30.01.

“**Landlord Award Amount**” means the amount of the award actually received by Landlord for any taking of any portion of any Demised Property, less any and all costs and expenses incurred by Landlord in connection with such taking (including any and all costs and expenses incurred by Landlord in connection with obtaining such award).

“**Landlord Parties**” means, collectively, (i) Landlord, Affiliates of Landlord, Landlord’s Lenders and any Landlord’s Mortgagee, and (ii) any members, partners, shareholders, officers, directors, employees, agents, attorneys, contractors, affiliates, heirs, successors or assigns of any of Landlord, Affiliates of Landlord, Landlord’s Lenders, or any Landlord’s Mortgagee.

“**Landlord Review Period**” is defined in Section 34.02.

“**Landlord’s Account**” is defined in Section 3.01.

“**Landlord’s Lenders**” means any persons or entities providing financing to Landlord or Affiliates of Landlord.

“**Landlord’s Mortgagee**” means any Persons holding a mortgage, deed of trust, deed to secure debt or similar instrument encumbering Landlord’s interest in the Demised Properties or portion thereof (whether or not any such Person is also a Landlord’s Lender).

“**Late Fee**” is defined in Section 15.06.

“**Law**” means all international, foreign, federal, state and local statutes, treaties, rules, regulations, ordinances, codes, directives, orders, or written policies issued pursuant thereto, and published administrative or judicial precedents.

“**Lease**” is defined in the first paragraph of this agreement.

“**Lease Term**” is defined in Section 2.01(a).

“**Leasehold Mortgage**” means any leasehold deed of trust, mortgage, deed to secure debt, assignment of leases and rents, assignment, security agreement, or other security document securing financing from a lender of Tenant and encumbering Tenant’s leasehold interest in any Demised Property.

“**Licensed Equipment**” is defined in the Recitals to this Lease.

“**Liens**” means liens, security interests, charges and encumbrances.

“**Lists**” is defined in Article 39.

“Losing Party” has the meaning set forth in Section 31.01.

“Losses” means all losses, claims, demands, actions, causes of action, settlements, obligations, duties, indebtedness, debts, controversies, remedies, choses in action, liabilities, costs, penalties, fines, damages, injuries, judgments, forfeitures, or expenses (including reasonable attorneys’, consultant, testing and investigation and expert fees and court costs), whether known or unknown, and whether liquidated or unliquidated.

“Minor Project” means (i) a non-structural minor maintenance or repair project or (ii) a “cosmetic refresh” project involving only painting, carpeting, floor covering and installation of moveable replacement Tenant Equipment and similar items, unless in either case (i) or (ii) the costs exceed, in the aggregate for any such project, for any affected Demised Property, \$500,000.

“Notice Date” has the meaning set forth in Section 31.01.

“OFAC” is defined in Article 39.

“OFAC Laws and Regulations” is defined in Article 39.

“Omnibus Agreement” means that certain Omnibus Agreement and Joint Escrow Instructions, by and between Landlord and Tenant.

“Option Period” is defined in Section 2.02(a).

“Original Lease Term” is defined in Section 2.01(a).

“Other Lease Event of Default” means an “Event of Default” (as defined in any Other Lease) under any Other Lease.

“Other Lease Option Period” means any “Option Period” (as defined in any Other Lease) under any Other Lease.

“Other Leases” means that certain Master Land and Building Lease (Portfolio 2) dated as of the date hereof by and between Landlord and Tenant, together with that certain Land and Building Lease (Distribution Center) dated as of the date hereof by and between Landlord and Tenant, and each an **“Other Lease”**.

“Other Leases First Option Extension Properties” means those Portfolio Properties listed on an “Extension Notice” (as defined in the applicable Other Lease) given pursuant to an Other Lease that Tenant desires be subject to an extension pursuant to Section 2.02(c) of such Other Lease.

“Other Leases Second Option Extension Properties” means those Portfolio Properties listed on an “Extension Notice” (as defined in the applicable Other Lease) given pursuant to an Other Lease that Tenant desires be subject to an extension pursuant to Section 2.02(e) of such Other Lease.

“Other Leases Third Option Extension Properties” means those Portfolio Properties listed on an “Extension Notice” (as defined in the applicable Other Lease) given pursuant to an Other Lease that Tenant desires be subject to an extension pursuant to Section 2.02(g) of such Other Lease.

“**Other Lists**” is defined in Article 39.

“**Other Parties**” is defined in Section 29.02.

“**PE First Option**” is defined in Section 2.02(c).

“**PE First Option Period**” is defined in Section 2.02(c).

“**PE Option**” is defined in Section 3.02(a).

“**PE Option Initial Base Rent**” is defined in Section 3.02(a).

“**PE Option Extension Properties**” is defined in Section 3.02(a).

“**PE Option Period**” is defined in Section 3.02(a).

“**PE Second Option**” is defined in Section 2.02(e).

“**PE Second Option Period**” is defined in Section 2.02(e).

“**PE Third Option**” is defined in Section 2.02(g).

“**PE Third Option Period**” is defined in Section 2.02(g).

“**Permitted Assignee**” is defined in Section 22.01(b).

“**Permitted Liens**” means (i) Liens to secure claims for labor, material or supplies in respect of obligations not overdue; (ii) Liens in respect of judgments or awards that have been in force for less than the applicable period for making an appeal so long as execution is not levied thereunder or in respect of which Tenant shall at the time in good faith be prosecuting an appeal or proceedings for review and in respect of which a stay of execution shall have been obtained pending such appeal or review; (iii) Liens of carriers, warehousemen, mechanics and materialmen and other like Liens that have been in existence less than 120 days after the date of creation thereof in respect of obligations not overdue; and (iv) purchase money Liens on Tenant Equipment to secure purchase money indebtedness incurred in connection with the acquisition of such Tenant Equipment, which Liens cover only the Tenant Equipment so acquired.

“**Permitted Uses**” means any lawful retail use other than the uses listed on Schedule 3.

“**Person**” means an individual, corporation, partnership, joint venture, association, joint-stock company, trust, estate, limited liability company, non-incorporated organization or association, or any other entity, any Government Authority or any agency or political subdivision thereof.

“**Petition**” means a petition in bankruptcy (including any such petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief) under the Bankruptcy Code of the United States of America, or under any other present or future federal or state statute, law or regulation of similar intent or application.

“**Portfolio Properties**” means each Demised Property together with each “Demised Property” as defined in the Other Leases.

“Rating Agency” means any of the following: Standard & Poor’s Ratings Group; Moody’s Investors Service, Inc.; Fitch Ratings, Inc.; and any other nationally-recognized statistical rating agency.

“Real Estate Taxes” means (i) all taxes and general and special assessments and other impositions in lieu thereof, or as a supplement thereto and any other tax measured by the value of real property and assessed on a uniform basis against the owners of real property, including any substitution in whole or in part therefor due to a future change in the method of taxation, and including any increase in any of the foregoing resulting from any sale, exchange, mortgage, encumbrance, or other disposition by Landlord, in each case assessed against, or allocable or attributable to, any of the Demised Properties and accruing during or prior to the Lease Term, and (ii) all transfer taxes imposed in connection with this Lease, and any and all transfer taxes assessed against, or allocable or attributable to, any of the Demised Properties and accruing during or prior to the Lease Term (except that the transferor or transferee, as applicable, shall pay all transfer taxes attributable to transfers to third parties during the Lease Term). For the avoidance of doubt, the term “Real Estate Taxes” shall include any interest or penalty, addition to tax or other additional amount imposed with respect to the foregoing clauses (i) and (ii).

“Reassessment” is defined in Section 3.03(c).

“Release” means any active or passive spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into any Environmental Media. For the purposes of this Lease, “Release” also includes any threatened Release.

“Remedial Activities” means any investigation, work plan preparation removal, repair, cleanup, abatement, remediation, monitored natural attenuation, natural resource damage assessment and restoration, closure, post-closure, detoxification or remedial activity of any kind whatsoever necessary to address Environmental Conditions.

“REMICs” is defined in Section 31.01.

“Rent” means Base Rent plus Additional Rent.

“Repairs” means all replacements (other than Restoration Work and restoration in connection with eminent domain), renewals, alterations, additions and betterments necessary for Tenant to properly maintain each Demised Property in good order and condition, safe and fit for its permitted use under this Lease.

“Replaced Property” is defined in Section 31.01.

“Replacement Property” is defined in Section 31.01.

“Restoration Work” is defined in Section 11.01.

“SDN List” is defined in Article 39.

“Second Option Extension Properties” is defined in Section 2.02(e).

“Second Option Period” is defined in Section 2.02(a).

“SLO Demised Property” means the Demised Property located at 2238 Broad St., San Luis Obispo, California 93401.

“SLO Environmental Covenant” is defined in Schedule 29.08.

“SNDA” is defined in Section 23.01.

“Subordination and Attornment Provisions” is defined in Section 22.01(b).

“Subtenant Minor Project” means (i) a non-structural minor maintenance or repair project or (ii) a “cosmetic refresh” project involving only painting, carpeting, floor covering and installation of moveable replacement Tenant Equipment and similar items, unless the costs exceed, in the aggregate for any such project, for any affected Demised Property, the percentage of the square footage of such Demised Property subject to subtenant’s sublease multiplied by \$500,000.

“Subtenant SNDA” is defined in Section 23.01.

“Tenant” is defined in the first paragraph of this Lease.

“Tenant Equipment” is defined in the Recitals to this Lease.

“Tenant’s Lender” means any lender of Tenant that holds a Leasehold Mortgage.

“Tenant Review Period” is defined in Section 34.01.

“Third Option Extension Properties” is defined in Section 2.02(g).

“Third Option Period” is defined in Section 2.02(a).

“Third-Party Option Property” means any Demised Property encumbered by or subject to any agreement or other instrument which contains a purchase right, termination right, recapture right, reversion of title, or option in favor of any third party that is exercisable upon the occurrence of certain events or circumstances described in such agreement or other instrument.

“Transaction Documents” means, collectively, this Lease, the Other Leases, the Omnibus Agreement and the Deeds, each of which are dated of even date herewith, and any other agreements entered into by and between Landlord and Tenant regarding any of the foregoing or the Demised Properties.

“Transfer Parties” is defined in Section 23.02.

“Unreimbursed Costs” means any fees or other costs that are not reimbursed or subject to reimbursement pursuant to applicable Law or regulations, insurance, contractual indemnities or any other means.

“Use” means the receipt, handling, generation, storage, treatment, recycling, disposal, transfer, transportation, introduction, or incorporation into, on, about, under or from the Demised Properties.

“Winning Party” has the meaning set forth in Section 31.01.

SCHEDULE 2

EXCLUDED PERSONAL PROPERTY

The following property shall be Tenant's Equipment, not Building Equipment:

- Refrigeration Equipment (Cases, Compressors, Racks – excluding HVAC and any walk-in coolers or freezers)

SCHEDULE 3

Permitted Use Exceptions

“Permitted Uses” shall not include:

- (1) any unlawful use;
- (2) any use which constitutes a public or private nuisance or produces objectionable noise, smell or vibration;
- (3) any noise or sound audible beyond the boundaries of a tenant’s space that is reasonably objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (4) tanning, bowling alley, karate center, skating rink, or other live sports facility other than a first class or nationally recognized gym, fitness center or spa;
- (5) any laundromat or commercial laundry or dry cleaning plant (other than shops serving as a drop-off and pick-up cleaning establishment which do no processing on their premises);
- (6) funeral parlor, crematorium, mortuary or similar service;
- (7) off track betting or bingo parlor, or other betting or gambling establishment;
- (8) any liquor store (a grocery store or similar establishment that sells liquor with such sales representing 20% or less of gross sales shall not be an excluded use) other than a first class wine boutique or nationally recognized chain such as BevMo;
- (9) any tavern or bar, billiard, pool room; provided, however, that first class restaurants with food service as a primary function that also serve liquor such as Applebee’s or Chili’s shall not be prohibited uses;
- (10) any cash for gold, or so called “second hand” or surplus store, pawn shop, flea market, swap meet, junk yard, or auction fire sale, liquidation, second hand or surplus store or flea market (excluding any store that is part of a recognized national or regional chain of first class stores selling second hand merchandise, including, but not limited to, Funcholand, Play It Again Sports and Once Upon A Child, and excluding quality antique stores);
- (11) massage parlor (excluding (a) facilities for therapeutic massage incidental to a permitted retail use such as a first class or nationally recognized day spa and (b) nationally recognized massage chains of comparable quality to Massage Envy);
- (12) living quarters (including, without limitation, drug rehabilitation or “halfway” house) or for residential purposes;
- (13) theater (movie or live), movie theater, auditorium or meeting hall, catering or banquet facility, night club, discotheque, dance hall or ballroom; provided, however, that use of electronic media incidental to another permitted use shall not be a prohibited use
- (14) church or other place of public assembly or religious worship, except that retail stores selling religious merchandise are expressly not prohibited;
- (15) any gun range or use which involves any unusual firing, explosive or other damaging or dangerous hazard (including the storage, display or sales of explosives or fireworks);
- (16) pornographic use (i.e., the exhibition, sale or display of sexually explicit printed materials, audio or video tapes, videocassettes, or film, or sexual devices or sexually oriented entertainment unless, (i) incidental to a permitted use, (ii) permitted by law, and (iii) commonly exhibited, sold, rented or displayed in first class shopping centers similar in the metropolitan area where the property is located), adult book or video tape store (i.e., stores a significant part of the inventory of which is not available for sale or rental to

SCHEDULE 3

MASTER LAND AND BUILDING LEASE
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- children under 15 years old because such inventory explicitly deals with or depicts human sexuality);
- (17) hotel or motel;
 - (18) school (except training incidental to a retail use; provided same is conducted within the applicable retail premises), library, reading room, beauty school, barber college or house of worship;
 - (19) drug paraphernalia store or so called "head" shop;
 - (20) medical marijuana store;
 - (21) any car wash or the performance of any automobile or boat body and fender repair work or other business servicing boats or motor vehicles (including quick lube oil change service, tire center, gasoline or service station, dispensing of petroleum products);
 - (22) any trailer court, mobile home park, sales office or lot for sale, rental or leasing of new or used boats, automobiles, motorcycles, trucks, mobile homes, trailers or other vehicles, labor camp, junk yard, stock yard;
 - (23) off track betting, gambling, gaming or check cashing facility (other than a bona fide banking institution);
 - (24) Amusement park, carnival, circus, fair, disco, nightclub or other entertainment facility including video game room, pool hall, arcade, indoor children's recreational facility or other amusement center (provided, however, that incidental interactive kiosks, games and equipment related to the otherwise permitted primary use of an owner, occupant or tenant, will not be prohibited hereunder);
 - (25) any business operated primarily only on a seasonal or part time basis;
 - (26) any office use; provided that the foregoing shall not prohibit (i) office use which is incidental to a retail operation and which is conducted from within the applicable retail premises, and (ii) quasi-retail offices providing services to the general public and customarily found in first class retail shopping centers in the metropolitan area where the applicable Demised Property is located (such as medical or dental services, travel agencies, insurance services, and real estate offices);
 - (27) animal raising or boarding (other than pet supply stores and veterinarian offices that are an incidental use in a national or regional pet store, provided the same does not sell animals raised in puppy mills);
 - (28) any assembling, manufacturing, distribution facility;
 - (29) any factory, processing or rendering plant, warehouse or storage facility (except reasonable storage of items incidental to another permitted use);
 - (30) any noxious, toxic, caustic or corrosive fuel or gas;
 - (31) any dust, dirt or fly-ash in excessive quantities;
 - (32) any heavy industrial use or for a purpose which causes strong or offensive odors, fumes, dust or vapors and/or untidiness; provided, however, that restaurants are not precluded hereby; any distilling, refining, smelting, agriculture or mining operation; or drilling for or removal of subsurface substances, dumping, disposal, incineration or reduction of garbage or refuse (other than handling or reducing such waste produced on the premises from otherwise authorized uses and, in such latter event, only if handled in a reasonably clean and sanitary manner), provided, however, that such activities will be permitted in connection with the construction of buildings and tenant improvements).

SCHEDULE 4a

Base Rent Reduction Arbitration

In the event that Landlord and Tenant fail agree on the monthly fair market rental for any applicable Demised Property in connection with the determination of a Base Rent reduction pursuant to Section 11.02 or Section 12.05 then:

(1) Submission of Proposed Base Rent. Within five (5) days after the date provided in Section 11.02 or Section 12.05, as applicable, that Landlord and Tenant shall submit to Base Rent Reduction Arbitration (the “**Base Rent Reduction Arbitration Date**”), (a) Landlord shall deliver to Tenant an appraisal setting forth an estimate of the monthly fair market rental for the applicable Demised Property or applicable portion thereof together with any supporting documentation for its assertion, and (b) Tenant shall deliver to Landlord an appraisal setting forth an estimate of the monthly fair market rental for the applicable Demised Property or applicable portion thereof together with any supporting documentation for its assertion. If either party fails to deliver its appraisal to the other party on or before the last day of such five (5)-day period, but the other party delivers its appraisal on or before the last day of such five (5)-day period, the assertion supported by such other party’s appraisal delivered pursuant to this subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such five (5)-day period.

(2) Appointment and Qualifications of Arbitrator. If the arbitration is not deemed concluded pursuant to subsection (1), above, then within fifteen (15) days after the Base Rent Reduction Arbitration Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous ten-year (10-year) period in the appraisal of net leased retail properties within the county in which the applicable Demised Property is located (each such appraiser chosen pursuant to this subsection (2), a “**Base Rent Reduction Arbitrator**”). Each of Landlord and Tenant shall notify the other party, in writing, of its Arbitrator (and the business address thereof) within two (2) Business Days after the appointment thereof (collectively, the “**Base Rent Reduction Arbitrator Appointment Notices**”). Each of Landlord and Tenant agrees that any Arbitrator may be (but is not required to be) an appraiser who prepared one or both of the appraisals delivered by Landlord and Tenant pursuant to subsection (1), above.

(3) Appointment of Third Arbitrator. If each party appoints a Base Rent Reduction Arbitrator and notifies the other party in accordance with subsection (2), above, then the two Base Rent Reduction Arbitrators shall, within ten (10) days after delivery of the later of the two Base Rent Reduction Arbitrator Appointment Notices, agree on and appoint a third Base Rent Reduction Arbitrator (whom shall be a licensed real estate appraiser with all other qualifications for the initial two Base Rent Reduction Arbitrators chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Base Rent Reduction Arbitrator and the business address thereof. If the two Base Rent Reduction Arbitrators fail to agree on and appoint a third Base Rent Reduction Arbitrator within such ten (10) day period, then either Landlord or Tenant may elect to have the third Base Rent Reduction

Arbitrator selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Base Rent Reduction Arbitrator and the parties shall cooperate reasonably with each other and the AAA (including by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Base Rent Reduction Arbitrator. If any fees of the third Base Rent Reduction Arbitrator or the AAA are required to be paid in advance (prior to the completion of the arbitration procedure described in this Schedule) in order for such Base Rent Reduction Arbitrator, or the AAA, as the case may be, to commence or continue its work in connection with the arbitration described in this Schedule, each party shall promptly pay one-half of such fees as and when due, and if either Landlord or Tenant fails to pay its one-half share of any such fees as and when due (such party is referred to in this Schedule as the “**Base Rent Reduction Delinquent Party**”), and the other party does pay its one-half share of any such fees as and when due, then if the Base Rent Reduction Delinquent Party fails to pay its one-half share of all such fees within ten (10) days after written notice from the other party, the assertion supported by such other party’s appraisals delivered pursuant to subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such ten (10)-day period.

(4) Base Rent Reduction Arbitrators’ Decision. If the arbitration is not previously deemed concluded pursuant to subsection (3), above, then within thirty (30) days after the appointment of the third Base Rent Reduction Arbitrator, the three Base Rent Reduction Arbitrators shall decide the appraisal that best estimates the monthly fair market rental for the applicable Demised Property or applicable portion thereof and shall notify Landlord and Tenant in writing of each Base Rent Reduction Arbitrator’s decision. The determination of each Base Rent Reduction Arbitrator shall be limited to the sole issue of, and each Base Rent Reduction Arbitrator shall have neither the right nor the power to determine any issue other than, the monthly fair market rental for the applicable Demised Property or applicable portion thereof, as determined by such Base Rent Reduction Arbitrator. The decision of the majority of the three Base Rent Reduction Arbitrators shall be binding on Landlord and Tenant (subject to subsection (5), below), and the arbitration shall be deemed concluded upon delivery to Landlord and Tenant of such notifications of the Base Rent Reduction Arbitrators’ decisions.

(5) If Only One Base Rent Reduction Arbitrator Is Appointed. If the arbitration is not previously deemed concluded pursuant to subsection (1), and if either Landlord or Tenant fails to appoint a Base Rent Reduction Arbitrator within fifteen (15) days after the Base Rent Reduction Arbitration Date or fails to deliver a Base Rent Reduction Arbitrator Appointment Notice in accordance with subsection (2), above, and the other party does appoint a Base Rent Reduction Arbitrator within such fifteen (15) day period and delivers a Base Rent Reduction Arbitrator Appointment Notice in accordance with subsection (2), above, then the Base Rent Reduction Arbitrator timely appointed by such other party shall reach a decision regarding the applicable Base Rent reduction, as determined by such Base Rent Reduction Arbitrator, and notify Landlord and Tenant of that decision within thirty (30) days after such Base Rent Reduction Arbitrator’s appointment. Such decision of the Base Rent Reduction Arbitrator shall be binding on Landlord and Tenant, and the arbitration shall be deemed concluded upon delivery of such notification of the Base Rent Reduction Arbitrator’s decision.

(6) Cost of Base Rent Reduction Arbitration. If the Base Rent Reduction Arbitrators (or Base Rent Reduction Arbitrator, pursuant to subsection (5), above)

determine that the monthly fair market rental for the applicable Demised Property or applicable portion thereof is closer to Tenant's estimate of the applicable Base Rent reduction, then Tenant shall be deemed the "**Removal Base Rent Winning Party**" under this subsection (6) and Landlord shall be deemed the "**Removal Base Rent Losing Party**" under this subsection (6). If the Base Rent Reduction Arbitrators (or Base Rent Reduction Arbitrator, pursuant to subsection (5), above) determine that the monthly fair market rental for the applicable Demised Property or applicable portion thereof is closer to Landlord's estimate of the applicable Base Rent reduction, then Landlord shall be deemed the "**Removal Base Rent Winning Party**" under this subsection (6) and Tenant shall be deemed the "**Removal Base Rent Losing Party**" under this subsection (6). In addition, in the event the arbitration is deemed concluded due to a party not timely delivering its estimate as described in subsection (1), or a Base Rent Reduction Delinquent Party failing to pay its share of fees after written notice as described in subsection (3), such failing party or Base Rent Reduction Delinquent Party (as the case may be) shall be deemed the "**Removal Base Rent Losing Party**" under this subsection (6), and the party that is not such failing party or Base Rent Reduction Delinquent Party (as the case may be) shall be deemed the "**Removal Base Rent Winning Party**" under this subsection (6). Each party shall initially pay the fees and expenses of its legal counsel, appointed arbitrator, any written reports prepared by any appraiser in connection with its duties under this Schedule, one-half of the fees of the third arbitrator, and one-half the fees of the AAA (if applicable), provided, however, that the Removal Base Rent Losing Party shall be obligated to reimburse the Removal Base Rent Winning Party for all such fees and expenses of the arbitration paid by the Removal Base Rent Winning Party promptly upon the completion of the arbitration procedure described in this Schedule.

SCHEDULE 4b**Casualty Removal Arbitration**

In the event that Landlord and Tenant fail to agree on whether the cost to complete the Restoration Work at the relevant Demised Property is in excess of twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property pursuant to Section 11.02 then:

(1) Submission of Proposed Value. Within five (5) days after the date provided in Section 11.02 that Landlord and Tenant shall submit to Casualty Removal Arbitration (the “**Casualty Removal Arbitration Date**”), (a) Landlord shall deliver to Tenant its estimate of the cost to complete such Restoration Work together with an MAI fair market value appraisal for the replacement value of such Demised Property supporting its assertion that the cost to complete the Restoration Work at the relevant Demised Property is less than or equal to twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property, and (b) Tenant shall deliver to Landlord its estimate of the cost to complete such Restoration Work together with an MAI fair market value appraisal for the replacement value of such Demised Property supporting its assertion that the cost to complete the Restoration Work at the relevant Demised Property is greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property. If either party fails to deliver its estimate and appraisal to the other party on or before the last day of such five (5)-day period, but the other party delivers its estimate and appraisal to the failing party on or before the last day of such five (5)-day period, the assertion supported by such other party’s estimate and appraisal delivered pursuant to subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such five (5)-day period.

(2) Appointment and Qualifications of Arbitrator. If the arbitration is not deemed concluded pursuant to subsection (1), above, then within fifteen (15) days after the Casualty Removal Arbitration Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous ten-year (10-year) period in the appraisal of grocery stores or other applicable Permitted Uses within the county in which the applicable Demised Property is located (each such appraiser chosen pursuant to this subsection (2), a “**Casualty Removal Arbitrator**”). Each of Landlord and Tenant shall notify the other party, in writing, of its Casualty Removal Arbitrator (and the business address thereof) within two Business Days after the appointment thereof (collectively, the “**Casualty Removal Arbitrator Appointment Notices**”). Each of Landlord and Tenant agrees that any Casualty Removal Arbitrator may be (but is not required to be) an appraiser who prepared one or both of the replacement value appraisals delivered by Landlord and Tenant pursuant to subsection (1), above.

(3) Appointment of Third Casualty Removal Arbitrator. If each party appoints a Casualty Removal Arbitrator and notifies the other party in accordance with subsection (2), above, then the two Casualty Removal Arbitrators shall, within ten (10) days after delivery of the later of the two Casualty Removal Arbitrator Appointment Notices, agree on and appoint a third Casualty Removal Arbitrator (whom shall be a licensed real estate appraiser with all other qualifications

for the initial two Casualty Removal Arbitrators chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Casualty Removal Arbitrator and the business address thereof. If the two Casualty Removal Arbitrators fail to agree on and appoint a third Casualty Removal Arbitrator within such ten (10) day period, then either Landlord or Tenant may elect to have the third Casualty Removal Arbitrator selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Casualty Removal Arbitrator and the parties shall cooperate reasonably with each other and the AAA (including by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Casualty Removal Arbitrator. If any fees of the third Casualty Removal Arbitrator or the AAA are required to be paid in advance (prior to the completion of the arbitration procedure described in this Schedule) in order for such Casualty Removal Arbitrator, or the AAA, as the case may be, to commence or continue its work in connection with the arbitration described in this Schedule, each party shall promptly pay one-half of such fees as and when due, and if either Landlord or Tenant fails to pay its one-half share of any such fees as and when due (such party is referred to in this Schedule as the “**Casualty Removal Delinquent Party**”), and the other party does pay its one-half share of any such fees as and when due, then if the Casualty Removal Delinquent Party fails to pay its one-half share of all such fees within ten (10) days after written notice from the other party, the assertion supported by such other party’s estimate and appraisal delivered pursuant to subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such ten (10)-day period.

(4) Arbitrators’ Decision. If the arbitration is not previously deemed concluded pursuant to subsection (3), above, then within thirty (30) days after the appointment of the third Casualty Removal Arbitrator, the three Casualty Removal Arbitrators shall decide whether the estimated cost to complete such Restoration Work is equal to or greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property and shall notify Landlord and Tenant in writing of each Casualty Removal Arbitrator’s decision. The determination of each Casualty Removal Arbitrator shall be limited to the sole issue of, and each Casualty Removal Arbitrator shall have neither the right nor the power to determine any issue other than, whether the estimated cost to complete such Restoration Work is equal to or greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property, as determined by such Casualty Removal Arbitrator. The decision of the majority of the three Casualty Removal Arbitrators shall be binding on Landlord and Tenant (subject to subsection (5), below), and the arbitration shall be deemed concluded upon delivery to Landlord and Tenant of such notifications of the Casualty Removal Arbitrators’ decisions.

(5) If Only One Casualty Removal Arbitrator Is Appointed. If the arbitration is not previously deemed concluded pursuant to subsection (1), and if either Landlord or Tenant fails to appoint a Casualty Removal Arbitrator within fifteen (15) days after the Casualty Removal Arbitration Date or fails to deliver a Casualty Removal Arbitrator Appointment Notice in accordance with subsection (2), above, and the other party does appoint a Casualty Removal Arbitrator within such fifteen (15) day period and delivers a Casualty Removal Arbitrator Appointment Notice in accordance with subsection (2), above, then the Casualty Removal Arbitrator timely appointed by such other party shall reach a decision regarding whether the

estimated cost to complete such Restoration Work is greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property, as determined by such Casualty Removal Arbitrator, and notify Landlord and Tenant of that decision within thirty (30) days after such Casualty Removal Arbitrator's appointment. Such decision of the Casualty Removal Arbitrator shall be binding on Landlord and Tenant, and the arbitration shall be deemed concluded upon delivery of such notification of the Casualty Removal Arbitrator's decision.

6. Cost of Casualty Removal Arbitration. If the Casualty Removal Arbitrators (or Casualty Removal Arbitrator, pursuant to subsection (5), above) determine that the estimated cost to complete such Restoration Work greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property, then Tenant shall be deemed the "**Casualty Removal Winning Party**" under this subsection (6) and Landlord shall be deemed the "**Casualty Removal Losing Party**" under this subsection (6). If the Casualty Removal Arbitrators (or Casualty Removal Arbitrator, pursuant to subsection (5), above) determine that the estimated cost to complete such Restoration Work is less than or equal to twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property, then Landlord shall be deemed the "**Casualty Removal Winning Party**" under this subsection (6) and Tenant shall be deemed the "**Casualty Removal Losing Party**" under this subsection (6). In addition, in the event the arbitration is deemed concluded due to a failing party not timely delivering its estimate and appraisal as described in subsection (1), or a Casualty Removal Delinquent Party failing to pay its share of fees after written notice as described in subsection (3), such failing party or Casualty Removal Delinquent Party (as the case may be) shall be deemed the "**Casualty Removal Losing Party**" under this subsection (6), and the party that is not the failing party or Casualty Removal Delinquent Party (as the case may be) shall be deemed the "**Casualty Removal Winning Party**" under this subsection (6). Each party shall initially pay the fees and expenses of its legal counsel, appointed arbitrator, any written reports prepared by any appraiser in connection with its duties under this Schedule, one-half of the fees of the third arbitrator, and one-half the fees of the AAA (if applicable), provided, however, that the Casualty Removal Losing Party shall be obligated to reimburse the Casualty Removal Winning Party for all such fees and expenses of the arbitration paid by the Casualty Removal Winning Party promptly upon the completion of the arbitration procedure described in this Schedule.

SCHEDULE 4.03

Option Rights

1960 West Baseline Road, Phoenix, AZ (the “Property”)

That certain purchase option as disclosed in the **Memorandum of Site Development Agreement** dated May 29, 2007, by and between South Mountain Pavilion, LLC (“**Developer**”), as seller, and Fresh and Easy, as buyer, granting Developer the right to repurchase the Property under certain circumstances, as more fully disclosed in that certain Site Development Agreement between the parties.

Reverter Rights

691 3rd Ave, Chula Vista, CA

Those certain reverter rights as disclosed in that certain **Deed** recorded in Deed Book 919, Page 316, dated November 28, 1922, by Pacific Building Company (“**Pacific**”), as grantor, to Kate Schmelsel and Lulu C. Steen, as grantees, reserving to Pacific reverter rights in the Property under certain circumstances, as more fully disclosed in such Deed.

Those certain reverter rights as disclosed in that certain **Deed** recorded in Deed Book 908, Page 254, dated November 28, 1922, by Pacific Building Company (“**Pacific**”), as grantor, to E. Kelville, as grantee, reserving to Pacific reverter rights in the Property under certain circumstances, as more fully disclosed in such Deed.

685 E. Bonita Ave., San Dimas, CA

Those certain reverter rights as disclosed in that certain **Indenture** recorded in Deed Book 436, Page 293, dated April 28, 1888, by the San Jose Ranch Company (“**Ranch Co.**”), as grantor, to B.F. Chamberlain, as grantee, reserving to Ranch Co. reverter rights in the Property under certain circumstances, as more fully disclosed in the Indenture.

Those certain reverter rights as disclosed in that certain **Indenture** recorded in Deed Book 919, Page 170, dated January 15, 1894, by the San Jose Ranch Company (“**Ranch Co.**”), as grantor, to M.L. Torrey and A.A. Torrey, as grantees, reserving to Ranch Co. reverter rights in the Property under certain circumstances, as more fully disclosed in such Indenture.

SCHEDULE 22.05

UNOCCUPIED SPACE

Store	Mailing Address	City	State	Zip	Unoccupied Space (sf)
1275	691 3 rd Avenue	Chula Vista	CA	91910	2,049
1058	1400 S. Boulder Hwy.	Henderson	NV	89015	3,300

SCHEDULE 22.05

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SCHEDULE 29.08

ENVIRONMENTAL COVENANT

“SLO Environmental Covenant”

Landlord shall conduct a Phase II investigation to determine if Hazardous Materials are located at or emanating from the SLO Demised Property (the “**Remediation Property**”) and whether Remedial Activities to abate such Hazardous Materials are necessary, under the terms of Article 29 and as set forth below in this SLO Environmental Covenant.

If Landlord’s Phase II investigation identifies Hazardous Materials above unrestricted use standards, Tenant shall prepare a Phase II scope of work within thirty (30) days and submit the same to Landlord. Landlord shall review such Phase II scope of work proposal and provided comments within fifteen (15) days of receipt. Tenant shall revise the Phase II scope of work proposal to incorporate Landlord’s reasonable comments. If the Phase II workplan involves a self-directed clean-up, and if the reasonably projected time period to achieve the remedial action objectives is expected to exceed five (5) years, then Landlord’s comments respecting technologies or approaches to achieve the remedial action objectives more quickly shall be deemed reasonable, provided the cost is not materially greater (i.e., estimated at less than 25%). If the approach involves enrollment in a voluntary clean up program, or otherwise suggests resort to Governmental Authority oversight, then Landlord shall be entitled to communicate to the Governmental Authority its preferences, should Tenant not accept Landlord’s suggestions on the Phase II scope of work, but the Governmental Authority shall determine the final scope of work.

The Phase II work may be conducted iteratively, in phases. If the investigations document exceedances of unrestricted use screening standards, then Tenant shall diligently pursue such Remedial Activities as are necessary to achieve unrestricted use standards at the earliest practicable time, except as otherwise provided for in this environmental covenant. If groundwater is impacted above Maximum Contaminant Levels, the Remedial Activities shall include notice to the Regional Water Quality Control Board. Tenant may petition for closure under a commercial use standard with the applicable Governmental Authority, but if such Governmental Authority requires achievement of an unrestricted use standard then Tenant shall achieve that standard. If case closure under a commercial use standard is pursued by Tenant, Landlord shall be entitled to review prior to final approval any activity and use limitations and/or any proposed deed restrictions. Landlord may in its sole discretion refuse to consent to any activity and use limitations or deed notices which impose operations and maintenance obligations on current or future surface users of the Remediation Property. Landlord agrees that a prohibition on use of ground water underlying the Remediation Property is an acceptable onsite activity and use restriction.

Tenant shall diligently pursue to completion at its own expense all Remedial Activities mandated hereunder. If a Governmental Authority is exercising jurisdiction over any Remedial Activities, Tenant shall comply with all orders, or agreements and shall pay all oversight costs when due (subject to any right to contest the accuracy of such invoices), as applicable.

The Remedial Activities shall continue until the later of: (a) achievement of unrestricted use standards, including Maximum Contaminant Levels in ground water; or (b) if a Governmental Authority is exercising jurisdiction, until Tenant secures a “no further action” or “case closure” determination. Tenant may petition a Governmental Authority for case closure under a commercial use standard, but not if the Remedial Activities are self-directed (in which case unrestricted use standards shall be documented as achieved) and only if Landlord consents to such standard (as set forth above). Tenant bears the risk of Landlord’s refusal to consent to a less stringent standard than an unrestricted use standard and Landlord shall not be held liable for additional costs or time expended by Tenant to achieve an unrestricted use standard.

Landlord also may elect to pursue such Remedial Activities which Tenant fails to diligently

SCHEDULE 29.08

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pursue, or to timely complete, as required under this Schedule 29.08, or if Tenant fails to pursue or achieve an unrestricted use standard for all or any portion of the applicable Remediation Property when required by a Governmental Authority. Landlord may use funds under the Holdback Agreement respecting the Remediation Property to fund this work.

Tenant shall provide to Landlord periodic progress reports of Remedial Activities, and any other material Remedial Activities.

Tenant and its consultants shall comply with all applicable Laws, including Environmental Laws, and use due care in the conduct of the Remedial Activities. Tenant shall employ only experienced and reputable consultants. Landlord shall have the right to disapprove the first recommended consultant in its sole discretion, in which case Tenant shall suggest a second consultant. If Landlord disapproves the second consultant it shall set forth good cause for doing so, in which case Tenant shall recommend a third consultant, subject again to Landlord's disapproval only for good cause shown.

As between Landlord and Tenant, Tenant shall conduct all Remedial Activities at Tenant's sole cost and expense, excepting those Remedial Activities Landlord may conduct under this SLO Environmental Covenant using funds pursuant to the applicable Holdback Agreement. Tenant hereby agrees to repair and restore, at Tenant's sole cost and expense, damage caused by Tenant or its consultants pursuant to the Remedial Activities at and near the Remediation Property.

Tenant shall take all necessary actions and implement all protections necessary to ensure that all actions taken in connection with the Remedial Activities performed by Tenant (including its consultants) with respect to the Remediation Property and all equipment, materials and substances generated, used or brought onto the Remediation Property pose no threat to the safety of persons or the environment and cause no (unrepaired) damage to the Remediation Property, or to the property of other persons.

The obligations herein apply to offsite locations to the extent Remedial Activities are or must be conducted on the property of others by Tenant. Ground water underlying the Remediation Property shall be deemed part of the Remediation Property for purposes of the obligations herein, even if such ground water is owned by a third party.

Tenant shall be the generator of record for all wastes generated as a result of any Remedial Activities, and liable and responsible for all costs, fees, permits, taxes, oversight charges, associated with the Remedial Activities including, if necessary, payment of sums to access third party property to conduct or complete the Remedial Activities.

At the completion of any Remedial Activity by Tenant, Tenant shall cause its consultants to remove such equipment, wells, materials and wastes (if any) for proper offsite disposal and shall restore any affected portion of any of the Remediation Properties (and the property of others, if applicable) to the condition it was in prior to initiation of the Remedial Activities.

Tenant shall not permit any mechanic's or materialmen's liens or any other liens to attach to the Remediation Property by reason of the performance of any Remedial Activities. The provisions of this paragraph shall survive the termination of this SLO Environmental Covenant for period of one year.

Unless agreed in writing by the Parties, Tenant shall maintain, at its expense, and shall cause the approved consultant to maintain, at their expense, insurance coverages in the following amounts:

- (i) Worker's Compensation – Coverage A: statutory amount
Coverage B: Employer's Liability insurance:

SCHEDULE 29.08

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

\$500,000 Each Accident

- (ii) Commercial General Liability including contractual liability coverage, on an occurrence basis, including Bodily Injury and Property Damage Liability for the following limits:

General Aggregate	\$ 2,000,000
Each Occurrence	\$ 1,000,000
- (iii) Owned, Hired and Non-Owned Business Automobile liability insurance in an amount no less than \$1,000,000 per accident Combined Single Limit for bodily injury and property damage
- (iv) Umbrella Policy (Occurrence form with defense costs outside the limits): \$1,000,000 Each Occurrence/\$1,000,000 Aggregate Excess of the Employer's Liability, Commercial General Liability and Automobile Liability coverages on a following form basis, including coverage for Additional Insureds.

Within ten (10) days of the Effective Date, Tenant shall furnish Landlord with Certificates of Insurance. The insurance shall remain in effect until completion of all Remedial Activities required under this SLO Environmental Covenant.

This SLO Environmental Covenant shall remain in effect during the Lease Term.

Tenant and Landlord shall cooperate with each other in all reasonable respects so as to effectuate the implementation of this SLO Environmental Covenant.

The obligations under this SLO Environmental Covenant shall be governed by the laws of the State of California, including the applicable California Environmental Laws, and including Environmental Guidance Standards. The definition of the term "commercial use standards," or "unrestricted use standards" (also known as "residential use standards") shall be the most stringent of the applicable definitions used in Environmental Guidance Standards in use in the State of the SLO Demised Property, including Maximum Contaminant Levels for ground water, if the Remedial Activities are self-directed. If a Governmental Authority is exercising jurisdiction over the Remedial Activities, the Environmental Guidance Standards actually selected by the Governmental Authority shall be the applicable standards for that project. The foregoing sentence does not determine whether commercial use standards or unrestricted use standards apply at the SLO Demised Property, but only how the standards, once selected and determined to be applicable, are to be defined.

The covenants, promises and undertakings in this SLO Environmental Covenant are cumulative and in addition to all other obligations under the Lease, but remain subject to the terms of Article 29.

SCHEDULE 34.02**ADDITIONAL TENANT PROPERTIES***Real Estate Asset List*

Store #	Region	Mailing Address (USGN)	City	State	Zip Code (USGN)
ASSETS ON THE BALANCE SHEET					
• 19 FH Sites					
1078	Phoenix	3050 S. Dobson Rd.	Chandler	AZ	85248
1143	Phoenix	4588 South Higley Road	Gilbert	AZ	85297
1452	Las Vegas	4760 W. Cactus Ave.	Clark County	NV	89141
1025	Phoenix	10781 N Frank Lloyd Wright Blvd.	Scottsdale	AZ	85259
1023	Phoenix	2758 South Crismon Road	Mesa	AZ	85212
1035	Las Vegas	3220 S. Nellis Blvd.	Las Vegas	NV	89121
1069	Las Vegas	3053 N. Jones Blvd.	Las Vegas	NV	89108
1061	Phoenix	10725 W. Thomas Rd.	Avondale	AZ	85323
1316	San Francisco	4036 Lone Tree Way	Antioch	CA	94509
1017	Phoenix	3000 North Alma School Road	Chandler	AZ	85224-1470
1413	San Francisco	3141 Balfour Road	Brentwood	CA	94513
1042	Phoenix	1904 W. Glendale Ave.	Phoenix	AZ	85021
1240	Riverside	23735 Jackson Ave.	Murrieta	CA	92562
1482	Los Angeles	7500 Melrose Ave	Los Angeles	CA	90036
1139	Las Vegas	3489 E. Owens Avenue	Las Vegas	NV	89110
1281	Riverside	82-935 Avenue 48	Indio	CA	92201
1045	Phoenix	3232 E Guadalupe Rd	Gilbert	AZ	85234
1478	San Diego	1325 Plaza Blvd.	National City	CA	91950
1487	Ventura County	5955 Calle Real	Goleta	CA	93117

EXHIBIT A**LOCATION/ADDRESS/LEGAL DESCRIPTION OF DEMISED PROPERTIES**

Unit No.	Address	City	ST
1053	600 S. Green Valley Pkwy, NV	Henderson	Nevada
1449	2238 Broad St.	San Luis Obispo	California
1209	685 E. Bonita Ave.	San Dimas	California
1275	691 3 RD Avenue	Chula Vista	California
1024	1960 West Baseline Road	Phoenix	Arizona
1058	1400 S. Boulder Hwy	Henderson	Nevada
1462	21815 Hawthorne Blvd	Torrance	California

[LEGAL DESCRIPTIONS FOLLOW]

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

LEGAL DESCRIPTION

600 S. Green Valley Pkwy, Henderson, NV

Real property in the City of Henderson, County of Clark, State of Nevada, described as follows:

PARCEL I:

A PORTION OF PARCEL A OF "THE MACDONALD RANCH CENTER", A COMMERCIAL SUBDIVISION, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 94, PAGE 76 OF PLATS, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL A, SAID POINT ALSO BEING A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF HORIZON RIDGE PARKWAY (WIDTH VARIES); THENCE ALONG THE EAST LINE OF SAID PARCEL A, SOUTH 00° 47' 25" WEST, A DISTANCE OF 149.67 FEET;
THENCE DEPARTING SAID EAST LINE, NORTH 89° 40' 16" WEST, A DISTANCE OF 288.49 FEET;
THENCE NORTH 00° 19' 44" EAST, A DISTANCE OF 27.54 FEET;
THENCE NORTH 06° 22' 20" EAST, A DISTANCE OF 136.66 FEET;
THENCE NORTH 02° 00' 34" EAST, A DISTANCE OF 19.60 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID HORIZON RIDGE PARKWAY, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1229.40 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS NORTH 00° 47' 26" EAST;
THENCE EASTERLY ALONG SAID CURVE TO THE RIGHT AND SAID RIGHT-OF-WAY, AN ARC DISTANCE OF 277.34 FEET, THROUGH A CENTRAL ANGLE OF 12° 55' 31" TO THE POINT OF BEGINNING.

ALSO KNOWN AS LOT 1-D OF THE RECORD OF SURVEY RECORDED IN FILE 131 OF SURVEYS, PAGE 65, OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

EXCEPTING THEREFROM THOSE PORTIONS CONVEYED TO THE CITY OF HENDERSON BY DEED RECORDED JUNE 27, 2007 IN BOOK 20070627 AS INSTRUMENT NO. 0002008 OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

PARCEL II:

A PORTION OF PARCEL A OF "THE MACDONALD RANCH CENTER", A COMMERCIAL SUBDIVISION, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 94, PAGE 76 OF PLATS, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER (NW ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF SAID SECTION 29, SAME BEING THE CENTERLINE INTERSECTION OF HORIZON RIDGE PARKWAY (WIDTH VARIES) AND GREEN VALLEY PARKWAY (WIDTH VARIES);
THENCE ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER (NW ¼) COINCIDENT WITH THE CENTERLINE OF SAID HORIZON RIDGE PARKWAY, SOUTH 89° 12' 34" EAST, A DISTANCE OF 469.14 FEET;
THENCE DEPARTING SAID CENTERLINE, SOUTH 00° 47' 26" WEST, A DISTANCE OF 55.25 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID HORIZON RIDGE PARKWAY, SAID POINT ALSO BEING THE POINT OF BEGINNING.

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, NORTH 84° 47' 00" EAST, A DISTANCE OF 50.17 FEET;

EXHIBIT A

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(PORTFOLIO 1)

THENCE CONTINUING ALONG SAID SOUTHERLY LINE, SOUTH 89° 12' 34" EAST, A DISTANCE OF 215.98 FEET;
THENCE DEPARTING SAID SOUTHERLY LINE, SOUTH 02° 00' 34" WEST, A DISTANCE OF 19.60 FEET;
THENCE SOUTH 06° 22' 20" WEST, A DISTANCE OF 136.66 FEET;
THENCE SOUTH 00° 19' 44" WEST, A DISTANCE OF 27.54 FEET;
THENCE NORTH 89° 40' 16" WEST, A DISTANCE OF 168.06 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 115.00 FEET;
THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 19.30 FEET, THROUGH A CENTRAL ANGLE OF 09° 36' 50";
THENCE SOUTH 80° 42' 54" WEST, A DISTANCE OF 67.25 FEET;
THENCE NORTH 01° 06' 42" EAST, A DISTANCE OF 192.78 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID HORIZON RIDGE PARKWAY, SAID POINT ALSO BEING THE POINT OF BEGINNING.

ALSO KNOWN AS LOT 1-E OF THAT RECORD OF SURVEY RECORDED IN FILE 131 OF SURVEYS, PAGE 65, OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

EXCEPTING THEREFROM THOSE PORTIONS CONVEYED TO THE CITY OF HENDERSON BY DEED RECORDED JUNE 27, 2007 IN BOOK 20070627 AS INSTRUMENT NO. 0002008 OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

PARCEL III:

A NON-EXCLUSIVE EASEMENT FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AND DRAINAGE AND UTILITIES, AS SET FORTH IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS RECORDED JUNE 29, 2001 IN BOOK 20010629 AS INSTRUMENT NO. 01556 OF OFFICIAL RECORDS, CLARK COUNTY.

PARCEL IV:

NON-EXCLUSIVE EASEMENTS FOR INGRESS, EGRESS, ACCESS, PARKING, AND DRAINAGE AND UTILITIES, AS SET FORTH IN THAT CERTAIN "DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND GRANT OF EASEMENTS", RECORDED OCTOBER 18, 2007 IN BOOK 20071018 AS DOCUMENT NO. 0001228, OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA, AS AMENDED BY CERTAIN "FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND GRANT OF EASEMENTS" RECORDED DECEMBER 30, 2009 AS DOCUMENT NO. 200912300003150, OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

LEGAL DESCRIPTION

1400 S. Boulder Hwy, Henderson, NV

Real property in the City of Henderson, County of Clark, State of Nevada, described as follows:

PARCEL I:

A PORTION OF LOT ONE (1) OF BOULDER/RACETRACK (A COMMERCIAL SUBDIVISION) AS SHOWN IN BOOK 132, PAGE 88 OF PLATS ON FILE AT THE CLARK COUNTY, NEVADA RECORDERS OFFICE, LYING WITHIN THE SOUTHWEST QUARTER (SW ¼) OF SECTION 21, TOWNSHIP 22 SOUTH, RANGE 63 EAST, M.D.M., CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST WESTERLY CORNER OF SAID LOT ONE (1), BEING A POINT ON THE NORTHERLY RIGHT OF WAY OF BOULDER HIGHWAY;
THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT ONE (1) AND THE NORTHERLY RIGHT OF WAY OF SAID BOULDER HIGHWAY SOUTH 42° 45' 25" EAST, 754.23 FEET TO THE POINT OF BEGINNING;

THENCE DEPARTING THE SOUTHWESTERLY LINE OF SAID LOT ONE (1) AND THE NORTHERLY RIGHT OF WAY OF SAID BOULDER HIGHWAY NORTH 47° 14' 35" EAST, 415.00 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID LOT ONE (1);
THENCE ALONG SAID NORTHEASTERLY LINE SOUTH 42° 45' 25" EAST, 222.00 FEET;

THENCE DEPARTING SAID NORTHEASTERLY LINE SOUTH 47° 14' 35" WEST, 182.00 FEET;
THENCE SOUTH 42° 45' 26" EAST, 19.00 FEET;
THENCE SOUTH 47° 14' 35" WEST, 233.00 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT ONE (1) AND THE NORTHERLY RIGHT OF WAY OF SAID BOULDER HIGHWAY;
THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LOT ONE (1) AND THE NORTHERLY RIGHT OF WAY OF SAID BOULDER HIGHWAY NORTH 42° 45' 25" WEST, 241.00 FEET TO THE POINT OF BEGINNING.

BEING ALSO DESCRIBED AS "PARCEL TWO (2)" ON THAT CERTAIN RECORD OF SURVEY ON FILE IN FILE 164 OF SURVEYS, PAGE 2 RECORDED MARCH 09, 2007 IN BOOK 20070309 AS DOCUMENT NO. 0002284, OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED MARCH 18, 2009 IN BOOK 20090318 AS INSTRUMENT NO. 02427 OF OFFICIAL RECORDS.

PARCEL II:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, ACCESS AND PARKING FOR AND BY VEHICLES AND PEDESTRIANS AS SET FORTH IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND GRANT OF EASEMENTS RECORDED JULY 06, 2005 IN BOOK 20050706 AS INSTRUMENT NO. 0007247, OFFICIAL RECORDS, CLARK COUNTY, NEVADA AND AS AMENDED BY AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND GRANT OF EASEMENTS, RECORDED OCTOBER 06, 2006, BOOK 20061006, INSTRUMENT NO. 4254 OF OFFICIAL RECORDS AND BY SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND GRANT OF EASEMENTS, RECORDED JULY 20, 2007, BOOK 20070720, INSTRUMENT NO. 2478 OF OFFICIAL RECORDS.

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THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AND GRANT OF EASEMENTS RECORDED ON FEBRUARY 6, 2008, IN BOOK 20080206 AS DOCUMENT NO. 03026 ("UTILITIES", PER SECTION 3.2 OF THE DECLARATION).

DOCUMENT(S) DECLARING MODIFICATIONS THEREOF RECORDED JUNE 19, 2012 IN BOOK 20120619 AS INSTRUMENT NO. 02149 OF OFFICIAL RECORDS.

PARCEL III:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS SET FORTH IN AND SUBJECT TO THE TERMS, CONDITIONS, PROVISIONS AND RESTRICTIONS CONTAINED IN THAT CERTAIN UNRECORDED NEVADA DEPARTMENT OF TRANSPORTATION RIGHT OF WAY PERMIT NO. 89067, PERMIT DETAIL NO. 89068.

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

LEGAL DESCRIPTION

21815 Hawthorne Blvd., Torrance, CA

Real property in the City of Torrance, County of Los Angeles, State of California, described as follows:

Parcel A-1:

Parcel 3 of Parcel Map No. 2209, in the City of Torrance, County of Los Angeles, State of California, as shown on map filed in Book 32, Page 2 of Parcel Maps, in the Office of the County Recorder of said County, together with that 12.00 foot strip of land of Hawthorne Boulevard, directly adjoining said Parcel on the East, vacated by the City Council of the City of Torrance as per Resolution No. 77-171, a copy of which is recorded September 07, 1977, as Instrument No. 77-989176 of Official Records, bounded Northerly by the Easterly prolongation of the Northerly line of said Parcel and Southerly by the Easterly prolongation of the Southerly line of the Northerly 91.00 feet of said Parcel as it would pass with the legal conveyance of said land by operation of law.

Except all 100 percent of the oil, gas, petroleum and other hydrocarbon substances which lie below a plane parallel to and 500 feet below the natural surface of said parcel of land, without, however, any right to enter upon the surface of said land property to explore for, develop or remove said substances, but with full right to face locations outside the outer boundary of said real property, in and under or recoverable from said real property, as reserved in the deed from Del Amo Estate Company, a Corporation, by deed recorded January 14, 1964, as Instrument No. 4772, in Book D-2322, Page 605, Official Records.

Parcel A-2:

An easement for ingress and egress by foot, bicycle and motor vehicles as contained in a Corporation Grant Deed recorded June 28, 1968 as Instrument No. 500 of Official Records.

Parcel B: (Northern Easement)

An easement for pedestrian and vehicular ingress and egress and access and for the drainage of water over a portion of Parcel 2 of Parcel Map No. 2209, in the City of Torrance, County of Los Angeles, State of California, as per map filed in Book 32 Page 2 of Parcel Maps, together with the West 12.00 feet of that portion of Hawthorne Boulevard, as shown on said Parcel Map No. 2209, lying between the Easterly prolongation of the most Southerly line of said Parcel 2 and the most Northerly, Southerly line of said Parcel 2 as described in a deed recorded October 9, 2009 as Instrument No. 20091539683 of Official Records of said County, per the Easement Agreement dated June 3, 2011, and recorded June 3, 2011 as Instrument No. 20110770259, of Official Records.

Parcel C: (REA)

Easement for pedestrian and vehicular ingress and egress and access, utility facilities and drainage pursuant to Declaration of Covenants, Conditions and Restrictions and Grant of Easements dated June 3, 2011 and recorded June 3, 2011 as Instrument No. 20110770260, of Official Records.

APN: 7366-002-010

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

LEGAL DESCRIPTION

2238 Broad St., San Luis Obispo, CA

Real property in the City of San Luis Obispo, County of San Luis Obispo, State of California, described as follows:

Parcel One:

Parcel B of Parcel Map SLO 10-0030, in the City of San Luis Obispo, County of San Luis Obispo, State of California, according to map recorded December 30, 2010 in Book 74, Pages 76 and 77 of Parcel Maps.

Excepting therefrom all minerals and mineral rights, interest and royalties, including without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under said property; however, without the right for any purpose whatsoever to enter upon, into or through the surface of said property in connection therewith, as reserved in deed from Southern Pacific Transportation Company, a Delaware Corporation, recorded September 1, 1987 in Book 3041, Page 709 of Official Records.

Parcel Two:

Easements for ingress, egress and parking as described in that certain Reciprocal Easement Agreement recorded November 25, 2009 as Instrument No. 2009065483 , as affected by that certain Certificate of Acceptance recorded February 2, 2011 as Instrument No. 2011005839 of Official Records of San Luis Obispo County, California.

Parcel Three:

Easements for ingress, egress and parking as described in that certain Roadway and Parking Declaration and Development, Easement and Maintenance Agreement recorded November 25, 2009 as Instrument No. 2009065486 as amended by First Amendment to Roadway and Parking Declaration and Development, Easement and Maintenance Agreement recorded March 30, 2011 as Instrument No. 2011015450 of Official Records of San Luis Obispo County, California.

Parcel Four:

Easements for ingress, egress, parking and utilities as set forth in that certain Declaration of Covenants, Conditions and Restrictions and Grant of Reciprocal Easements recorded December 30, 2010 as Instrument No. 2010067110 as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions and Grant of Reciprocal Easements recorded April 23, 2013 as Instrument No. 2013023146 of Official Records of San Luis Obispo County, California.

APN: 004-845-011

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

LEGAL DESCRIPTION

685 E. Bonita Ave., San Dimas, CA

Real property in the City of San Dimas, County of Los Angeles, State of California, described as follows:

PARCEL 1:

LOT 3 OF TRACT NO. 69609, IN THE CITY OF SAN DIMAS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1366 PAGES 44 THROUGH 49 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

A RECIPROCAL AND APPURTENANT EASEMENT FOR ACCESS, PUBLIC UTILITIES AND INCIDENTAL PURPOSES TO BE USED IN COMMON WITH OTHERS OVER LOTS 1, 2, 4, 5 AND 6 AS SET FORTH ON THAT CERTAIN TRACT MAP NO. 69609 FILED IN BOOK 1366 PAGES 44 THROUGH 49 INCLUSIVE OF MAPS AND AS MODIFIED BY RESOLUTION RECORDED JULY 30, 2013 AS INSTRUMENT NO. 20131118021, OFFICIAL RECORDS.

PARCEL 3:

NON EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS BY VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM PUBLIC STREETS, VEHICULAR PARKING, SIGNS, WATER DRAINAGE SYSTEMS AND UTILITIES CONTAINED IN THAT CERTAIN DECLARATION OF RESTRICTIONS AND EASEMENTS FOR BONITA CANYON GATEWAY RECORDED JULY 27, 2011 AS INSTRUMENT NO. 20111000666, OFFICIAL RECORDS.

PARCEL 4:

NON EXCLUSIVE EASEMENTS FOR RECIPROCAL PARKING AND ACCESS CONTAINED IN THAT CERTAIN COVENANT AND AGREEMENT ESTABLISHING RECIPROCAL PARKING AND ACCESS AGREEMENT RECORDED MAY 31, 2011 AS INSTRUMENT NO. 20110751098, OFFICIAL RECORDS.

PARCEL 5:

A NON EXCLUSIVE EASEMENT FOR THE PURPOSE OF DISCHARGING STORM WATER AS SET FORTH IN THAT CERTAIN GRANT OF PRIVATE STORM DRAIN EASEMENT RECORDED AUGUST 23, 2013 AS INSTRUMENT NO. 20131239856, OFFICIAL RECORDS.

APN: 8390-013-023

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

LEGAL DESCRIPTION

691 3rd Avenue, Chula Vista, CA

Real property in the City of Chula Vista, County of San Diego, State of California, described as follows:

PARCELS 1:

PARCELS 1 AND 2 OF PARCEL MAP NO. 7831, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 15, 1978, AS FILE NO. 78-395472, TOGETHER WITH A PORTION OF LOT 14 IN QUARTER SECTION 139 OF CHULA VISTA, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 505, FILED IN SAID OFFICE OF THE COUNTY RECORDER, MARCH 13, 1888, DESCRIBED IN WHOLE AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 1;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 1 NORTH 71° 04' 01" EAST, 291.30 FEET TO THE EASTERLY LINE OF SAID PARCEL 1;

THENCE ALONG SAID EASTERLY LINE AND THE SOUTHERLY PROLONGATION THEREOF SOUTH 18° 58' 47" EAST, 150.00 FEET TO THE NORTHERLY LINE OF THE SOUTHERLY 100 FEET OF SAID LOT 14;

THENCE ALONG SAID NORTHERLY LINE SOUTH 71° 04' 01" WEST, 96.25 FEET TO THE EASTERLY LINE OF THE WESTERLY 195 FEET OF SAID LOT 14;

THENCE ALONG SAID EASTERLY LINE SOUTH 19° 00' 00" EAST, 100.00 FEET TO THE SOUTHERLY LINE OF SAID LOT 14;

THENCE ALONG SAID SOUTHERLY LINE SOUTH 71° 04' 01" WEST, 173.03 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 22.00 FEET, SAID POINT BEING THE MOST EASTERLY POINT IN THE BOUNDARY OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE CITY OF CHULA VISTA BY DEED RECORDED APRIL 29, 1976 AS FILE/PAGE NO. 76-129009 OF SAID OFFICIAL RECORDS;

THENCE ALONG SAID BOUNDARY NORTHWESTERLY 34.53 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89° 55' 59" TO THE WESTERLY LINE OF SAID LOT 14;

THENCE ALONG SAID WESTERLY LINE TANGENT FROM SAID CURVE NORTH 19° 00' 00" WEST, 228.03 FEET TO THE POINT OF BEGINNING.

THIS LEGAL DESCRIPTION IS PURSUANT TO "CERTIFICATE OF COMPLIANCE" RECORDED AUGUST 24, 2011 AS INSTRUMENT NO. 2011-0436610 OF OFFICIAL RECORDS.

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

PARCEL 2:

NORTHERLY 40.00 FEET OF THE WESTERLY 156.00 FEET OF THE EASTERLY 330.00 FEET OF THE SOUTHERLY 195.00 FEET OF LOT 14 IN QUARTER SECTION 139 OF CHULA VISTA, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 505, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 13, 1888.

PARCEL 3:

THE NORTHERLY 55.00 FEET OF THE WESTERLY 156.00 FEET OF THE EASTERLY 330.00 FEET OF THE SOUTHERLY 155.00 FEET OF LOT 14 IN QUARTER SECTION 139 OF CHULA VISTA, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 505, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 13, 1888.

EXCEPTING FROM THE ABOVE DESCRIBED PROPERTY THAT PORTION INCLUDED WITHIN THE SOUTHERLY 113.00 FEET OF THE WESTERLY 136.00 FEET OF THE EASTERLY 310.00 FEET OF SAID LOT 14.

APN: 573-250-19-00 (Affects Parcel 3), 573-250-20-00 (Affects Parcel 2), and 573-250-40-00 (Affects Parcel 1)

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

LEGAL DESCRIPTION

1960 West Baseline Road, Phoenix, AZ

Real property in the City of Phoenix, County of Maricopa, State of Arizona, described as follows:

PARCEL I:

LOT 4 OF FINAL PLAT OF "SOUTH MOUNTAIN PAVILION" FILED ON JANUARY 23, 2007 AS INSTRUMENT NO. 2007-0086732 IN BOOK 894, PAGE 49 OF MAPS IN THE OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL II:

EASEMENTS FOR PEDESTRIAN AND VEHICLE INGRESS AND EGRESS, UTILITIES, SIGNAGE, DRAINAGE AND OTHER PURPOSES AS SET FORTH IN THAT CERTAIN DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS RECORDED JANUARY 24, 2006 AS INSTRUMENT NO. 2006-0107885 OF OFFICIAL RECORDS AND AMENDMENT RECORDED AUGUST 21, 2006 AS INSTRUMENT NO. 2006-1107388 OF OFFICIAL RECORDS AND SECOND AMENDMENT RECORDED MAY 29, 2007 AS INSTRUMENT NO. 2007-0616274 OF OFFICIAL RECORDS AND CORRECTIVE SECOND AMENDMENT RECORDED DECEMBER 03, 2007 AS INSTRUMENT NO. 2007-1273702 OF OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA.

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

EXHIBIT B
FORM OF SNDA

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (“*Agreement*”) is entered into as of [____], 20[___] (the “*Effective Date*”) by and among [_____] (together with any other holder of the Loan (defined below) and their respective successors and assigns, the “*Mortgagee*”), [_____] a [_____] (hereinafter, the “*Tenant*”) and [_____] a [_____] (the “*Landlord*”), with reference to the following facts:

A. Landlord owns fee simple title in the real property described in Exhibit “A” attached hereto (the “*Property*”).

B. Mortgagee has made or intends to make a loan to Landlord (the “*Loan*”).

C. To secure the Loan, Landlord has or will encumber the Property by entering into a mortgage or deed of trust in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the “*Mortgage*”) to be recorded in land records.

D. Pursuant to the Lease dated [____], (the “*Lease*”) between Landlord and Tenant, Landlord leased to Tenant a portion of the Property, as said portion is more particularly described in the Lease (the “*Leased Premises*”).

E. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in the Property and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Mortgagee agree:

1. Definitions. The following terms shall have the following meanings for purposes of this agreement.

a. Foreclosure Event. A “*Foreclosure Event*” means: (i) foreclosure under the Mortgage; (ii) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which Mortgagee becomes owner of the Property; or (iii) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord’s interest in the Property in lieu of any of the foregoing.

b. Former Landlord. A “*Former Landlord*” means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

c. Offset Right. An “**Offset Right**” means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant’s payment of Rent or performance of Tenant’s other obligations under the Lease, arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

d. Rent. The “**Rent**” means any fixed rent, base rent or additional rent under the Lease.

e. Successor Landlord. A “**Successor Landlord**” means any party that becomes owner of the Property as the result of a Foreclosure Event.

f. Termination Right. A “**Termination Right**” means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

g. Other Capitalized Terms. If any capitalized term is used in this Agreement and no separate definition is contained in this Agreement, then such term shall have the same respective definition as set forth in the Lease.

2. Subordination. The Lease, as the same may hereafter be modified, amended or extended, shall be, and shall at all times remain, subject and subordinate to the Mortgage (but not to the terms thereof), the lien imposed by the Mortgage, and all advances made under the Mortgage. notwithstanding the foregoing, Mortgagee may elect, in its sole and absolute discretion, to subordinate the lien of the Mortgage to the Lease.

3. Nondisturbance, Recognition and Attornment.

a. No Exercise of Mortgage Remedies Against Tenant. So long as the Tenant is not in default under the Lease beyond any applicable grace or cure periods (an “Event of Default”), Mortgagee (i) shall not terminate or disturb Tenant’s possession of the Leased Premises or rights under the Lease, except in accordance with the terms of the Lease and (ii) shall not name or join Tenant as a defendant in any exercise of Mortgagee’s rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant’s rights under the Lease or this Agreement in such action.

b. Recognition and Attornment. Upon Successor Landlord taking title to the Property (i) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (ii) Tenant shall recognize and attorn to Successor Landlord as Tenant’s direct landlord under the Lease as affected by this Agreement; and (iii) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant. Tenant hereby acknowledges that pursuant to the Mortgage and assignment of rents, leases and profits, Landlord has granted to the Mortgagee an absolute, present assignment of the Lease and Rents

which provides that Tenant continue making payments of Rents and other amounts owed by Tenant under the Lease to the Landlord and to recognize the rights of Landlord under the Lease until notified otherwise in writing by the Mortgagee. After receipt of such notice from Mortgagee, the Tenant shall thereafter make all such payments directly to the Mortgagee or as the Mortgagee may otherwise direct, without any further inquiry on the part of the Tenant. Landlord specifically agrees that Tenant may conclusively rely upon any written notice Tenant receives from Mortgagee notwithstanding any claim by Landlord contesting the validity of any term or condition of such notice, including, but not limited to, any default claimed by Mortgagee, and that Landlord shall not make any claim of any kind whatsoever against Tenant or Tenant's leasehold interest with respect to any amounts paid to Mortgagee by Tenant or any acts performed by Tenant pursuant to such written notice and such amounts paid to Mortgagee shall be credited to amounts due under the Lease as if such amounts were paid directly to Landlord.

c. Further Documentation. The provisions of this Article 3 shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article 3 in writing upon request by either of them within ten (10) days of such request.

4. Protection of Successor Landlord. Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

a. Claims Against Former Landlord. Any Offset Right that Tenant may have against any Former Landlord, unless (i) such Offset Right arises after the date Mortgagee encumbers the Property with the Mortgage and (ii) Tenant shall have given written notice to Mortgagee of such Offset Right promptly upon Tenant's actual knowledge of the occurrence of the event(s) giving rise to such Offset Right. The foregoing shall not limit either (x) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of a Foreclosure Event or because of events occurring on or before the date of a Foreclosure Event, notice of which shall have been given to Mortgagee, or (y) Successor Landlord's obligation to correct any conditions that existed as of the date of a Foreclosure Event that violate Successor Landlord's obligations as landlord under the Lease.

b. Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of a Foreclosure Event and Tenant's receipt of notice of such Foreclosure Event other than, and only to the extent that, the Lease expressly required such a prepayment or such payment was delivered to Mortgagee or Successor Landlord.

c. Security Deposit; Representations and Warranties. Any obligation (i) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee or Successor Landlord; or (ii) arising from a breach by Former Landlord of representations and warranties contained in the Lease; or (iii) without in any way superceding subsection (a) above, to pay Tenant any sum(s) accrued prior to Successor Landlord becoming

owner of the Property and owed to Tenant by Former Landlord, unless actually paid over to Successor Landlord.

d. Modification, Amendment or Waiver. Any modification or amendment of the Lease, or any waiver of the terms of the Lease, made without Mortgagee's written consent (which consent shall not be unreasonably withheld, conditioned or delayed), excepting, however, commercially reasonable non-material amendments or modifications of the Lease (for the avoidance of doubt, such non-material modifications do not include any changes in the rights of any "Lender" as such term is defined in the Lease, reductions in rent, reductions in length of term, imposition of material obligations on Landlord or material reductions of the obligations of Tenant under the Lease) which are the result of good faith, arm's length negotiations between Landlord and Tenant and of which Mortgagee receives prompt notice together with a copy of such amendment.

e. Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

5. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor landlord's (or its successors' or assigns') interest, if any, in the Property from time to time, including insurance and condemnation proceeds, security deposits, escrows, Successor Landlord's interest in the Lease, and the proceeds from any sale, lease or other disposition of the Property (or any portion thereof) by Successor Landlord (collectively, the "***Successor Landlord's Interest***"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord. Nothing set forth in this paragraph shall be construed to limit Tenant's equitable remedies, including specific performance and injunctive relief.

6. Casualty and Condemnation. Mortgagee agrees that, notwithstanding any provision of the Mortgage or any instrument secured by the Mortgage, any insurance proceeds and any condemnation awards which may be received by any party hereto and which relate to the Property shall be used or disbursed in accordance with the terms of the Lease.

7. Mortgagee's Right to Cure. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Offset Right or Termination Right:

a. Notice to Mortgagee. Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "***Default Notice***") and, thereafter, the opportunity to cure such breach or default as provided for below.

b. Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and, without limiting anything contained in Section 4(a) above, shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing. In addition, as to any breach or default by Landlord the cure of which requires possession and control of the Property, if Mortgagee undertakes such cure or causes such cure to be commenced by a receiver within the period permitted by this paragraph, and so long as Mortgagee continues to or causes a receiver to diligently and in good faith cure such breach or default, Mortgagee's cure period shall continue for such additional time as Mortgagee may reasonably require to either (i) obtain possession and control of the Property with due diligence and thereafter cure the breach or default with reasonable diligence and continuity; or (ii) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default. Nothing set forth in this paragraph shall limit Tenant's offset rights or rights to cure a breach or default and receive any reimbursement to which it is entitled under the Lease.

8. Miscellaneous.

a. Notices. Any notice or request given or demand made under this Agreement by one party to the other shall be in writing, and may be given or be served by hand delivered personal service, or by depositing the same with a reliable overnight courier service or by deposit in the United States mail, postpaid, registered or certified mail, and addressed to the party to be notified, with return receipt requested or by telefax transmission, with the original machine-generated transmit confirmation report as evidence of transmission. Notice deposited in the mail in the manner hereinabove described shall be effective from and after the expiration of three (3) days after it is so deposited; however, delivery by overnight courier service shall be deemed effective on the next succeeding business day after it is so deposited and notice by personal service or telefax transmission shall be deemed effective when delivered to its addressee or within two (2) hours after its transmission unless given after 3:00 p.m. on a business day, in which case it shall be deemed effective at 9:00 a.m. on the next business day. For purposes of notice, the addresses and telefax number of the parties shall, until changed as herein provided, be as follows:

(a) If to the Mortgagee, at:

and

(b) If to the Tenant, at:

and:

b. Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

c. Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

d. Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage.

e. Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If a Foreclosure Event occurs, then all rights and unaccrued obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement or under the Lease.

f. Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of New York, excluding such State's principles of conflict of laws.

g. Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

h. Due Authorization. Tenant represents to Mortgagee that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions. Mortgagee represents to Tenant that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

i. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Mortgagee, Tenant and Landlord have caused this Agreement to be executed as of the date first above written.

MORTGAGEE:

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

TENANT:

EXHIBIT B

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

LANDLORD:

MORTGAGEE'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

EXHIBIT B

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

TENANT'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

EXHIBIT B

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

LANDLORD'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

EXHIBIT B

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

LIST OF EXHIBITS

If any exhibit is not attached hereto at the time of execution of this Agreement, it may thereafter be attached by written agreement of the parties, evidenced by initialing said exhibit.

Exhibit "A" - Legal Description of the Land

EXHIBIT B

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

EXHIBIT C

FORM OF TENANT'S ESTOPPEL CERTIFICATE

The undersigned, _____, whose address is _____
_____ represents and certifies as follows:

1. The undersigned is the tenant ("**Tenant**") under that certain Master Land and Building Lease dated _____ with _____ as Landlord (the "**Lease**"), covering the properties described therein (collectively the "**Demised Properties**"), a true and correct copy of which (together with all amendments thereof) is attached hereto as Exhibit A. [Tenant understands that _____ ("**Secured Party**") intends to enter into financing arrangements with Landlord, as borrower, to be secured, among other things, by certain mortgages, deeds of trust and assignments of leases and rents, as amended, covering the Demised Properties.]

2. The Lease constitutes the only agreement, promise, understanding or commitment (either written or oral) Tenant has with respect to the Demised Properties and any right of occupancy or use thereof, except as follows:

3. The Lease is in full force and effect and has not been assigned, subleased, supplemented, modified or amended, in whole or in part, except as follows:

4. Tenant has not given Landlord any notice of termination under the Lease.

5. Tenant took possession of the Demised Properties on or about _____, _____, and commenced paying rent on or about _____, _____. Tenant presently occupies the Demised Properties, is open for business and operating at all of the Demised Properties, and is paying rent on a current basis. No rent has been paid by Tenant in advance except for the monthly rental that becomes due on _____, and no deposits, including security deposits and prepayments of rent, have been made in connection with the Lease.

6. The monthly base rental is the sum of _____ Dollars (\$_____). Landlord has not agreed to reimburse Tenant for or to pay Tenant's rent obligation under any other lease.

7. The Lease term commenced on _____, expires on _____, and there are no options to renew except: _____.

EXHIBIT C

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

8. To the best knowledge of Tenant, there are no defaults under the Lease by Landlord, nor have any events occurred that with the passage of time or giving of notice or both, will result in any such default, except as follows: _____ . To the best knowledge of Tenant, Tenant does not presently have (nor with the passage of time or giving of notice or both will have) any offset, charge, lien, claim, termination right or defense under the Lease.

9. Tenant has no right of first offer, right of first refusal, or option to purchase, with respect to all or any portion of any Demised Properties[.], except as set forth in Article [] of the Lease].

10. Tenant is aware that Landlord and the other addressees hereto[, including Secured Party,] intend to rely upon this Certificate and the statements set forth herein and that the statements and facts set forth above shall be binding on Tenant to the extent of such reliance by Landlord and any other addressee hereto; provided, however, that Tenant's liability shall be limited to being estopped from claiming that its statements in this Certificate are not accurate (subject to, as applicable, the "best knowledge" limitations expressly set forth in this Certificate).

11. To the best of Tenant's knowledge, Tenant is not entitled to any concession or rebate of rent or other charges from time to time due and payable under the Lease, except as expressly set forth in the Lease, and there are no unpaid or unreimbursed construction allowances or other offsets due Tenant under the Lease.

12. To the best of Tenant's knowledge and belief, there are no rental, lease or similar commissions payable with respect to the Lease.

13. Any notices to be provided hereunder shall be provided pursuant to the notice provisions of the Lease.

14. Tenant and the persons executing this Certificate on behalf of Tenant have the power and authority to execute and deliver this Certificate, thereby binding Tenant.

IN WITNESS WHEREOF, Tenant has executed this Certificate this ____ day of _____, 20____.

"TENANT"

a _____

By: _____
Name: _____
Title: _____

EXHIBIT C

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

EXHIBIT D

FORM OF MEMORANDUM OF LEASE

(Above space reserved for recorder and recording information)

This instrument prepared by and
after recording return to:

Pircher, Nichols & Meeks
1925 Century Park East
Suite 1700
Los Angeles, California 90067-2512
Attention: Real Estate Notices (SAH
#5602.3)
Facsimile: 310-201-8922

MEMORANDUM OF LEASE AND RIGHT OF FIRST OFFER

This Memorandum of Lease and Right of First Offer is made and entered into as of _____,
_____, _____ by and between _____, a _____ ("**Landlord**"), and
_____, a _____, whose address is _____ ("**Tenant**"),
who agree as follows:

1. Terms and Premises. Pursuant to a certain Master Land and Building Lease (the "**Lease**") dated on or about the date hereof entered into between Landlord and Tenant, Landlord has leased to Tenant and Tenant has leased from Landlord that certain real property, together with all the improvements thereon and appurtenances thereunto belonging (the "**Premises**"), more particularly described on Exhibit "A" attached hereto and incorporated herein, for a term of [_____] ([____]) YEARS from _____, _____, expiring on _____, _____. Tenant has [_____] ([____]) [____]-year options to extend the term of the Lease, all as more particularly set forth in the Lease. Tenant has a right of first offer to purchase the Premises, as more particularly set forth in the Lease.

2. Purpose of Memorandum of Lease. This Memorandum of Lease is executed and recorded to give public notice of the Lease between the parties and all terms and conditions of the Lease are incorporated by reference into this Memorandum and this Memorandum of Lease does not modify the provisions of the Lease. If there are any conflicts between the Lease and this Memorandum of Lease, the provisions of the Lease shall prevail. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any term not defined herein shall have the meaning as set forth in the Lease.

EXHIBIT D

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

[SIGNATURES AND ACKNOWLEDGMENTS ON NEXT PAGE]

EXHIBIT D

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

LANDLORD:

TENANT:

_____,
a _____

_____,
a _____

By: _____

By: _____

Date: _____

Date: _____

Signed, sealed, and delivered this _____
day of _____, _____ in the presence of:

Signed, sealed, and delivered this _____
day of _____, _____ in the presence of:

Witness

Witness

Notary Public, County of _____,
State of _____

Notary Public, County of _____,
State of _____

My commission expires: _____

My commission expires: _____

(Notary Seal)

(Notary Seal)

[SIGNATURES CONTINUE ON NEXT PAGE]

EXHIBIT D

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

EXHIBIT "A"

EXHIBIT D

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

EXHIBIT E

FORM OF LANDLORD ASSIGNMENT LEASE AGREEMENT

(See Attached)

EXHIBIT E

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

LAND AND BUILDING LEASE

between

[____],
a [____],

as LANDLORD

and

[____],
a [____]

as TENANT

[____][____], **2013**

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LAND AND BUILDING LEASE

THIS LAND AND BUILDING LEASE (this "**Lease**") is made and entered into as of [_____] [____], 2013 (the "**Commencement Date**"), by and between [_____] a [_____] ("**Landlord**") and [_____] a [_____] ("**Tenant**").

RECITALS

A. Landlord owns (i) good and indefeasible title in fee simple to the land described on Exhibit A attached hereto (the "**Land**"); and (ii) all improvements and other structures located on the Land; any rights of way, easements, parking covenants, entitlements, privileges and other rights appurtenant to the Land, including regarding any street adjoining any portion of the Land and any air and development rights related to the Land and any and all fixtures at or on the Land, including all of the machinery, equipment and systems at or on any of the Land (collectively, "**Building Equipment**"), including, without limitation, the following (but specifically excluding any of the following that are not "fixtures" pursuant to applicable Law): built-in equipment; elevators; escalators; compressors; appliances; engines; electrical, telecommunications, plumbing, heating and lighting (including emergency lighting) fixtures, systems and equipment; radio frequency identification fixtures, systems and equipment; ventilating, and air conditioning fixtures, systems and equipment; data and other storage fixtures, systems and equipment; security fixtures, systems and equipment; fire sprinklers and fire suppression fixtures, systems and equipment; private telephone fixtures, systems and equipment; security cameras, systems and other equipment; paging and sound fixtures, systems and equipment; cleaning fixtures, systems and equipment; walk-in coolers and grill hoods; built-in sinks; built-in shelving; awnings, and supports for signs (all of the foregoing in this clause (ii), collectively, "**Improvements**"). The Land and all Improvements thereon are collectively referred to herein as the "**Demised Property**."

B. The personal property, trade fixtures and equipment owned or leased by Tenant located at the Demised Property and used in connection with the operation of the business at the Demised Property (other than the Building Equipment) are referred to herein collectively as the "**Tenant Equipment**."

C. Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, the Demised Property so that Tenant may, in accordance with and subject to the terms, conditions and restrictions of this Lease, operate (or cause the operation of) a grocery store or another Permitted Use at the Demised Property.

NOW, THEREFORE, in consideration of the lease of the Demised Property and the rents, covenants and conditions herein set forth, and with reference to the definitions of various terms used herein as set forth on Schedule 1 hereto, Landlord and Tenant do hereby covenant, promise and agree as follows:

ARTICLE 1 DEMISE OF PREMISES

Subject to the terms and conditions contained herein, Landlord does hereby lease unto Tenant, and Tenant does hereby hire from Landlord, for the term hereinafter provided in Article 2, the Demised Property for the use thereof by Tenant, Tenant's employees, customers and invitees.

ARTICLE 2 TERM

Section 2.01

(a) This Lease shall commence on the Commencement Date and terminate on [_____], 2033 (the “**Original Lease Term**”) unless sooner terminated as hereinafter set forth. The “**Lease Term**,” as such term is used herein, means the Original Lease Term as extended (or as may be extended) pursuant to Section 2.02 below, unless sooner terminated as hereinafter set forth.

(b) This Lease shall be deemed to be in full force and effect upon the Commencement Date. Tenant shall be deemed in possession of the Demised Property upon the Commencement Date.

Section 2.02

(a) Tenant shall have the option to extend the term of this Lease for up to three (3) separate option periods upon and subject to the terms set forth below in this Section 2.02. The first option period (the “**First Option Period**”) shall commence at the expiration of the Original Lease Term. The second option period (the “**Second Option Period**”) shall commence at the expiration of the First Option Period. The third option period (the “**Third Option Period**”) shall commence at the expiration of the Second Option Period. The First Option Period, the Second Option Period and the Third Option Period are sometimes referred to herein collectively as the “**Option Periods**” and individually as an “**Option Period**.” Each of the First Option Period and the Second Option Period shall continue for a period of five (5) years from and after the commencement date of such Option Period, and the Third Option Period shall continue for a period of three (3) years from and after the commencement date of such Option Period. Except as otherwise expressly provided herein, all of the terms and conditions of this Lease applicable to the Original Lease Term shall continue to apply during each Option Period. In no event shall Tenant have any options to extend the term of this Lease except as expressly provided herein. A notice delivered by Tenant to Landlord in order to extend the term of this Lease for any Option Period pursuant to the terms hereof is referred to herein as an “**Extension Notice**”.

(b) To validly extend the Lease Term for the First Option Period for the Demised Property at the date of Tenant’s delivery to Landlord of an Extension Notice for the First Option Period (i) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the Original Lease Term and not later than ten (10) months prior to the expiration of the Original Lease Term, and (ii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the First Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease.

(c) To validly extend the Lease Term for the Second Option Period for the Demised Property at the date of Tenant’s delivery to Landlord of an Extension Notice for the Second Option Period (i) Tenant must have validly extended this Lease for the First Option Period, (ii) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the First Option Period and not later than ten (10) months prior to the expiration of the First Option Period, and (iii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the Second Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease.

(d) To validly extend the Lease Term for the Third Option Period for the Demised Property at the date of Tenant's delivery to Landlord of an Extension Notice for the Third Option Period (i) Tenant must have validly extended this Lease for the Second Option Period, (ii) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the Second Option Period and not later than ten (10) months prior to the expiration of the Second Option Period, and (iii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the Third Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease.

(e) Without limiting anything contained in Section 36.02 hereof, time is of the strictest essence in the performance of each provision of this Section 2.02. Either party, upon request of the other, shall execute and acknowledge, in form suitable for recording, an instrument confirming any Option Period, with Tenant paying all applicable recording costs.

ARTICLE 3 RENT

Section 3.01 Rent. Tenant shall pay all Base Rent and Additional Rent, from and after the Commencement Date and thereafter throughout the Lease Term, without offset, deduction, or abatement, except as may be otherwise expressly provided herein. Notwithstanding the foregoing, any amounts due by Tenant to Landlord hereunder for which no due date is expressly specified herein shall be due within twenty-five (25) days following the delivery to Tenant by Landlord of written notice of such amounts due. Except as otherwise expressly provided herein, in the event of nonpayment by Tenant of any Rent, Landlord shall have the same rights and remedies in respect thereof regardless of whether such Rent is Base Rent or Additional Rent. All payments of Rent due to Landlord shall be paid to Landlord (at its election from time to time) in one of the following manners: (a) by electronic deposit into an account designated by Landlord (a "**Landlord's Account**"), (b) by mail at Landlord's address set forth in Article 17, or (c) by mail to any other place in the United States designated by Landlord upon at least thirty (30) days' prior written notice to Tenant.

Section 3.02 Base Rent.

(a) The following terms shall have the following meanings:

(i) "**Base Date**" means (A) if the Commencement Date is the first day of a calendar month, the Commencement Date, and (B) if the Commencement Date is other than the first day of a calendar month, the first day of the first calendar month occurring after the Commencement Date.

(ii) "**Adjustment Dates**" means, collectively, each anniversary of the Base Date.

(iii) "**Base Rent Escalation**" means one and one-half percent (1.5%).

(b) The base rent amount for the Demised Property for each month of the Lease Term shall be [\$ _____], as increased as hereinafter provided ("**Base Rent**"). Tenant shall pay to Landlord Base Rent, in advance, without demand therefor, on or before the first day of each and every calendar month during the Lease Term and if the Commencement Date is not the first day of a calendar month, Tenant shall pay to Landlord pro-rated Base Rent on the Commencement Date for the partial calendar month in which the Commencement Date occurs.

(c) Subject to the terms of Section 3.02(d) below, on each of the Adjustment Dates, the Base Rent shall increase by the Base Rent Escalation.

Section 3.03 Additional Rent.

(a) If by applicable Law, any general or special assessment or like charge may be paid in installments without any penalty whatsoever, then such assessment may be paid in such installments and Tenant shall only be liable for the portion thereof that is allocable or attributable to the Lease Term or any portion thereof. If such assessment or charge may be payable in installments with interest, Tenant may pay such assessment or charge in installments, together with all interest thereon.

(b) Tenant shall pay all Real Estate Taxes directly to the collecting authority no less than five (5) days prior to the delinquency date thereof and shall provide Landlord not less than three (3) Business Days prior to such delinquency date written evidence of payment in full reasonably acceptable to Landlord. Nothing in this Lease shall obligate Tenant to pay any estate, inheritance, franchise, net income or similar taxes of Landlord (other than any rental taxes imposed upon the Landlord that are measured by or based in whole or in part directly upon the Rent payable under this Lease, whether existing at the date hereof or hereinafter imposed by any Governmental Authority) nor shall any of same be deemed Real Estate Taxes, unless the same shall be specifically imposed in substitution for, or in lieu of, Real Estate Taxes. Notwithstanding the first sentence of this clause (b), upon the occurrence of both of the following events, Tenant shall pay Real Estate Taxes to Landlord no less than thirty (30) days prior to the delinquency date thereof in lieu of payment directly to the applicable collecting authority: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) the occurrence and continuance of any Default under this Section 3.03(b) by Tenant, or the occurrence and the continuance of any Event of Default under any provision in this Lease. Real Estate Taxes paid by Tenant to Landlord pursuant to this Section shall be used only for the payment of the Real Estate Taxes. If Tenant fails to pay the appropriate party (Landlord or the collecting authority, as provided herein) all Real Estate Taxes when due hereunder, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and all penalties or interest, or portion thereof, paid or incurred by Landlord as a result of such nonpayment or late payment by Tenant. Without limitation of the foregoing, Tenant shall deposit with Landlord no later than thirty (30) days prior to the end of the Lease Term an amount sufficient to pay unpaid Real Estate Taxes and other accrued liabilities that will encumber the Demised Property after the end of the Lease Term to the extent that Real Estate Taxes and such other liabilities have accrued and will accrue through the end of the Lease Term. Landlord shall segregate all such deposits from its other funds and use such deposits solely to pay such accrued liabilities as they come due.

(c) [Provided a Landlord assignment results in a reassessment of the Demised Property (a "**Reassessment**") for real estate tax purposes by the appropriate government authority under the terms of Proposition 13 (as adopted by the voters of the State of California in the June 1978 election), Tenant shall not be liable for any increase in Real Estate Taxes solely attributable to such assignment and Reassessment. For the avoidance of doubt, Tenant shall be liable for any increase in Real Estate Taxes that would have resulted absent any assignment and Reassessment.]¹

(d) Tenant shall have the right to undertake an action or proceeding against the applicable collecting authority seeking an abatement of Real Estate Taxes or a reduction in the valuation of the Demised Property and/or contest the applicability of any Real Estate Taxes (including, without

¹ For California only

limitation, a reduction in the value of the Demised Property if located in California under the terms of Proposition 8 (as adopted by the voters of the State of California in the November 1978 election)); provided, however, that Tenant delivers to Landlord prior written notice of any such action or proceeding by Tenant, and that Tenant has paid timely (and continues to pay timely) all Real Estate Taxes as provided in this Lease to the extent required by applicable Law. In any instance where any such permitted action or proceeding is being undertaken by Tenant, (i) Landlord shall cooperate reasonably with Tenant, at no cost or expense to Landlord, and execute any and all documents approved by Landlord and reasonably required in connection therewith and (ii) Tenant shall provide Landlord with all information reasonably requested by Landlord with respect to such action or proceeding within five (5) days after receipt of Landlord's written request. Tenant shall be entitled to any refund (after the deduction therefrom of all expenses incurred by Landlord in connection therewith) of any Real Estate Taxes (including penalties or interest thereon) received by Tenant or Landlord, whether or not such refund was a result of actions or proceedings instituted by Tenant, to the extent such refund relates to Real Estate Taxes actually paid by Tenant to Landlord or the collecting authority, as applicable.

(e) Tenant shall be solely responsible for, and shall pay directly to the applicable service providers, the cost of all utility services provided to the Demised Property throughout the Lease Term. Notwithstanding the foregoing, upon the occurrence of both of the following events, Tenant shall pay to Landlord the cost of any and all utility services provided to the Demised Property in lieu of payment directly to the applicable service providers: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) any Default under this Section 3.03(d) by Tenant, or any Event of Default. Funds paid by Tenant to Landlord pursuant to the immediately preceding sentence shall be used only for the payment of the cost of utility services to the Demised Property. If Tenant fails to pay the appropriate party (Landlord or the service providers, as provided herein) all such costs when due hereunder, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and all penalties or interest, or portion thereof, paid or incurred by Landlord as a result of such nonpayment or late payment by Tenant.

(f) Without limiting any of Tenant's other obligations set forth in this Article, Tenant shall pay to Landlord, with each payment due to Landlord hereunder (and as a part of Rent due hereunder), all sales and excise tax on rental income and all other similar taxes imposed upon Landlord with respect to rental or other payments under this Lease (including Real Estate Taxes paid to Landlord pursuant to Section 3.03(b), or directly to the applicable taxing authority, in each case to the extent deemed includible in Landlord's gross income or gross receipts) in the nature of a gross receipts tax, gross income tax, margins tax, sales tax, occupancy tax, occupation tax, commercial activity tax, commercial rents tax, business and occupation tax, privilege tax or the like, whether imposed by a federal, state or local taxing authority (but, for purposes of clarity, not including any tax imposed on net income or any franchise taxes of Landlord measured by net income or net worth), which, when added to such payment, shall yield to Landlord after deduction of all such tax payable by Landlord with respect to all such payments a net amount which Landlord would have realized from such payment had no such tax been imposed. To the extent permitted by applicable Law, Tenant may pay any such tax directly to the taxing authority, provided Tenant establishes such right to Landlord's satisfaction prior to making any such payment, and Tenant within ten (10) days after any such payment delivers to Landlord written evidence satisfactory to Landlord that such payment has been made.

(g) Any indemnity payments due to Landlord from Tenant hereunder that are attributable to liabilities, fixed or contingent, known or unknown (i) that existed as of the date hereof, or relate to periods prior to and including the date hereof, or (ii) to which the Demised Property was subject as of the date hereof, or that existed on the date hereof and ran with the Demised Property and became a

liability of the Landlord as the transferee or assignee of the previous owner of the Demised Property, shall not be treated as additional rent or other gross income of the Landlord for federal income tax purposes, but as an adjustment to the Landlord's adjusted basis in the Demised Property, which adjusted basis shall prior to the receipt by Landlord of such indemnity payments be deemed to include the amount of such liabilities. Tenant agrees that it will take no position inconsistent herewith for federal income tax purposes.

ARTICLE 4 USE

Section 4.01 Tenant's use of the Demised Property shall be limited to use as a grocery store or other Permitted Use, and Tenant shall not suffer or permit any Person (including any subtenant) to use the Demised Property for another purpose (and the Demised Property shall be used for no other purpose), without the prior written approval of Landlord, which approval may be granted or withheld in the reasonable discretion of Landlord.

Section 4.02 Notwithstanding any other provision of this Article, Tenant shall not use, or suffer or permit any Person (including any subtenant) to use, the Demised Property or any portion thereof for any purpose in violation of any applicable Law, or in violation of any warranties or guaranties, or in violation of any covenants or restrictions of record in effect as of the date of this Lease and any other covenants or restrictions of record encumbering the Demised Property during the Lease Term, provided such other covenants or restrictions of record are consented to by Tenant (such consent not to be unreasonably withheld, conditioned or delayed) or, without limiting any of the express terms of this Lease, caused by Tenant. From the Commencement Date and thereafter throughout the Lease Term, Tenant shall conduct its business in a commercially reasonable and reputable manner with respect to the Demised Property and in compliance with the terms and provisions of this Lease. The character of the occupancy of the Demised Property is an additional consideration and a material inducement for the granting of this Lease by Landlord to Tenant.

Section 4.03 [Without limiting the foregoing covenants in this Article 4, Tenant hereby agrees that it shall not cause any event or circumstance that triggers any purchase right, termination right, recapture right or option regarding the Demised Property set forth on Schedule 4.03, provided, however, that with respect to the "Reverter Rights" identified on Schedule 4.03, Tenant shall not be in breach of the foregoing covenant unless such rights are actually exercised. For the avoidance of doubt, Tenant shall not be in breach of the foregoing covenant in this Section by reason of any action of Landlord.][ONLY FOR APPLICABLE PROPERTIES]

Section 4.04 Without limitation, no provision of this Article 4 shall limit any of the covenants of Tenant contained in Article 22.

ARTICLE 5 PERFORMANCE OF OBLIGATIONS; ACCEPTANCE OF DEMISED PROPERTY

Tenant hereby represents, warrants and covenants to Landlord that Tenant has the right and lawful authority to enter into this Lease and perform Tenant's obligations hereunder. Landlord hereby represents, warrants and covenants to Tenant that Landlord has the right and lawful authority to enter into this Lease and perform Landlord's obligations hereunder. Tenant acknowledges that it has had access to the Demised Property prior to execution of this Lease and has had the opportunity to perform all tests, studies, inspections and investigations (including any investigations regarding zoning and use issues regarding the Demised Property) and has in fact evaluated the Demised Property to the extent required for

its operations, that it desires, and that Tenant is accepting the Demised Property in its AS IS condition existing on the date Tenant executes this Lease. Tenant hereby accepts the Demised Property in its condition as of the date of possession hereunder, subject to all applicable Law, as well as private easements and restrictions, governing and regulating the use, operation or maintenance of the Demised Property, whether or not of record (collectively, the “**Diligence Matters**”), and accepts this Lease subject thereto and to all matters disclosed hereby, and by any exhibits attached hereto. Tenant waives to the fullest extent allowed by Law any rights to notice by Landlord regarding the condition of the Demised Property, whether at law or in equity, and hereby waives any rights and remedies thereunder based in any alleged or actual failure of Landlord to provide any such notices. Tenant acknowledges that (a) neither Landlord nor any of its Affiliates has made any representation or warranty as to the suitability of the Demised Property for the conduct of the Tenant’s business and (b) Tenant is entering into this Lease solely on the basis of its own investigations and familiarity with the Demised Property and not on the basis of any representation, warranty, covenant, agreement, undertaking, promise, statement, arrangement or understanding by, on behalf of, or with, Landlord or any of its Affiliates, except as expressly set forth in this Lease.

ARTICLE 6 ALTERATIONS

Subject to the provisions of this Article 6, Tenant shall have no right to make alterations or additions to the Improvements (collectively, “**Alterations**”) at the Demised Property that (i) involve structural changes (unless otherwise approved by Landlord), (ii) would reduce the value of the Improvements as they existed prior to the time that said Alterations are made; or (iii) would adversely affect the structural integrity of the Improvements. Tenant shall not install any underground storage tanks and any above ground storage tanks shall include secondary containment sufficient to prevent spills, overfills or tank ruptures from causing a release to the environment. Any and all Alterations made by Tenant shall be at Tenant’s sole cost and expense. Prior to the commencement of construction, Tenant shall deliver promptly to Landlord detailed cost estimates for any such proposed Alterations, as well as all drawings, plans and other information regarding such Alterations (such estimates, drawings, plans and other information are collectively referred to herein as the “**Alteration Information**”). Landlord’s review and/or approval (if required) of any Alteration Information shall in no event constitute any representation or warranty of Landlord regarding (x) the compliance of any Alteration Information with any applicable Law, (y) the presence or absence of any defects in any Alteration Information, or (z) the safety or quality of any of the Alterations constructed in accordance with any plans or other Alteration Information. Landlord’s review and/or approval of any of the Alteration Information shall not preclude recovery by Landlord against Tenant based upon the Alterations, the Alteration Information, or any defects therein. In the event that Landlord’s consent is required for particular Alterations, Tenant shall request Landlord’s consent to such Alterations in writing, and Landlord will endeavor to respond to such request within ten (10) Business Days following Landlord’s receipt of such request. In the event that Landlord fails to so respond to Tenant’s request within the foregoing ten (10) Business Day period, then Tenant may deliver a second written request for Landlord’s consent to such Alterations containing a sentence in the header of the first page of the request set in at least 14-point bold font, all capital letters, stating “**LANDLORD’S FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS AFTER LANDLORD’S RECEIPT HEREOF SHALL CONSTITUTE LANDLORD’S CONSENT TO THE ALTERATIONS PROPOSED HEREIN,**” and Landlord will endeavor to respond to such second request within ten (10) Business Days following receipt of the same. In the event that Landlord fails to so respond to Tenant’s second request within the foregoing ten (10) Business Day period, then Landlord shall be deemed to have consented to the Alterations set forth in Tenant’s written request. In making any and all Alterations, Tenant also shall comply with all of the following conditions:

(a) No Alterations shall be undertaken until Tenant shall have (i) procured and paid for, so far as the same may be required, all necessary permits and authorizations of all Governmental Authorities having jurisdiction over such Alterations, and (ii) delivered to Landlord at least five (5) days prior to commencing any such Alterations written evidence acceptable to Landlord, in its reasonable discretion, of all such permits and authorizations. Landlord shall, to the extent necessary (but at no cost, expense, or risk of loss to Landlord), join in the application for such permits or authorizations whenever necessary, promptly upon written request of Tenant.

(b) Any and all structural Alterations of the Improvements shall be performed under the supervision of an architect and/or structural engineer reasonably acceptable to Landlord.

(c) Except for minor, non-structural projects bearing no material risk of any liens for labor and/or materials being filed by third party contractors in connection therewith against Landlord or the Demised Property (but in all cases for any project that is not a Minor Project), Tenant shall notify Landlord at least fifteen (15) days' prior to commencing any Alterations, and Tenant shall permit Landlord access to the Demised Property in order to post and keep posted thereon such notices as may be provided or required by applicable Law to disclaim responsibility for any construction on the Demised Property. In addition, Landlord may require Tenant to file or record any such notices, or other similar notices, each in form and substance reasonably satisfactory to Landlord, in accordance with local law or custom.

(d) Any and all Alterations shall be conducted and completed in a commercially reasonable time period, in a good and workmanlike manner, and in compliance with all applicable Law, permits, and requirements of all Governmental Authorities having jurisdiction over the Demised Property, and of the local Board of Fire Underwriters, if any; and, upon completion of any and all Alterations, Tenant shall obtain and deliver to Landlord a copy of the amended certificate of occupancy for the Demised Property, if required under applicable Law or by any Governmental Authority. If any Alterations involve the generation, handling, treatment, storage, disposal, permitting, abatement or reporting of Hazardous Materials, Tenant shall prepare and retain any and all records, permits, reports and other documentation necessary or advisable to document and evidence all such Hazardous Materials were handled in compliance with applicable Law.

(e) The cost of any and all Alterations shall be promptly paid by Tenant so that the Demised Property at all times shall be free of any and all liens for labor and/or materials supplied for any Alterations subject to the next succeeding sentence. In the event any such lien shall be filed, Tenant shall, within ten (10) days after receipt of notice of such lien, deliver written notice to Landlord thereof, and Tenant shall, within forty-five (45) days after Tenant's receipt of notice of such lien, discharge the same by bond or payment of the amount due the lien claimant. Tenant may in good faith contest any such lien provided that within such forty-five (45) day period Tenant provides Landlord with a surety bond or other form of security reasonably acceptable to Landlord, protecting against said lien. Tenant shall provide Landlord promptly with evidence satisfactory to Landlord that all contractors, subcontractors or materialmen have been paid in full with respect to such Alterations and that their lien rights have been waived or released. In the event Tenant fails to either discharge such lien or protect against such lien in accordance with the foregoing, then Landlord shall have the option (but not the obligation) upon not less than fifteen (15) days' prior notice, and Tenant's failure to either discharge such lien or protect against such lien in accordance with the foregoing, to pay such lien or post a bond to protect against such lien and pass through such costs to Tenant as Additional Rent.

(f) The interest of Landlord in the Demised Property shall not be subject in any way to any liens for improvements to or other work performed to the Demised Property by or on behalf of Tenant. Tenant shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion, or other interest of Landlord in the Demised Property. All mechanics, materialmen, contractors, laborers, artisans, suppliers, and other parties contracting with Tenant, its representatives or contractors with respect to the Demised Property are hereby given notice that they must look solely to Tenant to secure payment for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Demised Property through or under Tenant during the term of this Lease. Tenant shall notify every contractor making improvements to the Demised Property that the interest of Landlord in the Demised Property shall not be subject to liens for improvements to or other work performed with respect to the Demised Property by or on behalf of Tenant. Notwithstanding anything to the contrary set forth in this Lease, no restrictions contained in this Lease as to liens shall apply to Permitted Liens.

(g) Tenant shall discharge any lien filed against the Demised Property, the Building or the Land, or any part thereof, for work done or materials furnished at Tenant's request with respect to the Demised Property as provided above in subsection (e) of this Article 6. If Tenant fails to keep this covenant, in addition to any other remedies available to Landlord under this Lease, Tenant agrees to pay Landlord, as Additional Rent, the sum equal to the amount of the lien thus discharged by Landlord, plus all actual and reasonable costs and expenses, including without limitation third party attorney's and paralegal's fees and court costs, incurred by Landlord in discharging such lien.

Notwithstanding anything contained in Section 4.01, so long as Tenant is diligently pursuing completion of an Alteration permitted under this Lease, Tenant may cease operations at the Demised Property, as reasonably required to complete such Alteration, and only to the extent and for a time period reasonably necessary to complete such Alteration, and any such cessation of operations without diligent pursuit of completion of such Alteration or extending beyond such reasonable scope and time to complete such Alteration shall constitute a default under Section 4.01 (subject to the terms thereof).

ARTICLE 7 REPAIRS AND MAINTENANCE

Except as otherwise provided in this Article, Tenant, at its sole cost and expense, shall maintain the Demised Property and each part thereof, structural and non-structural, in good order and condition, including all areas outside of any buildings (including all sidewalks, driveways, landscaping, trash enclosures, and trash compacting and loading areas on the Demised Property), and including any roof on any buildings, in a neat and clean condition, and ensuring that debris from the operation of each grocery store or other Permitted Use on the Demised Property is cleaned and removed on a regular basis) and, subject to the terms and conditions of Article 6, shall make any necessary Repairs thereto, interior and exterior, whether extraordinary, foreseen or unforeseen, but subject to Article 11 and Article 12. Without limitation, (a) no Repairs shall result in any structural damage to the Demised Property or any injury to any persons, (b) Tenant shall ensure that the quality of materials and workmanship of any Repairs meets or exceeds the quality of materials and workmanship of the Improvements prior to the need for such Repairs; (c) all Repairs shall fully comply with applicable Law, the requirements of any covenants, conditions, restrictions or other permitted encumbrances that are of record regarding the Demised Property, and any applicable repair standards and requirements promulgated by Tenant for its (or its subsidiaries' or Affiliates' or franchisees') properties. Tenant promptly shall abate mold in the Demised Property if such mold creates a material unsanitary or unsightly condition. Landlord shall have no duty whatsoever to maintain, replace, upgrade, or repair any portion of the Demised Property, including any structural items, roof or roofing materials, or any aboveground or underground storage

tanks, and Tenant hereby expressly waives the right to make Repairs at the expense of Landlord, which right may be provided for in any applicable Law now or hereinafter in effect. In addition to Landlord's rights under Section 15.05, if Tenant fails or neglects to commence and diligently proceed with all Repairs or fulfill its other obligations as set forth above within fifteen (15) days after receipt of written notice of the need therefor describing the applicable Repair or other obligation, then Landlord or its agents may, subject to the terms of Article 18 below, enter the Demised Property for the purpose of making such Repairs or fulfilling those obligations; provided, however, without limiting Landlord's rights pursuant to Article 18 below, in the event that Tenant reasonably disputes Tenant's obligation to make such Repairs or other obligations set forth above, then Landlord's right to enter the Demised Property for the purpose of making such Repairs or fulfilling those obligations shall be postponed pending a determination of such dispute (however, if in Landlord's reasonable determination such Repairs or performance of such obligations is necessary to avoid an imminent threat of injury or harm to persons or material damage or loss of value to property, then Landlord may, whether or not such dispute has been resolved, with or without notice (provided, however, that Landlord shall endeavor to give such notice as is practical under the circumstances, if any, which notice may be oral and need not be in writing), and without regard to whether or not any applicable cure period expressly provided herein has expired, elect to perform such Repairs or obligations). All actual and reasonable costs and expenses incurred by Landlord as a consequence of such Landlord's actions, plus an administrative charge of five percent (5%) of such costs and expenses, shall be due to Landlord from Tenant within ten (10) days after written demand from Landlord, which written demand shall include reasonably detailed evidence of such costs and expenses.

ARTICLE 8 COMPLIANCE WITH LAW

Tenant shall, throughout the Lease Term, at its sole cost and expense, comply with, and cause any subtenants or other occupants at the Demised Property to comply with, applicable Law. Without limiting the foregoing, and as a condition to being permitted hereunder to sell alcoholic beverages at the Demised Property, Tenant shall maintain, or cause to be maintained, all licenses or permits required by applicable Law in order to sell alcoholic beverages at the Demised Property and shall deliver to Landlord any information regarding such licenses or permits that Landlord may reasonably request from time to time.

ARTICLE 9 DISCLAIMER AND INDEMNITIES

Section 9.01 To the extent not prohibited by applicable Law, none of the Landlord Parties shall be liable for, under any circumstances, and Tenant hereby releases all Landlord Parties from, any loss, injury, death or damage to person or property (including any business or any loss of income or profit therefrom) of Tenant, Tenant's members, officers, directors, shareholders, agents, employees, contractors, customers, invitees, or any other Person in or about the Demised Property, whether the same are caused by (a) fire, explosion, falling plaster, steam, dampness, electricity, gas (including methane gas), water, rain; (b) breakage, leakage or other defects of Tenant Equipment, Building Equipment, sprinklers, wires, appliances, plumbing fixtures, water or gas pipes, roof, air conditioning, lighting fixtures, street improvements, or subsurface improvements; (c) theft, acts of God, acts of the public enemy, riot, strike, insurrection, civil unrest, war, court order, requisition or order of governmental body or authority; (d) any act or omission of any other occupant of the Demised Property; (e) operations in construction of any private, public or quasi-public work; (f) Landlord's reentering and taking possession of the Demised Property in accordance with the provisions of this Lease or removing and storing the property of Tenant as herein provided; or (g) any other cause, including damage or injury that arises from the condition of the Demised Property, from occupants of adjacent property, from the public, or from any other sources or

places, and regardless of whether the cause of such damage or injury or the means of repairing the same are inaccessible to Tenant, or that may arise through repair, alteration or maintenance of any part of the Demised Property or failure to make any such repair, from any condition or defect in, on or about the Demised Property including any Environmental Conditions or the presence of any mold or any other Hazardous Materials, or from any other condition or cause whatsoever; provided, however, that the foregoing release set forth in this Section 9.01 shall not be applicable to any claim against a Landlord Party to the extent, and only to the extent, that such claim is directly attributable to the gross negligence or willful misconduct of such Landlord Party (provided, however, that the term “gross negligence” shall not include gross negligence imputed as a matter of law to Landlord solely by reason of its interest in the Demised Property or the failure to act by Landlord or anyone acting under its direction or control or on its behalf, in respect of matters that are or were the obligation of Tenant under this Lease).

Section 9.02 In addition to any and all other obligations of Tenant under this Lease (including under any indemnity or similar provision set forth herein), to the extent permitted by applicable Law, Tenant hereby agrees to fully and forever indemnify, protect, defend (with counsel selected by Landlord) and hold all Landlord Parties free and harmless of, from and against any and all Losses (including, subject to the terms of this Section, diminution in the value of the Demised Property, normal wear and tear excepted and including any Losses resulting from third party claims): (a) arising out of or in any way related to or resulting directly or indirectly from: (i) the use, occupancy, or activities of Tenant, its subtenants, agents, employees, contractors or invitees in or about the Demised Property; (ii) any failure on the part of Tenant to comply with any applicable Law, including any Environmental Laws; (iii) any Default or Event of Default under this Lease or any breach or default by Tenant or any other party (other than Landlord) under any other Transaction Document (including as a result of any termination by Landlord, following an Event of Default, of any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Demised Property pursuant to Section 15.08), and including any additional fees and costs, or any increased interest rate or other charges imposed by any Landlord’s Lender by reason of such Default or Event of Default (whether or not such Default or Event of Default is a default under any agreements with any Landlord’s Lender); (iv) any other loss, injury or damage described in Section 9.01 above; (v) in connection with mold at the Demised Property; (vi) work or labor performed, materials or supplies furnished to or at the request of Tenant or in connection with obligations incurred by or performance of any work done for the account of Tenant in, on or about the Demised Property; and (b) whether heretofore now existing or hereafter arising out of or in any way related to or resulting directly or indirectly from the presence or Release at, on, under, to or from the Demised Property of Hazardous Materials. Without limiting the foregoing, (x) Tenant shall pay on demand all actual and reasonable fees and costs of Landlord (including attorneys’ fees and costs) in connection with any enforcement by Landlord of the terms of this Lease, and (y) all of the personal or any other property of Tenant kept or stored at, on or about the Demised Property shall be kept or stored at the sole risk of Tenant. Notwithstanding the foregoing, the indemnity set forth in this Section 9.02 shall not be applicable to any claim against any Landlord Party to the extent, and only to the extent, such claim is directly attributable to the gross negligence or willful misconduct of such Landlord Party (provided, however, that the term “gross negligence” shall not include gross negligence imputed as a matter of law to Landlord solely by reason of its interest in the Demised Property or the failure to act by Landlord or anyone acting under its direction or control or on its behalf, in respect of matters that are or were the obligation of Tenant under this Lease).

Section 9.03 The provisions of this Article 9 shall survive the expiration or sooner termination of this Lease as to breaches or matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article 9 shall also apply to any breaches or matters occurring, or arising from or relating to

circumstances or events occurring during any holdover tenancy by Tenant). Tenant hereby waives the provisions of any applicable Law restricting the release of claims, or extent of release of claims, that Tenant does not know or suspect to exist at the time of release, that, if known, would have materially affected Tenant's decision to agree to the release contained in this Article 9. In this regard, Tenant hereby agrees, represents, and warrants to Landlord that Tenant realizes and acknowledges that factual matters now unknown to Tenant may hereafter give rise to Losses that are presently unknown, unanticipated and unsuspected, and Tenant further agrees, represents and warrants that the release provided hereunder has been negotiated and agreed upon in light of that realization and that Tenant nevertheless hereby intends to release, discharge and acquit the parties set forth herein above from any such unknown Losses that are in any manner set forth in or related to this Lease, the Demised Property and all dealings in connection therewith.

ARTICLE 10 INSURANCE

Section 10.01 As of the Commencement Date and throughout the Lease Term, Tenant shall, at its sole expense, obtain, pay for and maintain (or cause to be obtained, paid for and maintained), with financially sound and reputable insurers (as further described in Section 10.03), (a) comprehensive "all risk" insurance covering loss or damage to the Demised Property (including Improvements now existing or hereafter erected thereon) together with all equipment, inventory, contents, personal property, furniture and any fixtures located thereon, caused by fire, lightning, hail, windstorm, hurricane, tidal surge, explosion, vandalism, malicious mischief, leakage of sprinkler systems, and such other losses, hazards, casualties, liabilities and contingencies as are normally and usually covered by "all risk" or special property policies in effect where the Demised Property is located, endorsed to include all of the extended coverage perils and other broad form perils, including the standard "all risks" or special clauses, including building ordinance or law coverage sufficient to provide coverage for costs to comply with building and zoning codes and ordinances including demolition costs and increased cost of construction, (b) business income and interruption insurance to include loss of business at limits sufficient to cover 100% of the annual revenues at the Demised Property minus any non-fixed expenses payable by Tenant to Landlord with a period of indemnity not less than twelve (12) months from time of loss (such amount being adjusted annually) and an extended period of indemnity of three hundred sixty-five (365) days, (c) flood insurance for the Demised Property and separately for contents/equipment in amounts acceptable to Landlord and Landlord's Lender (and if the Demised Property is located in a special flood hazard area (as identified by FEMA) Tenant must maintain at a minimum insurance through the National Flood Insurance Program (unless such special hazard area is covered under a blanket policy reasonably acceptable to Landlord) in addition to Tenant's blanket property policy with a deductible acceptable to Landlord and Landlord's Lender in their sole discretion, and (d) terrorism insurance for the Demised Property. The policy(ies) referred to in clauses (a) and (d) above shall be in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements and the Building Equipment, together with all equipment, inventory, contents, personal property, furniture and any fixtures located on the Demised Property (without any deduction for depreciation), and the policy(ies) referred to in clauses (a), (b), (c) and (d) above shall contain a replacement cost endorsement and an agreed amount or waiver of co-insurance provisions endorsement, provided, however, that with respect to the policy(ies) referred to in clause (c), so long as the Demised Property is not located in whole or in part in a special flood hazard area (as identified by FEMA), in no event shall Tenant be required to maintain policy(ies) for flood insurance relating to the Demised Property and separately for contents/equipment in an amount exceeding \$1,000,000. The deductible under the policies referred to in clauses (a), (b), (c) and (d) above shall not exceed an amount customarily required by institutional lenders for similar properties in the general vicinity of the Demised Property, but in no event in excess of \$200,000 or such greater amount as is approved by Landlord from time to time (and without limiting the parenthetical contained in clause (c)

above). A separate named storm wind deductible of up to 1% of the total insurable value for the Demised Property will be accepted for any location considered by Landlord to be in a "1st tier" hurricane county. If the Demised Property is located in area prone to geological phenomena, including sinkholes, mine subsidence, earthquakes, the insurance policies referred to in clause (a) and (b), above shall cover such risks and in such amounts (not less than the PML for the Demised Property), in form and substance, as Landlord shall reasonably determine with deductibles not greater than the greater of (i) \$250,000 or (ii) five percent (5%) of the total insurable value for the Demised Property. Maximum allowed deductibles in connection with insurance provided for in this Article 10 shall be adjusted annually in proportion to increases in the CPI.

Section 10.02 As of the Commencement Date and throughout the Lease Term, Tenant shall maintain, with financially sound and reputable insurers (as further described in Section 10.03), public liability and other types of insurance with respect to its business and the Demised Property (including all Improvements now existing or hereafter erected thereon) against all losses, hazards, casualties, liabilities and contingencies as customarily carried or maintained by persons of established reputation engaged in similar businesses. Without limiting of the foregoing, Tenant shall maintain or cause to be maintained policies of insurance with respect to the Demised Property in the following amounts and covering the following risks:

(a) Broad form boiler and machinery or breakdown insurance in an amount equal to the full replacement cost of the Improvements at the Demised Property (without any deduction for depreciation) in which the boiler or similar vessel is located, and including replacement cost coverage against loss or damage from (1) leakage of sprinkler systems and (2) damage, breakdown or explosion of steam boilers, electrical machinery and equipment, air conditioning, refrigeration, pressure vessels or similar apparatus and mechanical objects now or hereafter installed at the Demised Property, including loss of inventory, stock and other contents due to spoilage, and (3) business interruption.

(b) During any period of construction, reconstruction, renovation or alteration at the Demised Property, a complete value, "All Risks" Builders Risk form or "Course of Construction" insurance policy in non-reporting form and in an amount reasonably satisfactory to Landlord.

(c) Commercial General Liability insurance covering claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Demised Property on an occurrence form and in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and shall provide coverage for premises and operations, products and completed operations and contractual liability with a deductible in an amount customarily required by institutional owners or institutional lenders (whichever is lower) for similar properties in the general vicinity of the Demised Property, but in no event in excess of \$200,000, and an umbrella liability policy in the amount of \$50,000,000. Liquor Liability insurance, in amounts and subject to terms reasonably approved by Landlord, shall also be maintained by Tenant if alcohol is sold or served at the Demised Property.

(d) Worker's compensation with statutory limits and employer's liability insurance in an amount of \$1,000,000 per accident, per employee and in the aggregate.

(e) Such other insurance (including increased amounts of insurance) and endorsements, if any, with respect to the Demised Property, including, without limitation, any equipment, inventory, contents, personal property, furniture or any fixtures and the operation thereof as Landlord may reasonably require from time to time and similar to that required for similarly situated properties.

Section 10.03 Each carrier providing any insurance, or portion thereof, required by this Article shall have the legal right to conduct its business in the jurisdiction in which the Demised Property is located, and shall have a claims paying ability rating by S&P of not less than “A-” and an A.M. Best Company, Inc. rating of not less than A and financial size category of not less than IX. Tenant shall cause all insurance that it is required to maintain hereunder to contain a mortgagee clause and loss payee clause in favor of Landlord’s Lender in accordance with this Section to be payable to Landlord’s Lender as a mortgagee and not as a co-insured, as its interest may appear.

Section 10.04 All insurance policies required to be maintained by Tenant hereunder and renewals thereof (a) shall be in a form reasonably acceptable to Landlord, (b) shall provide for a term of not less than one year, (c) if the same are insurance policies covering any property (i) shall include a standard non-contributory mortgagee endorsement or its equivalent in favor of and in form acceptable to Landlord’s Lender, (ii) shall contain an agreed value clause updated annually (if the amount of coverage under such policy is based upon the replacement cost of the Demised Property) and (iii) shall designate Landlord’s Lender as “mortgagee and loss payee.” In addition, all property insurance policies (except for flood and earthquake limits) must automatically reinstate after each loss, and the commercial general liability and umbrella policies shall contain an insured endorsement in favor of Landlord and Landlord’s Lender, as their interests may appear.

Section 10.05 Any insurance provided for in this Article may be effected by a blanket policy or policies of insurance, or under so-called “all-risk” or “multi-peril” insurance policies, provided that the amount of the total insurance available with respect to the Demised Property shall provide coverage and indemnity at least equivalent to separate policies in the amounts herein required, and provided further that in other respects, any such policy or policies shall comply with the provisions of this Article. Any increased coverage provided by individual or blanket policies shall be satisfactory, provided the aggregate liability limits covering the Demised Property under such policies shall otherwise comply with the provisions of this Article.

Section 10.06 Every insurance policy carried or required to be carried by any party with respect to the Demised Property, equipment, contents, inventory, personal property or fixtures shall include provisions waiving the insurer’s subrogation rights against the other party prior to the occurrence of damage or loss. Subject to the above, each party hereby waives any rights of recovery against the other party for any direct damage or consequential loss covered by said policies (or by policies required to be carried hereunder by such party) whether or not such damage or loss shall have been caused by any acts or omissions of the other party, but such waiver shall operate only to the extent such waiving party is so protected by such insurance coverage (or would have been protected by maintaining all policies required to be carried hereunder by such party).

Section 10.07 The policies of insurance required to be maintained by Tenant under this Article 10 shall name Tenant as the insured and Landlord as additional insured and Landlord’s Lenders as additional insureds as their interests may appear, with primary coverage in favor of Landlord and all additional insureds (and with provisions that any other insurance carried by any additional insured or Landlord shall be non-contributing and that naming Landlord and the additional parties listed above in this Section as insureds or additional insureds shall not negate any right Landlord or such parties would have had as claimants under the policy if not so designated). The business interruption insurance required pursuant to Section 10.01 shall name Landlord and Landlord’s Lenders as loss payees. All insurance policies required under this Article 10 also shall provide that the beneficial interest of Landlord in such policies shall be fully transferable. In the event Tenant fails to procure or maintain any policy of

insurance required under Article 10, or if the insurance company or coverages provided fail meet the requirements contained in this Article 10, Landlord may, at its option, purchase such insurance and charge Tenant all costs and expenses incurred in procuring and maintaining such insurance.

Section 10.08 Tenant shall provide to Landlord, beginning on the Commencement Date and continuing annually thereafter with certificates (or other evidence reasonably requested by Landlord) from all applicable insurance carriers evidencing the payment of premiums or accompanied by other evidence of such payment (e.g., receipts, canceled checks) in form reasonably satisfactory to Landlord. Each insurance policy required to be carried by Tenant hereunder shall include a provision requiring the insurer to provide Landlord with not less than thirty (30) days' prior written notice of cancellation. Upon the occurrence of both of the following events, Tenant shall pay insurance premiums to Landlord no later than thirty (30) days prior to the date such premiums are due in lieu of payment directly to the applicable the insurance carriers: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) the occurrence and continuance of any Default under this Section 10.08 by Tenant, or any occurrence and the continuance of any Event of Default under any provision in this Lease. Any insurance premiums timely paid by Tenant to Landlord pursuant to this Section shall be applied towards payment of the insurance premium next coming due when such premiums are due and payable.

Section 10.09 Tenant may request from time to time changes to the insurance required pursuant to this Article 10 and Landlord shall review such requested changes and may approve or disapprove such changes in its reasonable discretion. Any such changes shall be documented as an amendment to this Lease. Tenant agrees to pay Landlord upon receipt of written notice from Landlord for all reasonable costs and expenses (including reasonable attorneys' fees and costs) incurred by Landlord in connection with any such requested change or amendment.

ARTICLE 11 DAMAGE OR DESTRUCTION

Section 11.01 If at any time during the Lease Term, the Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature, Tenant shall promptly apply for and diligently pursue all necessary permits, and, upon issuance of such permits, thereafter diligently proceed to repair, replace or rebuild the Demised Property as nearly as possible to its condition and character immediately prior to such damage with such variations and Alterations as may be permitted under (and subject to the provisions of) Article 6 (the "**Restoration Work**").

Section 11.02 All property and casualty insurance proceeds payable to Landlord or Tenant (except (a) insurance proceeds payable to Tenant on account of the Tenant Equipment or Tenant's inventory; and (b) insurance proceeds payable from comprehensive general public liability insurance, or any other liability insurance) at any time as a result of casualty to the Demised Property shall be paid jointly to Landlord and Tenant for purposes of payment for the cost of the Restoration Work, except as may be otherwise expressly set forth herein. Landlord and Tenant shall cooperate in order to obtain the largest possible insurance award lawfully obtainable and shall execute any and all consents and other instruments and take all other actions necessary or desirable in order to effectuate same and to cause such proceeds to be paid as hereinbefore provided. The proceeds of any such insurance in the case of loss shall, to the extent necessary, be used first for the Restoration Work with the balance, if any, payable to Tenant (provided, however, that if an Event of Default is continuing, the balance, if any, shall be payable to Landlord). If insurance proceeds as a result of a casualty to the Demised Property are insufficient to complete the Restoration Work necessary by reason of such casualty, then Tenant shall be responsible for the payment of such amounts necessary to complete such work; provided, however, in the event of a casualty (i) that is not required to be insured against by Tenant under this Lease and (ii) the uninsured cost

to complete the Restoration Work at the Demised Property is in excess of thirty-five percent (35%) of the replacement cost of the Demised Property (an “**Uninsured Casualty**”), then Tenant may deliver a notice to Landlord within thirty (30) days after concluding that the uninsured cost to complete the Restoration Work at the Demised Property is in excess of thirty-five percent (35%) of the replacement cost of the Demised Property, stating Tenant’s desire to terminate this Lease and Tenant’s estimated cost to complete such Restoration Work and estimated replacement cost of the Demised Property, and this Lease shall terminate thirty (30) days following Landlord’s receipt of such notice, provided, however, that if Landlord disputes any part of Tenant’s estimate, Landlord may deliver notice of such dispute to Tenant within thirty (30) days after receipt of Tenant’s notice and such dispute shall be submitted by Landlord and Tenant to the arbitration process set forth in Schedule 4b attached hereto (“**Casualty Termination Arbitration**”) (and if Landlord prevails in such Casualty Termination Arbitration, this Lease shall not terminate). In connection with any such termination of this Lease, any insurance proceeds in connection with such casualty, and if such insurance proceeds amount to less than thirty-five percent (35%) of the replacement cost of the Demised Property, such additional amounts necessary to equal the uninsured cost to complete the Restoration Work up to thirty-five percent (35%) of the replacement cost of the Demised Property, shall be paid by Tenant to Landlord within thirty (30) days after Landlord’s receipt of Tenant’s termination notice. In the event that a casualty occurs in the last eighteen (18) months of the Lease Term, Tenant may deliver a notice to Landlord within forty-five (45) days after concluding that the cost to complete the Restoration Work at the Demised Property is in excess of twenty percent (20%) of the replacement cost of the Demised Property (a “**End of Term Casualty**”), stating Tenant’s desire to terminate this Lease and Tenant’s estimated cost to complete such Restoration Work and estimated replacement cost of the Demised Property, and this Lease shall terminate thirty (30) days following Landlord’s receipt of such notice, provided, however, that if Landlord disputes Tenant’s estimate, Landlord may deliver notice of such dispute to Tenant within thirty (30) days after receipt of Tenant’s notice and such dispute shall be settled by Casualty Termination Arbitration (and if Landlord prevails in such Casualty Termination Arbitration, this Lease shall not terminate). If this Lease does not terminate in connection with an Uninsured Casualty or an End of Term Casualty, then Tenant shall complete the Restoration Work in accordance with Section 11.01, and, if insurance proceeds as a result of such casualty to the Demised Property are insufficient to complete the Restoration Work, then Tenant shall be responsible for the payment of such amounts necessary to complete such Restoration Work.

Section 11.03 Subject to the terms hereof, this Lease shall not be affected in any manner by reason of the total or partial destruction to the Demised Property or any part thereof and Tenant, notwithstanding any applicable Law, present or future, waives all rights to quit or surrender the Demised Property or any portion thereof because of the total or partial destruction of the Demised Property (prior to the expiration of this Lease). Without limiting the foregoing, no Rent shall abate as a result of any casualty, and the proceeds of all business income and interruption insurance carried by Tenant shall be payable to Tenant.

ARTICLE 12 EMINENT DOMAIN

Section 12.01 Landlord and Tenant hereby agree that in no event shall any taking of the Demised Property for any public or quasi-public use under any statute or by right of eminent domain, or by purchase in lieu thereof, in any way relieve Tenant of any obligations under this Lease (as to the Demised Property or otherwise) except as explicitly provided in this Article.

Section 12.02 If any portion of the Demised Property, or existing access to or from the Demised Property, is taken for any public or quasi-public use under any statute or by right of eminent domain, or by purchase in lieu thereof, and such taking (a) reduces the value of the Demised Property by

fifty percent (50%) or more, or (b) prevents, and would prevent after reasonable repair and reconstruction efforts by Tenant, use of the Demised Property for its current permitted use under applicable zoning or other use regulations (including with respect to required parking and access), then this Lease shall terminate as of the date that title to the Demised Property, or portion thereof, actually transfers to the applicable authority.

Section 12.03 Tenant agrees that Landlord has the right in its sole discretion, and at Tenant's sole cost and expense, to oppose any proposed taking regarding the Demised Property. The parties hereto agree to cooperate in applying for and in prosecuting any claim for any taking regarding the Demised Property and further agree that the aggregate net award shall be distributed as follows:

(a) Landlord shall be entitled to the entire award for the condemned Demised Property, except as expressly described in paragraph (b), below.

(b) Tenant shall be entitled to receive fifty percent (50%) of its leasehold value (the excess (if any) of the present value of the fair market rental for the condemned Demised Property (without regard to the Condemnation) for the remainder of the Lease Term over the present value as of the Condemnation Date of the Base Rent payable for the remainder of the Lease Term). Tenant shall also be entitled to (i) the present value of any capital improvement to the extent paid for by Tenant during the Lease Term, multiplied by (ii) the percentage of the remaining useful life of such improvement falling within the Lease Term.

(c) Tenant shall be entitled to any award that may be made exclusively for the taking of Tenant's inventory and personal property, or costs related to the removal and relocation of Tenant's inventory and personal property.

Section 12.04 Except in the case of a removal of the Demised Property from this Lease as described in Section 12.02, in case of a taking of any portion of the Demised Property, (i) Tenant at its own expense shall proceed with diligence (subject to reasonable time periods for purposes of adjustment of any award and unavoidable delays) to repair or reconstruct (or cause to be repaired and reconstructed) the affected Improvements to a complete architectural unit, and all such repair or reconstruction work shall be performed in accordance with the standards and requirements for Alterations set forth in Article 6 and (ii) Landlord shall reasonably make available to Tenant any award due to Landlord in connection with any such taking, to the extent necessary, to be used for such repair or reconstruction work, provided, however, that if such award is insufficient to complete such repair or reconstruction work, Tenant shall nevertheless proceed to complete such repair or reconstruction work at its own expense as provided in (i).

Section 12.05 In the case of a taking of any portion of the Demised Property, if this Lease shall not have been terminated pursuant to Section 12.02, the Base Rent payable hereunder shall be reduced by an amount equal to the monthly fair market rental attributable to the applicable portion of the Demised Property immediately prior to such condemnation as reasonably agreed to by Landlord and Tenant, provided that should Landlord and Tenant fail to reasonably agree within ten (10) Business Days after such taking, then Landlord and Tenant shall submit the issue to Base Rent Reduction Arbitration.

Section 12.06 Notwithstanding any other provision of this Article, any compensation for a temporary taking shall be payable to Tenant without participation by Landlord, except to the proportionate extent such temporary taking extends beyond the end of the Lease Term, and there shall be no abatement of Rent as a result of any temporary taking affecting the Demised Property.

ARTICLE 13 FINANCIAL AND REPORTING COVENANTS

Section 13.01 Confidentiality. Subject to the terms of this Article 13, Landlord shall maintain as confidential any and all information obtained in connection with this Article 13, and accordingly, Landlord agrees not to disclose all or any portion of such information to any third party, except that Landlord may disclose such information:

(a) to those principals, directors, partners, members, employees, representatives, consultants, counsel, accountants and other professional advisors of Landlord who have a legitimate need to review or know such information;

(b) to lenders (including Landlord's Lenders), prospective lenders, purchasers, prospective purchasers, or otherwise in connection with any sale or financing of the Demised Property or any direct or indirect interest therein;

(c) to any government or self-regulatory agency whose supervision or oversight of Landlord or any of its affiliates may be subject to the extent required by applicable Law, any Governmental Authority or a court of competent jurisdiction, in each case to the extent reasonably necessary to comply with any legal or regulatory requirements to which Landlord or its affiliates may be subject; and

(d) to a court of competent jurisdiction in connection with any enforcement action regarding this Lease or the transactions contemplated hereby.

Except any disclosure pursuant to clause (d) of the immediately preceding sentence, upon disclosing such information to any Person to the extent permitted hereunder, Landlord shall advise such Person of the confidential nature thereof, and shall take all reasonable precautions to prevent the unauthorized disclosure of such information by such Person.

Section 13.02 Books and Records. Tenant shall keep accurate books and records of account of all of the Demised Property sufficient to permit the preparation of financial statements in accordance with GAAP. So long as neither Landlord nor any Person directly or indirectly controlling, controlled by, or under common control with Landlord (for purposes of this Section 13.02, "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with") means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise) engages in the business of operating a grocery store, upon Landlord's request, no more than once per calendar year, Tenant shall provide, or cause to be provided, to Landlord in addition to any other financial statements required under this Lease, the following financial statements and information:

(a) promptly and in any event within the earlier of (i) one hundred twenty (120) days after the end of each fiscal year of the Tenant (Tenant's fiscal year constitutes a twelve-month period ending on February 28 of each calendar year) and (ii) within five (5) Business Days of when delivered to any senior lender of Tenant, audited statements of the financial position of Tenant as of the end of each such fiscal year, consisting of a balance sheet and income statement, which statements shall be duly certified by an officer of Tenant to fairly represent the financial condition of Tenant, as of the date thereof, prepared by Tenant in accordance with GAAP; and

(b) promptly and in any event within one hundred twenty (120) days after the end of each calendar year, total retail sales figures in respect of the Demised Property for the applicable calendar year, certified by an officer of Tenant to be true, correct and complete in all material respects.

ARTICLE 14 INTENTIONALLY OMITTED

ARTICLE 15 EVENTS OF DEFAULT

Section 15.01 Events Of Default. Subject to the terms of this Article, the occurrence of any of the following shall constitute an event of default by Tenant under this Lease ("**Event of Default**"):

(a) **Nonpayment of Base Rent.** Failure to pay any installment of Base Rent on or before the date when due under this Lease. Notwithstanding the foregoing, the first failure to pay any installment of Base Rent on or before the date when due under this Lease in any twelve (12) month period during the Lease Term shall not constitute an Event of Default under this Lease until the third (3rd) Business Day following Landlord's delivery of written notice to Tenant regarding the same.

(b) **Nonpayment of Additional Rent.** Failure to pay any amount of Additional Rent on or before the date when due. Notwithstanding the foregoing, the first failure to pay any Additional Rent on or before the date when due under this Lease in any twelve (12) month period during the Lease Term shall not constitute an Event of Default under this Lease until the fifth (5th) Business Day following Landlord's delivery of written notice to Tenant regarding the same.

(c) **Bankruptcy and Insolvency.** If at any time during the Lease Term, (i) Tenant files a Petition, (ii) any creditor or other Person that is an Affiliate of Tenant files against Tenant any Petition, or any creditor or other Person (whether or not an Affiliate of Tenant) files against Tenant any Petition where Tenant or an Affiliate of Tenant, cooperates or colludes with such creditor or other Person in connection with such Petition or the filing thereof, (iii) any creditor or other Person that is not an Affiliate of Tenant files a Petition against Tenant, where none of Tenant or an Affiliate of Tenant cooperates or colludes with such creditor or other Person in connection with such Petition or the filing thereof, and such Petition is not vacated or withdrawn within ninety (90) days after the filing thereof, (iv) a trustee or receiver is appointed to take possession of the Demised Property, or of all or substantially all of the business or assets of Tenant, and such appointment is not vacated or withdrawn and possession restored to Tenant within ninety (90) days thereafter, (v) a general assignment or arrangement is made by Tenant for the benefit of creditors, (vi) any sheriff, marshal, constable or other duly-constituted public official takes possession of the Demised Property, or of all or substantially all of the business or assets of Tenant by authority of any attachment, execution, or other judicial seizure proceedings, and if such attachment or other seizure remains undismissed or undischarged for a period of ninety (90) days after the levy thereof, (vii) Tenant admits in writing its inability to pay its debts as they become due; or (viii) Tenant files an answer admitting or failing timely to contest a material allegation of any Petition filed against Tenant.

(d) **Misrepresentation.** The discovery by Landlord that any representation, warranty or financial statement given to Landlord by Tenant, or any Affiliate of Tenant, was fraudulently false or misleading when given, including as set forth in any Transaction Document.

(e) [Third-Party Option]; Insurance; Reporting; Transfers; Other Covenants. (i) Any default by Tenant under Section 4.03², Article 10, Article 13 or Article 40, provided such default shall not constitute an Event of Default under this Lease unless Tenant fails to cure such default on or before the thirtieth (30th) day following Landlord's delivery of written notice to Tenant regarding such default and (ii) any default by Tenant under Article 22 or Article 39, unless the same is cured within thirty (30) days thereafter; provided, however, that with respect to (x) any default by Tenant under Section 4.03, any cure must be evidenced by a waiver of the applicable purchase right, termination right, recapture right or option regarding the Demised Property by the applicable holder(s) of such right in form and substance reasonably satisfactory to Landlord and (y) any material default by Tenant under Article 10 occurring during the Lease Term (including a default that results in, or with the passage of time will result in, Tenant failing to carry any material insurance required under Article 10), such material default shall not constitute an Event of Default under this Lease unless Tenant fails to cure such material default on or before the second (2nd) Business Day following Landlord's delivery of written notice to Tenant regarding such material default (for the avoidance of doubt the cure periods specified in (x) and (y) are in lieu of, and not in addition to, the thirty (30) day cure periods specified in clause (i) above).

(f) Delivery of Notices and Other Documents. The failure by Tenant to deliver any of the notices or other documents required to be delivered to Landlord under this Lease within the time periods required herein (other than any such notices or other documents specifically addressed in another clause of this Section 15.01, for which Tenant will have the grace periods (if any) and notice rights (if any) set forth in such other clause), within the time period stated in this Lease for the delivery by Tenant of any notice or other document to Landlord (or if no time period is so stated then within fifteen (15) days after request), then the failure of Tenant to deliver such notice or document within ten (10) Business Days after written notice to Tenant of such failure.

(g) Liens. Any claim of lien is recorded against the Demised Property and such claim of lien continues for forty-five (45) days after Tenant receives notice thereof without discharge (by bonding or other means available pursuant to applicable Law), or satisfaction being made by or on behalf of Tenant.

(h) Material Judgments. Any final judgment (after any applicable appeals) against Tenant is entered for the payment of uninsured amounts in excess of \$5,000,000 or insured amounts in excess of \$10,000,000, and such judgment remains unsatisfied within sixty (60) days after the rendering of such judgment, unless Tenant enters into an agreement with all applicable claimants in connection with such judgment regarding payment of same, and Tenant does not breach or default under such agreement beyond applicable notice and cure periods during the term thereof. Any such final judgment amount shall be considered insured only if Tenant delivers to Landlord within fifteen (15) days after such final judgment (after any applicable appeals) written evidence both of the applicable Tenant insurance and coverage thereunder regarding such judgment. If Landlord receives actual (not merely constructive) written notice of any judgment, then any default by Tenant under this subsection (h) in connection with such judgment during the Lease Term shall not constitute an Event of Default under this Lease unless Tenant fails to cure such default on or before the tenth (10th) Business Day following Landlord's delivery of written notice to Tenant regarding such default.

(i) Wrongful Denial of Lease. Tenant wrongfully denies that it has any or further liability or obligation under this Lease, or wrongfully purports to revoke, terminate or rescind same

² For applicable properties

(provided that the foregoing shall not limit Tenant's right to assert a good faith defense to any claim by Landlord that an Event of Default has occurred hereunder or that Tenant is liable to Landlord hereunder pursuant to one or more specific provisions hereunder).

(j) Environmental. Any default under Article 29 or any Holdback Agreement if Tenant fails to cure such default as soon as reasonably practicable, and in any event within thirty (30) days after notice or knowledge of such default; provided, however, that if the default involves an imminent or substantial endangerment, or other worker or public health or safety hazard, the cure shall be effected as soon as possible (and failure to do so shall constitute an Event of Default); provided, further, that if the condition or circumstance is not reasonably susceptible to a cure within thirty (30) days, then Tenant shall have commenced such cure within thirty (30) days and thereafter diligently pursue the cure to completion (and failure to do so shall constitute an Event of Default).

(k) Other Obligations. The failure by Tenant to timely perform any obligation, agreement or covenant under this Lease, other than those matters specified in Sections 15.01(a)-(j) above, and such failure continuing for a period of thirty (30) days after written notice of such failure is delivered to Tenant by Landlord, or such longer period, up to but not exceeding an additional one hundred fifty (150) days (for the avoidance of doubt, in any event, subject to Article 16 regarding force majeure), as is reasonably necessary to remedy such default.

As used in this Lease, "**Default**" means any breach or default under this Lease, whether or not the same is an Event of Default, and also any breach or default under this Lease, that after notice or lapse of time or both, would constitute an Event of Default if that breach or default were not cured within any applicable grace or cure period.

Section 15.02 Remedies Upon Event of Default. If an Event of Default by Tenant occurs, then, in addition to any other remedies available to Landlord at law or in equity or elsewhere hereunder, Landlord shall have the following remedies:

(a) Termination. Landlord shall have the right, with or without notice or demand, immediately upon expiration of any applicable grace period specified herein, to terminate this Lease (or Tenant's possession of the Demised Property), and at any time thereafter recover possession of all or any portion of the Demised Property or any part thereof and expel and remove therefrom Tenant and any other Person occupying the same by any lawful means, and repossess and enjoy all or any portion of the Demised Property without prejudice to any of the remedies that Landlord may have under this Lease. If Landlord elects to terminate this Lease (or to terminate Tenant's right of possession), Landlord shall also have the right to reenter the Demised Property and take possession of and remove all personal property of Tenant, if any, in the Demised Property. If Landlord elects to terminate this Lease and/or Tenant's right to possession, or if Tenant's right to possession is otherwise terminated by operation of law, Landlord may recover as damages from Tenant the following: (i) all Rent then due under this Lease through the date of termination; (ii) the Rent due for the remainder of the Lease Term in excess of the fair market rental value of the Demised Property for the remainder of the Lease Term, including any and all Additional Rent (each discounted by the discount rate of the Federal Reserve Bank of San Francisco plus one percent (1%)); (iii) the cost of reletting the Demised Property, including the anticipated period of vacancy until the Demised Property can be re-let at their fair market rental values; and (iv) any other costs and expenses that Landlord may reasonably incur in connection with the Event of Default. Efforts by Landlord to mitigate the damages caused by the Event of Default (or Tenant's Default under this Lease) shall not waive Landlord's right to recover damages under the foregoing provisions. Landlord agrees to

use commercially reasonable efforts to mitigate damages, if, and to the extent, required by applicable Law.

(b) Continuation after Event of Default. If Landlord does not elect to terminate this Lease, then this Lease shall continue in effect, and Landlord may enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, and Landlord, without terminating this Lease, may exercise all of the rights and remedies of a landlord at law or in equity, subject to Article 26 hereof. Landlord shall not be deemed to have terminated this Lease except by an express statement in writing. Acts of maintenance or preservation, efforts to relet the Demised Property, or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate Tenant's right to possession unless such election is expressly stated in writing by Landlord. Notwithstanding any such reletting without such termination, Landlord may at any time thereafter elect to terminate Tenant's right to possession and this Lease. If Landlord elects to relet the Demised Property for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any and all costs of such reletting (including attorneys' fees, brokers' fees, alterations and repairs to the Demised Property, and tenant improvement costs); second, to the payment of any and all indebtedness other than Rent due hereunder from Tenant to Landlord; third, to the payment of any and all Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If the rent received from the reletting is less than the sum of the costs of reletting, other indebtedness due by Tenant, and the Rent due by Tenant, then Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly.

(c) State-Specific Remedy. Landlord may pursue any other remedy now or hereafter available to Landlord under the Laws of the state in which the Demised Property is located in addition to and not as an alternative remedy to those provided hereunder.

(d) Damages. Without limiting Tenant's indemnifications of Landlord and the other Landlord Parties under this Lease (including under Article 9 and Article 29 of this Lease) in connection with claims and other actions by third parties against Landlord or other Landlord Parties (which indemnifications include consequential, indirect and punitive damages, if any, payable to third parties making claims being indemnified against), Landlord hereby waives any right to any consequential, indirect or punitive damages against Tenant. Tenant hereby waives any right to any consequential, indirect or punitive damages against Landlord.

Section 15.03 No Cure Rights Following Events of Default. Upon the occurrence of an Event of Default, Landlord shall have all rights and remedies hereunder and under applicable Law. Except only as may be required by applicable Law that cannot be waived lawfully (a) Landlord shall have no obligation to give any notice after an Event of Default as a condition to Landlord's pursuit of any right or remedy; and (b) Landlord shall have no obligation to accept the attempted or purported cure of, or to waive, any Event of Default, regardless of tender of delinquent payments or other performance by Tenant, or any other event or condition whatsoever; and Tenant shall not have any right to cure any Event of Default, and no right to cure shall be implied. Without limiting the foregoing, after the occurrence of any Event of Default (irrespective of whether or not the same consists of an ongoing condition, a one-time occurrence, or otherwise), the same shall be deemed to continue at all times thereafter; unless Landlord executes and delivers a written agreement in which Landlord expressly states that such Event of Default has ceased to continue (and Landlord shall not be obligated under any circumstances whatsoever to execute and deliver any such agreement). Without limitation, this Section shall govern in any case where reference is made in this Lease or otherwise to (x) any "cure" (whether by use of such word or otherwise)

of any Event of Default, (y) “during an Event of Default” or “the continuance of an Event of Default” (in each case, whether by use of such words or otherwise), or (z) any condition or event that continues beyond the time when the same becomes an Event of Default.

Section 15.04 Indemnification. Nothing in this Article shall be deemed to affect or limit Tenant’s obligation to indemnify, defend, protect and hold harmless Landlord and the other Landlord Parties under this Lease (including under Article 9 and Article 29), and such obligation shall survive the termination or expiration of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, such obligations shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

Section 15.05 Performance by Landlord. Notwithstanding any other provision herein, in addition to any other rights of Landlord under this Lease, if Tenant has failed to satisfy any obligation of Tenant set forth herein, whether or not the same constitutes an Event of Default, and in Landlord’s reasonable determination such failure by Tenant constitutes an imminent threat of injury or harm to persons, or a material damage or loss of value to property, then Landlord may, with or without notice (provided, however, that Landlord shall endeavor to give such notice as is practical under the circumstances, if any, which notice may be oral and need not be in writing), and without regard to whether or not any applicable cure period expressly provided herein has expired, elect to perform such obligation for the account and at the expense of Tenant. If Landlord pays any sums of money or incurs any expense in connection with performing any such obligation (including attorneys’ fees, consultant fees, testing and investigation fees, expert fees and court costs), such sums so paid or expenses so incurred by Landlord, plus an administrative charge of five percent (5%) of such sums or expenses, shall be due to Landlord from Tenant within ten (10) days after written demand therefor from Landlord, in addition to any other amounts to be paid by Tenant to Landlord under this Lease, which written demand shall include reasonably detailed evidence of such costs and expenses.

Section 15.06 Late Fee. In addition to any interest charged to Tenant under Section 15.07, if any payment of Base Rent or Additional Rent is not received by Landlord from Tenant when such payment is due to Landlord hereunder, such payment shall be deemed delinquent and cause Tenant to incur a late fee of five percent (5%) of each such delinquent payment (the “**Late Fee**”), due and payable immediately with the delinquent Base Rent or delinquent Additional Rent, as the case may be; provided, however, that the first such delinquent payment in any twelve (12) month period shall not be subject to a Late Fee.

Section 15.07 Interest. Tenant hereby acknowledges that late payment by Tenant of Base Rent or Additional Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, in addition to any Late Fee due from Tenant hereunder, any sum due by Tenant under this Lease that is not paid when due shall bear interest at the lesser of five percent (5%) per annum of such sums, or the maximum rate allowed under applicable Law, from the date such sum becomes due and payable by Tenant hereunder until paid, unless otherwise expressly provided in this Lease, provided, however, that the first such late payment in any twelve (12) month period shall not be subject to such interest until the fifth (5th) Business Day following Landlord’s delivery of written notice to Tenant regarding the same.

Section 15.08 Tenant’s Subleases. If Landlord elects to terminate this Lease on account of any Event of Default, then Landlord may terminate any sublease and any license, concession, or other

consensual arrangement for possession entered into by Tenant and affecting the Demised Property (subject to the terms of any applicable nondisturbance agreement executed by Landlord and subject to the terms of any sublease in existence as of the Commencement Date), or choose to succeed to Tenant's interest in any such arrangement. Absent a nondisturbance agreement between Landlord and any such subtenant, no payment by a subtenant with respect to a sublease shall entitle such subtenant to possession of the Demised Property after termination of this Lease and Landlord's election to terminate the sublease. If Landlord elects to succeed to Tenant's interest in such arrangement, then Tenant shall, as of the date of notice given by Landlord to Tenant of such election, have no further right to, or interest in, any rent or other consideration due under that arrangement.

Section 15.09 Form of Payment After Default. Without limiting any other obligation of Tenant under this Lease, if Tenant fails, on two or more occasions, to pay any amount due to Landlord under this Lease within the applicable notice and cure periods set forth in this Lease, or if Tenant attempts to pay any such amount by drawing a check on an account with insufficient funds, then Landlord shall have the right to require that any and all subsequent amounts paid by Tenant to Landlord under this Lease (to cure a default or otherwise) be paid in the form of cashier's or certified check drawn on an institution acceptable to Landlord, by wire transfer or any other form approved by Landlord in its sole and absolute discretion, notwithstanding that Landlord may have previously accepted payments from Tenant in a different form.

Section 15.10 Acceptance of Rent Without Waiving Rights. No endorsement or statement by Tenant on any check or any letter accompanying any payment by Tenant to Landlord will be deemed an accord and satisfaction of any amount in dispute between Tenant and Landlord or otherwise. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord, may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement. Landlord may accept any and all of Tenant's payments without waiving any right or remedy under this Lease, including the right to commence and pursue an action to enforce rights and remedies under a previously served notice of default, without giving Tenant any further notice or demand.

Section 15.11 Licenses and Permits. In connection with any repossession of the Demised Property by Landlord or its designee, Tenant and its Affiliates shall reasonably cooperate with Landlord in transferring to Landlord or its designee any entitlements, certificates, emissions credits, licenses or permits then held or maintained by Tenant or its Affiliates and required by applicable Law in order to operate the Demised Property as a grocery store or other applicable Permitted Use, including any such licenses or permits required in order to serve alcoholic beverages at the Demised Property.

Section 15.12 Remedies Cumulative. All rights, privileges, elections, and remedies of Landlord are cumulative and not alternative with all other rights and remedies hereunder, at law or in equity to the fullest extent permitted by applicable Law. The exercise of one or more rights or remedies by Landlord shall not impair Landlord's rights to exercise any other right or remedy to the fullest extent permitted by applicable Law.

Section 15.13 Affirmance of Lease. In the event that, following of the filing of any Petition regarding Tenant, under applicable Law, the trustee in bankruptcy or Tenant has the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant shall, within such time period as may be permitted by the bankruptcy court having jurisdiction, so affirm this Lease, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease, and

provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations under this Lease.

Section 15.14 Survival. The remedies available to Landlord pursuant to this Article shall survive expiration or termination of this Lease.

ARTICLE 16 FORCE MAJEURE

If either party is prevented or delayed from timely performance of any obligation or satisfying any condition under this Lease by any event or circumstance beyond the reasonable control of such party, exclusive of financial inability of a party, but including any of the following if beyond the reasonable control of such party: casualty or condemnation, strike, lockout, labor dispute, civil unrest, inability to obtain labor, materials or reasonable substitutes thereof, acts of God, present or future governmental restrictions, regulations or control, insurrection, and sabotage, then the time to perform such obligation or satisfy such condition shall be extended on a day for day basis for each day of delay caused by such event or circumstance, but only for a reasonable period of time not to exceed, in any event, one hundred twenty (120) days. The provisions of this Article shall in no event operate to delay the Commencement Date or to excuse Tenant from the payment of all Rent as and when due under this Lease. For the avoidance of doubt, the inclusion of casualty and condemnation in this Article 16 does not supersede or limit the requirements of Article 10, Article 11 or Article 12 with respect thereto or lengthen any time periods with respect to Tenant's obligations thereunder (unless a new casualty or condemnation occurs which new casualty or condemnation, however, shall be subject to the requirements of Article 10, Article 11 or Article 12, as applicable).

ARTICLE 17 NOTICES

(a) Any notice, demand or other communication to be given under the provisions of this Lease by either party hereto to the other party hereto shall be effective only if in writing and (i) personally served, (ii) mailed by United States registered or certified mail, return receipt requested, postage prepaid, (iii) sent by a nationally recognized courier service (such as Federal Express) for next-day delivery, to be confirmed in writing by such courier, or (iv) sent by facsimile (with answer back acknowledged), addressed as follows:

To Tenant: c/o The Yucaipa Companies, LLC
9130 West Sunset Boulevard
Los Angeles, California 90069
Attention: Legal Dept.
Facsimile: 310-789-1791

with a copy to: Pircher, Nichols & Meeks
1925 Century Park East
Suite 1700
Los Angeles, California 90067-2512
Attention: Real Estate Notices (SAH #5602.3)
Facsimile: 310-201-8922

To Landlord: [_____]

[_____]

[]
[]

with a copy to:

[]
[]
[]
[]

and a copy to:

[]
[]
[]

(b) Subject to the terms of this subsection (b), all notices, demands and other communications sent in the foregoing manner shall be deemed delivered when actually received or refused by the party to whom sent, unless (i) mailed, in which event the same shall be deemed delivered on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of the third (3rd) Business Day after the date of mailing, whichever first occurs, or (ii) sent by facsimile, in which event the same shall be deemed delivered only if a duplicate notice sent pursuant to a method described in subsection (a)(i), (a)(ii) or (a)(iii) of this Article 17 is delivered within two (2) Business Days after such facsimile is received by the recipient. Notwithstanding the foregoing, if any notice, demand or other communication is not received during business hours on a Business Day, such notice, demand or other communication shall be deemed to have been delivered at the opening of business on the next Business Day.

(c) Either Landlord or Tenant may from time to time change its address for receiving notices under this Lease by providing written notice to the other party in accordance with this Article 17.

ARTICLE 18 ACCESS

Landlord and its designees shall have the right upon not less than twenty-four (24) hours' prior written notice to Tenant (except in the event of an emergency that poses an immediate and material danger to persons or property within the Demised Property, where no prior notice shall be required) to enter upon the Demised Property at reasonable hours to inspect the Demised Property or, during the period commencing one year prior to the end of the Lease Term, for the purpose of exhibiting same to prospective tenants and posting "for lease" or similar signage at the Demised Property, all in Landlord's discretion. Any such entry and/or inspection by Landlord shall not unreasonably interfere with Tenant's ability to conduct its business operations at the Demised Property. Tenant may elect to have a representative of Tenant accompany Landlord during all such entries (but in no event shall the availability of a representative to accompany Landlord or Tenant's election or failure to inform Landlord of its election to have a representative accompany Landlord be a condition to Landlord's rights under this Article 18).

ARTICLE 19 SIGNS

Tenant may, at Tenant's sole cost and expense, install or erect, at or on the Demised Property, signs of any height or dimensions and bearing such inscriptions as Tenant shall reasonably determine; provided, however, that no sign shall be installed or erected by Tenant at or on the Demised Property until all governmental approvals and permits required therefor have been obtained, all fees

pertaining thereto have been paid by Tenant, and Tenant has delivered written evidence of such approvals, permits and payment to Landlord. Landlord shall use commercially reasonable efforts to assist Tenant, upon Tenant's request, in obtaining all necessary governmental permits and approvals for such signs. Upon the termination of this Lease following an Event of Default or upon a rejection of this Lease in any bankruptcy or similar proceeding, Landlord shall have the right, at its sole option, to retain and use the signage structures (but not the signs) in the future operation of the Demised Property without payment of any compensation to Tenant, or to require Tenant to remove such signage structures at Tenant's sole cost and expense (and, if such removal is not accomplished by Tenant promptly after notice from Landlord, Landlord may undertake such removal at Tenant's sole cost and expense). This Article shall survive termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 20 IMPROVEMENTS, BUILDING EQUIPMENT AND TENANT EQUIPMENT

Section 20.01 Any Building Equipment and other Improvements at the Demised Property on the Commencement Date shall be the property of Landlord. In the event that Tenant installs or erects any fixtures or other Improvements to the Demised Property after the Commencement Date, such fixtures or other Improvements shall be the property of Landlord and remain upon and be surrendered with the Demised Property; provided, however, that Tenant shall be required to remove any underground storage tanks or otherwise close such tanks in accordance with applicable Law, unless Landlord expressly consents in writing to the continued presence of any such underground storage tanks. Notwithstanding the foregoing provisions, Tenant shall be liable for all property taxes, assessments, and similar charges assessed against or allocable to any property at the Demised Property (irrespective of whether such property is Building Equipment owned by Landlord or Tenant Equipment or other personal property owned by Tenant) and that are attributable to any period of time during the Lease Term.

Section 20.02 During the Lease Term, Tenant shall be entitled to use the Building Equipment in Tenant's operations at the Demised Property. Tenant shall keep the Building Equipment in good working order and repair, shall not remove the Building Equipment from the Demised Property (subject to the terms of this Section) and shall not permit any lien or other encumbrance to attach to any Building Equipment except as may be caused by Landlord, and except any such liens that are being contested by Tenant in good faith by appropriate proceedings and that have been bonded over by Tenant to the reasonable satisfaction of Landlord or for which Tenant provides alternative security to the reasonable satisfaction of Landlord. Tenant shall keep (or cause to be kept) the Building Equipment insured and shall be responsible for any casualty or other loss to Building Equipment or occasioned by Building Equipment. Tenant shall at all times have a system in place to identify the Building Equipment from the Tenant Equipment or any of Tenant's personal property, and any items of equipment not so identified shall conclusively be presumed to be Building Equipment and shall be the property of Landlord. Tenant may, from time to time, retire or replace Building Equipment with new items of equipment of equal or greater value purchased by Tenant, in which event such replaced equipment shall constitute Building Equipment; provided, however that Tenant shall provide Landlord prompt written notice after any such replacement together with reasonable evidence as to the value and quality of the new Building Equipment. Promptly after Landlord's receipt of such written notice in connection with any such replacement (or written notice of any Capital Alterations) made during the final twelve (12) months of the Lease Term (or the final twelve (12) months of the applicable Option Period if an Option shall have been exercised), the useful life of which extends beyond the Lease Term, Landlord shall pay to Tenant an amount equal to (i) the quotient of (x) the portion of the useful life of such replacement or Capital

Alteration not falling within the Lease Term divided by (y) the total useful life of such replacement or Capital Alteration, multiplied by (ii) the value of such replacement or Capital Alteration, provided, that, should the Lease Term thereafter be extended, the amount shall be recalculated so that the applicable Option Period is included within the Lease Term and any amounts due Landlord pursuant to such recalculation shall be paid by Tenant to Landlord promptly after such recalculation. All Building Equipment shall be the property of Landlord, and Tenant shall execute such instruments and documents as Landlord may require to evidence such ownership by Landlord.

Section 20.03 In the event of any replacement of any Tenant Equipment with new items of equipment, such new items of equipment shall thereafter constitute Tenant Equipment. Tenant shall keep the Tenant Equipment fully insured and shall be responsible for any casualty or other loss to any Tenant Equipment or occasioned by any Tenant Equipment.

ARTICLE 21 END OF TERM; HOLDING OVER

Section 21.01 Upon the expiration or earlier termination of this Lease, Tenant shall peaceably and quietly quit and surrender the Demised Property, and all Alterations that are then part of the Demised Property, broom clean and in good order and condition. Tenant shall within thirty (30) days prior to the expiration of this Lease (or within thirty (30) days after written notice from Landlord upon any earlier termination of this Lease) transfer to Landlord all plans, drawings, other Alteration Information, and technical descriptions of the Demised Property in Tenant's possession or control, and shall assign to Landlord, without warranty or representation, all assignable permits, licenses, authorizations and warranties necessary for the operation of the Demised Property (in each case to the extent not previously transferred or assigned to Landlord). Upon the expiration or earlier termination of this Lease, Tenant shall have the obligation to remove all Tenant Equipment, trade fixtures and personal property from the Demised Property, except that, with the prior written consent of Landlord (which consent Landlord may withhold in its sole discretion), Tenant may elect to abandon any such Tenant Equipment, trade fixtures and personal property. Any Tenant Equipment, trade fixtures or personal property that is not removed upon the expiration or earlier termination of this Lease within the time periods set forth above in this Section 21.01 shall be deemed abandoned and may be removed, stored, disposed of or used by Landlord without payment of any compensation to Tenant (and any costs incurred by Landlord in connection with any such removal, storage or disposal shall be paid by Tenant to Landlord immediately upon demand). Tenant agrees to deliver, within three (3) Business Days after the date of this Lease, written notice of the covenant in the immediately preceding sentence to any lender with a security interest in any of the Tenant Equipment and any equipment lessor that owns any of the Tenant Equipment, which notice shall specifically state that any Tenant Equipment, trade fixtures or personal property remaining on the Demised Property at the time of termination or expiration of this Lease shall be deemed abandoned and the property of Landlord, subject to any direct agreements between Landlord and any lender or owner with an interest in such Tenant Equipment, trade fixtures and personal property. Tenant shall deliver a copy of such notice to Landlord contemporaneously with its delivery to such lender or equipment lessor.

Section 21.02 If Tenant holds over in possession after the expiration of the Lease Term, then such holding over shall not be deemed to extend the Lease Term or renew this Lease, but rather the tenancy thereafter shall continue as a tenancy at sufferance pursuant to the terms and conditions contained in this Lease, at one hundred fifty percent (150%) of the Base Rent otherwise then applicable (in addition to all Additional Rent); and Tenant shall be responsible for the consequences of any unauthorized holdover and shall indemnify, defend, protect (with counsel selected by Landlord) and hold Landlord Parties wholly free and harmless from any and all Losses arising therefrom. If Tenant is obligated under

Article 29 to undertake Remedial Activities, Tenant shall be permitted to access the Demised Property to conduct the Remedial Activities and such access shall not be deemed holding over in possession unless the Remedial Activities materially interfere with surface uses, or materially compromise the quiet enjoyment of the Demised Property, in which case Tenant shall be deemed to be holding over until such time as surface uses may resume without undue impairment.

Section 21.03 This Article 21 shall survive the expiration or termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article 21 shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 22 TENANT ASSIGNMENT AND SUBLETTING

Section 22.01

(a) Except as otherwise explicitly provided in this Article 22 and Article 23, neither Tenant, nor Tenant's successors or assigns, shall assign or transfer, in whole or in part, by operation of law or otherwise, this Lease, or sublet the Demised Property, in whole or in part, or permit the Demised Property or any portion thereof to be used or occupied by third parties, or enter into a management contract or other arrangement whereby the Demised Property shall be managed or operated by anyone other than the owner of the Tenant's leasehold estate (other than customary property-level agreements for landscaping, maintenance and other similar services), without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall request Landlord's consent to a proposed assignment or sublease in writing, and Landlord will endeavor to respond to such request within ten (10) Business Days following receipt thereof. In the event that Landlord fails to so respond to Tenant's request within such ten (10) Business Day period, then Tenant may deliver a second written request for Landlord's consent to such proposed assignment or sublease containing a sentence in the header of the first page of the request set in at least 14-point bold font, all capital letters, stating "**LANDLORD'S FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS AFTER LANDLORD'S RECEIPT HEREOF SHALL CONSTITUTE LANDLORD'S CONSENT TO THE ASSIGNMENT OR SUBLEASE PROPOSED HEREIN,**" and Landlord shall endeavor to respond to such second request within ten (10) Business Days following Landlord's receipt of such request. In the event that Landlord fails to so respond to Tenant's second request within such ten (10) Business Day period, then Landlord shall be deemed to have consented to the proposed assignment or sublease set forth in Tenant's written request. Any response by Landlord that withholds consent to any proposed assignment or sublease and does not contain a reasonably detailed explanation of the reasonable grounds for Landlord's withholding of its consent shall be deemed a failure to respond. No assignment or transfer of any direct or indirect ownership interest in Tenant, in whole or in part, by operation of law or otherwise, privately or publicly, regardless of the number of tiers of ownership, and regardless of whether there is a change of control, shall be deemed an assignment hereunder or otherwise require Landlord's consent. No assignment to any entity with which Tenant may merge, consolidate or to an entity that purchases (i) all the assets of Tenant or (ii) at least ninety percent (90%) of the value of all of the assets of Tenant shall require Landlord's consent. The sale or assignment of assets other than Tenant's leasehold interest in the Demised Property shall not be deemed an assignment or otherwise require Landlord's consent. No encumbrance, pledge or hypothecation, in whole or in part, by operation of law or otherwise, of this Lease or any interest in the leasehold estate created by this Lease, or of any direct or indirect ownership interest in Tenant, regardless of the number of tiers of ownership, shall be deemed an assignment or otherwise require Landlord's consent, nor shall the

foreclosure or transfer in lieu of foreclosure thereof. Any such encumbrance, pledge or hypothecation of this Lease or any interest in the leasehold estate created by this Lease shall be subject to the provisions of Section 23.03.

(b) After any assignment or sublease permitted by Landlord hereunder (including any assignment or sublease described in Sections 22.02, 22.03, 22.04 and 22.05), and except as expressly provided herein, (i) Tenant (unless it is no longer in existence in connection with a merger, consolidation or sale of all of its assets) shall remain liable for all its obligations under this Lease, and Tenant shall, promptly after request, execute and deliver to Landlord a guaranty in form and substance reasonably acceptable to both Landlord and Tenant, whereby Tenant explicitly guarantees all of the assignee's obligations under this Lease, and (ii) Landlord may condition its consent to any sublease regarding the Demised Property upon the sublease containing the following provisions (or the subtenant separately agreeing), in form and substance reasonably acceptable to Landlord and Landlord's Lender (collectively, the "**Subordination and Attornment Provisions**"): (A) that the sublease is subordinate in all respects to this Lease provided that Landlord and Landlord's Lender agree to accept the attornment described in the immediately succeeding clause (B) and agree not to disturb the rights of the subtenant pursuant to a commercially reasonable non-disturbance agreement; (B) that in the event of the cancellation or termination of this Lease for any reason whatsoever or of the surrender of this Lease by operation of law prior to the expiration date of the sublease, the subtenant shall make full and complete attornment to Landlord under the terms of the sublease for the balance of the term of the sublease; (C) that subtenant waives the provisions of any Law then or thereafter in effect that may give subtenant any right of election to terminate the sublease or to surrender possession of the Demised Property in the event any proceeding is brought by Landlord to terminate this Lease; and (D) that all of the foregoing provisions in (A) through (C) are for the benefit of both Tenant and Landlord and Landlord is a third party beneficiary thereof. Notwithstanding the foregoing, upon the reasonable request of Landlord or Landlord's Lender, Landlord, Tenant and the subtenant shall execute and deliver to each other a separate subordination and attornment agreement regarding the sublease, in form and substance reasonably acceptable to Landlord and Landlord's Lender. Tenant shall submit current financial statements of any proposed assignee or sublessee together with Tenant's request for Landlord's approval of any proposed assignment or sublease. Tenant shall reimburse Landlord for all reasonable costs and expenses actually paid by Landlord in connection with any requested consent to an assignment or sublease; including reasonable legal fees and costs in reviewing sublease or assignment documents and in preparing or reviewing consents. Without in any way limiting Landlord's right to reasonably withhold consent to any proposed assignment or sublease by Tenant, Tenant shall deliver to Landlord written notice of any assignment or sublease of this Lease promptly after the effective date of any such assignment or sublease.

(c) If this Lease is assigned or transferred, or if all or any part of the Demised Property is sublet or occupied by any party other than Tenant, Landlord may collect rent from the assignee, transferee, or, after the occurrence of an Event of Default, subtenant or similar occupant, and apply the net amount collected to the Rent reserved in this Lease, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any covenant or condition of this Lease, or the acceptance of the assignee, transferee, subtenant or occupant as tenant, or a release of Tenant from the performance or further performance by Tenant of its obligations under this Lease. Without limiting the generality of the foregoing, Tenant expressly acknowledges and agrees that, in the event of any assignment of this Lease, Tenant shall (if it remains liable pursuant to the provisions of this Article 22) remain jointly and severally liable with the assignee for all of the obligations under this Lease, and in all other cases of any transfer of Tenant's interest under this Lease, Tenant shall remain primarily liable for such obligations. Subject to the foregoing, the consent by Landlord to an assignment, transfer, management contract or subletting shall not in any way be construed to relieve Tenant from obtaining the express

written consent of Landlord in each instance to any subsequent similar action that Tenant may desire to take.

Section 22.02 Notwithstanding anything contained in Section 22.01, Tenant may sublease the entire Demised Property, at any time, in the ordinary course of business hereunder without Landlord's prior written consent, provided all of the following conditions are satisfied: (a) the subtenant is commercially and financially sound; (b) the permitted use under the sublease is limited to the operation of a Permitted Use (and with any change in use to a use which is not a Permitted Use subject to the prior written consent of each of Landlord and Tenant, which approval each may withhold in its reasonable discretion), in compliance with all applicable Laws and the covenants set forth in Section 4.02, (c) the sublease contains the Subordination and Attornment Provisions (provided, however, that such provisions shall subordinate the sublease in all respects to the Lease without any condition that Landlord or Landlord's Lender agree to accept the subtenant's attornment or agree not to disturb the rights of the subtenant pursuant to a commercially reasonable subordination, non-disturbance and attornment agreement, or otherwise, unless Landlord consents in writing to the sublease), if required by Landlord in its sole and absolute discretion; (d) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term, and (e) the subtenant has not refused to deliver to Landlord and any Landlord's Lender, promptly after request, a subordination, non-disturbance and attornment agreement in form and substance described in Section 22.01(b).

Section 22.03 Notwithstanding anything contained in Section 22.01, Tenant may sublease space within the Demised Property hereunder subject to Landlord's consent not to be unreasonably withheld (provided, however, that Landlord's consent shall not be required for such subleases of less than twenty percent (20%) of the useable square feet of the Demised Property, but Landlord's consent (not to be unreasonably withheld) shall be required for any such sublease if twenty percent (20%) or more in the aggregate of the useable square feet of the portion of the Demised Property is already subject to such subleases or would be subject to such subleases with the inclusion of any additional such sublease[, it being agreed that any usable space at the Demised Property not being occupied by Tenant on the Commencement Date (as set forth on Schedule 22.05) shall not be included in any of the foregoing calculations, regardless of whether any such space is later sublet]³, provided all of the following conditions are satisfied: (a) the subtenant is commercially and financially sound; (b) the permitted use under the sublease is limited to the operation of customary in-store, grocery store (which may include, but which shall not be limited to, the operation of a pharmacy, bank or coffee kiosk) or other customary in-store Permitted Uses (and with any change in use to a use which is not a Permitted Use subject to the prior written consent of each of Landlord and Tenant, which approval each may withhold in its reasonable discretion) and the covenants set forth in Section 4.02 are included in the sublease as obligations of the subtenant (although the covenants set forth in Section 4.01 may be expressly excluded from the sublease), (c) the applicable sublease contains the Subordination and Attornment Provisions and prohibits the subtenant from effecting or permitting any Alterations other than a Subtenant Minor Project without the prior written consent of Tenant and Landlord; (d) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term, and (e) the subtenant has not refused to deliver to Landlord and any Landlord's Lender, promptly after request, a subordination, non-disturbance and attornment agreement in form and substance described in Section 22.01(b).

Section 22.04 Notwithstanding anything to the contrary contained in Section 22.01, Tenant may assign the Lease in its entirety without Landlord's prior written consent, but with prior written notice

³ Only in an assignment lease with unoccupied space

to Landlord, and provided an Event of Default does not exist as of the delivery of Tenant's notice to Landlord and as of the effective date of the applicable assignment, if such assignment or sublease is to the following (a "**Permitted Assignee**"): an entity that along with any guarantor of such entity's obligations under the Lease (pursuant to a guaranty in form and substance acceptable to Landlord) has a net worth at the time of such assignment equal to or greater than the greater of (x) the net worth of Tenant immediately before the assignment (but in no event shall such assignee and guarantor be required to have a combined net worth greater than \$150,000,000) and (y) \$10,000,000. In addition, Tenant may assign its rights to the entire Lease without consent to any entity, including any Tenant Affiliate, so long as Tenant remains liable pursuant to a guaranty in form and substance acceptable to Landlord. In the event of any assignment to a Permitted Assignee, Tenant shall be released from any liability accruing under this Lease after the date of such assignment. Any Permitted Assignee or other assignee permitted under this Section 22.04 shall be subject to all of the provisions of this Lease, including the operation requirements set forth in Article 4. For the avoidance of doubt, in no event shall Tenant be permitted to assign less than all of its interest in this Lease.

Section 22.05 [Notwithstanding anything contained in Section 22.01, Tenant shall use commercially reasonable efforts to sublease the unoccupied portions of the Demised Property described in Schedule 22.05 pursuant to subleases in form and substance reasonably acceptable to Landlord, and agrees that all of the following conditions shall be satisfied with regard to any such subleases: (a) the subtenant is commercially and financially sound; (b) the sublease contains the Subordination and Attornment Provisions and prohibits the subtenant from effecting or permitting any Alterations other than Subtenant Minor Projects without the prior written consent of Tenant and Landlord; (c) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term, and (d) the subtenant has not refused to deliver to Landlord and any Landlord's Lender, promptly after request, a subordination, non-disturbance and attornment agreement in form and substance described in Section 22.01(b). Landlord and Tenant shall reasonably cooperate in locating appropriate subtenants in connection with each such unoccupied portion of the Demised Property.]⁴

Section 22.06 Upon any sublease or assignment permitted as provided in this Article 22 Tenant shall deliver to Landlord copies of such sublease or assignment agreement in form and substance reasonably satisfactory to Landlord (including assumption language reasonably satisfactory to Landlord in any assignment agreement) promptly after the execution thereof by Tenant. Tenant shall provide Landlord with at least ten (10) Business Days written notice of its intent to assign or sublet this Lease with Landlord's consent or as otherwise permitted hereunder and shall deliver such assignment or sublease containing, if an assignment, an agreement, in recordable form, executed by the assignor and the assignee, in which the assignee assumes the performance of the obligations of the assignor under this Lease throughout the Lease Term within ten (10) Business Days of such assignment. Tenant shall be entitled to redact any confidential business terms (other than the terms Landlord is otherwise entitled to see under this Lease) not applicable to Landlord. In no event shall Tenant be entitled to amend, extend or otherwise modify any sublease or assignment agreement (except with respect to such redacted material) without the prior written consent of Landlord, which consent Landlord may withhold in its reasonable discretion. Landlord agrees to enter into a commercially reasonable subordination, non-disturbance and attornment agreement with any subtenant under any sublease approved by Landlord in writing hereunder and any sublease for less than twenty percent (20%) of the useable square feet at a Demised Property, as

⁴ Only in a lease that has unoccupied space

described in Section 22.03, but shall not have any obligation to deliver a subordination, non-disturbance and attornment agreement to any other subtenant.

Section 22.07 Subject to the terms of this Lease, this Lease shall be binding upon, enforceable by, and inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns. Without limiting Landlord's rights to reimbursement for fees and costs payable to third parties contained in this Lease, including in connection with its review of any Tenant request for Landlord's consent in connection with an assignment or sublet pursuant to this Article 22, Landlord agrees not to charge Tenant any additional amount as a condition to its consent to any assignment or sublease hereunder.

ARTICLE 23 FINANCINGS

Section 23.01 This Lease shall be subject and subordinate to all present and future ground or underlying leases of the Demised Property and to the lien of any mortgages or trust deeds, now or hereafter in force against the Demised Property, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages or trust deeds, or the lessors under such ground or underlying leases, require in writing that this Lease be superior thereto; and Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any mortgage or deed of trust to which this Lease is subordinate, or in the event of any termination of any ground or underlying lease to which this Lease is subordinate, to attorn to the purchaser upon any such foreclosure sale, if so requested to do so by such purchaser, and to the ground or underlying lease lessor, if so requested to do so by such ground or underlying lease lessor, and to recognize such purchaser, or ground or underlying lessor, as the case may be, as the lessor under this Lease; provided, however, that the foregoing subordination to present and future ground or underlying leases of the Demised Property and to the lien of any future mortgages or trust deeds in force against the Demised Property shall be conditioned upon Landlord providing Tenant with a subordination, non-disturbance and attornment agreement in favor of Tenant in the form attached hereto as Exhibit B, or other commercially reasonable, mutually reasonably acceptable form requested by Landlord that provides, without limitation, that this Lease and the rights of Tenant hereunder shall control over any contrary provisions in such mortgage, deed of trust or ground lease and shall survive any foreclosure proceeding brought under such mortgage or deed of trust, or termination of such ground or underlying lease (as applicable), provided an Event of Default is not continuing under this Lease (either, an "SNDA"). Without limiting the foregoing, (a) as of the Commencement Date, each of Landlord, Landlord's Lender, and Tenant shall execute and deliver to each other a subordination, non-disturbance and attornment agreement in the form attached hereto as Exhibit B, or a substantially similar form proposed by Landlord, and (b) Tenant shall, and shall use commercially reasonable efforts to cause any subtenant, other than an existing subtenant, from time to time, within seven (7) days after any request by Landlord, to execute and deliver such other instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease (at Landlord's election) to any such mortgages, trust deeds, ground or underlying leases (including, at Landlord's election, one or more additional SNDAs requested by Landlord's Lender).

Section 23.02 Tenant shall cooperate with Landlord and execute, subject to Tenant's reasonable approval which shall not be unreasonably withheld, any and all instruments reasonably requested by Landlord (including, if necessary, the execution of a reasonable amendment to this Lease), in the establishment and maintenance of cash management procedures reasonably requested by any Landlord's Lender with respect to payment of Base Rent and other amounts payable by Tenant directly to Landlord as and when the same are due and payable hereunder; provided, however, that Tenant shall not

be obligated to agree to any requested action or execute any requested instrument if the same would have a material adverse effect upon Tenant, unless Tenant is reasonably compensated therefor by Landlord. In addition, Tenant agrees to cooperate in good faith with Landlord, any Landlord's Lender and any Landlord's Mortgagee, in connection with any sale or transfer of the Demised Property by Landlord or any transfer, participation, syndication and/or securitization of any loan secured by the Demised Property, or any or all servicing rights with respect thereto, including (a) by providing such documents, financial and other data, and other information and materials (the "**Disclosures**") that would typically be required with respect to a similarly situated tenant (and typically acceptable to a significant tenant) by a purchaser of the Demised Property and/or a purchaser, transferee, assignee, servicer, participant, co-lender, investor or Rating Agency involved with respect to any transfer, participation, syndication and/or securitization of any loan secured by the Demised Property, as applicable (collectively, the "**Transfer Parties**" and each, a "**Transfer Party**"); and (b) by amending the terms of this Lease, subject to Tenant's reasonable approval which shall not be unreasonably withheld, to the extent reasonably necessary so as to satisfy the requirements of the Transfer Parties involved in any such transfer, participation, syndication or securitization; provided, however, that Tenant shall not be obligated to agree to any requested action, or execute any requested amendment, if the same would have a material adverse effect upon Tenant, unless Tenant is reasonably compensated therefor by Landlord

Section 23.03 Notwithstanding Section 22.01 above, but subject to the terms of this Article, Landlord agrees that Tenant shall have the right to encumber, pledge or hypothecate Tenant's interest in the leasehold estate created by this Lease. All proceeds from any Leasehold Mortgage shall remain the property of Tenant. Landlord shall not be obligated to subordinate any or all of Landlord's right, title or interest in and to the Demised Property and this Lease to the lien of any Leasehold Mortgage. A Leasehold Mortgage shall encumber only Tenant's leasehold interest in the Demised Property, and shall not encumber Landlord's right, title or interest in the Demised Property. Landlord shall have no liability whatsoever for the payment of any obligation secured by any Leasehold Mortgage or related obligations. A Leasehold Mortgage shall be, and hereafter shall continue at all times to be, subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and junior, subject and subordinate, in each and every respect, to all rights and interests of any Landlord's Mortgagee now or hereafter affecting the Demised Property. Should there be any conflict between the provisions of this Lease and the provisions of any Leasehold Mortgage, the provisions of this Lease shall control. No Leasehold Mortgage shall be for a term longer than the Original Lease Term. Either prior to or concurrently with the recordation of any Leasehold Mortgage, Tenant shall cause a fully conformed copy thereof and of the financing agreement secured thereby to be delivered to Landlord and Landlord's Mortgagee, together with a written notice containing the name and post office address of Tenant's Lender. Upon written request from Tenant, Landlord agrees to deliver an estoppel certificate in favor of Tenant's Lender regarding this Lease, in form and substance reasonably acceptable to Landlord and Tenant's Lender. Tenant agrees that a condition precedent to its granting a Leasehold Mortgage to any Tenant's Lender shall be the execution and delivery by such Tenant's Lender to Landlord and Landlord's Lender of a subordination, non-disturbance and attornment agreement, in form and substance reasonably acceptable to Landlord and Landlord's Lender, that shall provide, without limitation, that upon a default under the Leasehold Mortgages, Tenant's Lender may foreclose only on this Lease as an entirety, applicable to all, but not less than all (even if otherwise possible under applicable Law) of the Demised Property. Tenant hereby acknowledges and agrees (a) that it is Landlord's intent to pledge the Demised Property to Landlord's Lender on or about the Commencement Date, (b) that any instruments effecting or evidencing such pledge shall at all times be prior in interest to any Leasehold Mortgage and (c) if requested by Landlord's Lender, Tenant shall cause Tenant's Lender to enter into an agreement in form and substance reasonably acceptable to Landlord's Lender confirming that Tenant's Lender has no interest in the Demised Property other than in Tenant's interest under this Lease and that any Leasehold Mortgage is

subject and subordinate to any such instruments effecting or evidencing such pledge. In addition, in the event that any Landlord's Lender requires that the Leasehold Mortgage be terminated of record and re-recorded in order to ensure priority of any such instrument effecting or evidencing such pledge, Tenant shall cause the same to occur promptly after written request, and at Landlord's expense. Tenant hereby agrees not to grant any Leasehold Mortgages against the Demised Property unless and until instruments securing or evidencing Landlord's pledge of the Demised Property to Landlord's Lender are recorded against the Demised Property. If Landlord delivers to Tenant a Default notice under this Lease, Landlord shall notify any Tenant's Lender (without any liability for failure to provide such notification) that has delivered to Landlord a prior written request for such notice, and Landlord shall recognize and accept the performance of any obligation of Tenant hereunder by Tenant's Lender (provided said performance occurs within the same cure periods as provided to Tenant under this Lease); provided, however that nothing contained herein shall obligate Tenant's Lender to take any such actions. Any act by Tenant or Tenant's Lender in violation of this Section 23.03 shall be null and void and of no force or effect. Tenant shall, without charge, at any time and from time to time, within ten (10) days after any request by Landlord, obtain from Tenant's Lender and deliver to Landlord or any other Person specified by Landlord, duly executed and acknowledged, an estoppel certificate certifying (x) copies of the documents creating, evidencing and securing the debt secured by any Leasehold Mortgage, (y) whether, to the knowledge of Tenant's Lender, any default exists under such Leasehold Mortgage and (z) such other matters relating to such Leasehold Mortgage as Landlord may reasonably request (and any Leasehold Mortgage shall contain an express obligation by Tenant's Lender to deliver such an estoppel certificate upon request from time to time). Landlord also hereby agrees, upon request by Tenant or Tenant's Lender, to enter into a commercially reasonable agreement with Tenant's Lender that may provide, without limitation (a) without limiting any express rights of Landlord under this Lease, Landlord's waiver of any Landlord's lien against any property of Tenant, (b) that Landlord shall not amend the Lease without the prior written consent of Tenant's Lender, (c) that Tenant's Lender shall have the right, but not the obligation, to pay and perform all obligations of Tenant under this Lease subject to any additional cure periods reasonably agreed to by Landlord and Tenant's Lender, (d) that upon any termination of the Lease, Tenant's Lender shall have the right to a new lease with Landlord, for the remainder of the Lease Term, and otherwise with the same covenants, conditions and agreements as are contained in the Lease subject to such reasonable conditions as Landlord may impose, and (e) that Tenant's Lender shall have rights upon written notice to Landlord to enter upon the Demised Property to remove Tenant's personal property following any default under the Leasehold Mortgage, provided, however that Tenant's Lender shall maintain adequate insurance (and deliver written evidence of the same to Landlord) and satisfy Tenant's obligation to pay Base Rent during such period of possession, not to exceed thirty (30) days, which thirty (30)-day period will be tolled in the event of an applicable bankruptcy proceeding. For the avoidance of doubt, the rights afforded Tenant pursuant to Section 34.01 shall be available to Tenant's Lender becoming Tenant under this Lease (itself or through a wholly-owned subsidiary) through foreclosure, deed-in-lieu or other similar process. This Section shall survive termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this section shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 24 ESTOPPEL CERTIFICATES

Tenant shall, without charge, at any time and from time to time, within ten (10) days after any request by Landlord, deliver to Landlord or any other Person specified by Landlord, duly executed and acknowledged, a completed Estoppel Certificate in substantially the form as set forth on Exhibit C attached hereto, or other commercially reasonable estoppel certificate confirming such information

regarding this Lease and Tenant as Landlord may request (either, an “**Estoppel Certificate**”). Landlord shall, without charge, at any time and from time to time, within ten (10) days after any request by Tenant, deliver to Tenant or any other Person specified by Tenant, duly executed and acknowledged, a commercially reasonable estoppel certificate confirming such information regarding this Lease and Landlord as Tenant may reasonably request.

ARTICLE 25 RECORDING

Neither Landlord nor Tenant shall record this Lease; however, upon the request of either party hereto, the other party shall join in the execution and recordation of a memorandum of lease (or similar instrument) in a form substantially similar to the form attached hereto as **Exhibit D**. If the recordation of such memorandum of lease (or similar instrument) is requested by Tenant, Tenant shall pay all costs charged by the applicable local recorder in connection therewith.

ARTICLE 26 APPLICABLE LAW; WAIVER OF JURY TRIAL

This Lease shall be construed in accordance with, and this Lease and all matters arising out of or relating to this Lease (whether in contract, tort or otherwise) shall be governed by, the law of the State where the Demised Property is located without regard to conflicts of law principles. If any provision of this Lease or the application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by applicable Law.

TENANT AND LANDLORD, EACH HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF [____], STATE OF [____], AND EACH IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LEASE SHALL BE LITIGATED IN SUCH COURTS (EXCEPT FOR FORCIBLE ENTRY AND DETAINER ACTIONS, OR SIMILAR PROCEEDINGS, WHICH SHALL BE LITIGATED IN COURTS LOCATED WITHIN THE COUNTY AND STATE IN WHICH THE DEMISED PROPERTY IS LOCATED). TENANT AND LANDLORD EACH ACCEPTS, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS (EXCEPT AS PROVIDED ABOVE IN THIS PARAGRAPH) AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS LEASE.

EACH OF TENANT AND LANDLORD, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS LEASE.

TENANT AND LANDLORD EACH ACKNOWLEDGES THAT THE PROVISIONS OF THIS ARTICLE ARE A MATERIAL INDUCEMENT TO THE OTHER PARTY’S ENTERING INTO THIS LEASE.

ARTICLE 27 LIABILITY OF PARTIES

Section 27.01 The obligations of Landlord under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord. Tenant shall look solely to the Demised Property for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord. Whenever Landlord transfers its interest in the Demised Property, Landlord shall be automatically released from further performance under this Lease with respect to the Demised Property and from all further liabilities and expenses hereunder related to the Demised Property whether occurring prior to or after any such assignment provided the applicable assignee assumes all obligations under this Lease whether occurring prior to or after any such assignment.

Section 27.02 The obligations of Tenant under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant. Landlord shall not seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant.

ARTICLE 28 ATTORNEYS' FEES; EXPENSES

Without limiting any other obligation of Tenant to timely indemnify or reimburse Landlord hereunder (including under Article 9 and Article 29):

(a) If any party to this Lease shall bring any action or proceeding for any relief against the other, declaratory or otherwise, arising out of this Lease, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs incurred in bringing or defending such action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs, separate from the judgment, incurred in enforcing such judgment. The prevailing party shall be determined by the trier of fact based upon an assessment of which party's major arguments or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues. For the purposes of this clause, attorneys' fees shall include fees incurred in the following: (i) post-judgment motions; (ii) contempt proceedings; (iii) garnishment, levy, and debtor and third party examinations; (iv) discovery; and (v) bankruptcy litigation. This clause is intended to be expressly severable from the other provisions of this Agreement, is intended to survive any judgment and is not to be deemed merged into the judgment.

(b) Tenant agrees to pay or, if Tenant fails to pay, to reimburse, Landlord upon receipt of written notice from Landlord for all reasonable costs and expenses (including reasonable attorneys' fees and costs) incurred by Landlord in connection with (i) any request by Tenant to Landlord (including any amendment to this Lease requested by Tenant), including Landlord's actions in response thereto, provided, however, the foregoing shall not include costs and expenses incurred by Landlord in connection with any request by Tenant to Landlord under Article 29, or Schedule 29.08, or any Holdback Agreement⁵, Article 4 (unless Landlord reasonably determines that it needs to engage an attorney in

⁵ Only in Lease for applicable Demised Property

connection therewith), or Section 34.02 (except to the extent any of the foregoing requests is in connection with an amendment to this Lease) (for the avoidance of doubt, the cost of arbitration under Section 31.01 shall be apportioned as provided in clause (6) of Section 31.01 and expenses paid or incurred by Landlord pursuant to Section 31.01 shall be paid as set forth in the final paragraph of Section 31.01); (ii) securing Tenant's compliance with any requests made pursuant to the provisions of this Lease or other Transaction Documents; and (iii) enforcing any obligations of or collecting any payments due from Tenant under this Lease, the other Transaction Documents or with respect to the Demised Property.

ARTICLE 29 ENVIRONMENTAL

Section 29.01 Tenant acknowledges that Landlord makes no warranties or representations of any kind, or in any manner or in any form whatsoever, as to the status of Environmental Conditions or Hazardous Materials at the Demised Property. Tenant shall conduct at its own expense any and all investigations regarding Environmental Conditions of the Demised Property and will satisfy itself as to the absence or existence of Hazardous Materials contamination of the Demised Property and the suitability of the Demised Property for Tenant's operations. Tenant's entry into this Lease shall be made at its sole risk. [Pursuant to California Health & Safety Code § 25359.7, Landlord has provided written notice to Tenant prior to the date hereof that a release of "Hazardous Substances," as that term is defined pursuant to the California Health & Safety Code § 25339.7, has come to be located on or beneath the Demised Property.]⁶

Section 29.02 Tenant shall comply with all Environmental Laws and cause and ensure the Demised Property and all operations thereon comply with all applicable Environmental Laws. Tenant shall not suffer or permit any loss, on, at, under or affecting the Demised Property of any source if the same pose a health or safety risk to invitees or employees. From and after the Commencement Date, Tenant shall not be entitled to the Use of any Hazardous Materials at the Demised Property other than De Minimis Amounts, which shall be performed in full compliance with all Environmental Laws and any other applicable Laws. Tenant shall be prohibited from conducting or allowing the Release of Hazardous Materials onto, on, about, under or from the Demised Property, the exception being sewer or other permitted discharges or Releases or other De Minimis Amounts, in full compliance with all Environmental Laws and any other applicable Laws. From and after the date of this Lease, Tenant covenants to, and shall, undertake all Remedial Activities necessary to comply with Environmental Laws and, additionally, to address any Use or Release of Hazardous Materials after the date of this Lease, by Tenant or its agents, employees, representatives, invitees, licensees, subtenants, customers or contractors ("**Other Parties**"), or a Release by any third party, adversely affecting the Demised Property at Tenant's sole cost and expense. A Use or Release of Hazardous Materials shall be deemed to adversely affect the Demised Property if such conditions or circumstances require Remedial Activities under Environmental Laws or Environmental Guidance Standards. Tenant shall give immediate written notice to Landlord of any Remedial Activities, including the abatement of any mold or fungi that constitute Hazardous Materials, even if no applicable Law compels such abatement. If any Remedial Activities are required to be performed at any location other than the Demised Property, Tenant shall use its commercially reasonable efforts to obtain any required access agreements from third parties.

Section 29.03 In addition to any other obligation herein, during the Lease Term Tenant shall be liable for or responsible for: (a) the violation of any Environmental Law by Tenant or due to any fact,

⁶ Only applicable to CA properties

condition, circumstance, operation or activity at the Demised Property, including any Existing Environmental Conditions, or any new Environmental Conditions caused or permitted by Tenant during the Lease Term, including Releases by Tenant or by third parties; and (b) Hazardous Materials or Environmental Conditions at, on, under, about or from the Demised Property during the Lease Term (and in the event of any holding over by Tenant, during any period that Tenant occupies the Demised Property) whether or not the same constitute a violation of any Environmental Law, provided the same require Remedial Activities under any Environmental Guidance Standards. If Tenant voluntarily conducts, or is required under this Lease to conduct, any Repairs, Alterations or Restoration Work, Tenant shall be responsible for handling all disturbed Hazardous Materials (including lead-based paint or asbestos) in accordance with Environmental Laws and Environmental Guidance Standards. Tenant shall not be obligated under this Lease to undertake Remedial Activities unless during the Lease Term any Environmental Conditions (including Existing Environmental Conditions) constitute or create a violation of Environmental Laws, or create or constitute a public or worker health or safety risk, or a threat to the indoor or outdoor environment, under Environmental Guidance Standards. All Remedial Activities undertaken shall be to achieve unrestricted use standards; provided, however, Tenant may petition for closure under a commercial use standard with the applicable Governmental Authority, but if such Governmental Authority requires achievement of an unrestricted use standard then Tenant shall achieve that standard. If case closure under a commercial use standard is pursued, Landlord shall be entitled to review prior to final approval any activity and use limitations and/or any proposed deed restrictions. Landlord may refuse to consent to any activity and use limitations or deed notices which impose operations and maintenance obligations unacceptable to Landlord on current or future surface users of the Demised Property, or which raise repair, operating or maintenance costs. Landlord agrees that a prohibition on use of ground water underlying a Demised Property is an acceptable onsite activity and use restriction. The definition of the term “commercial use standards,” or “unrestricted use standards” (also known as “residential use standards”) shall be the most stringent of the applicable definitions used in Environmental Guidance Standards in use in the State of the Demised Property, including Maximum Contaminant Levels for ground water, if the Remedial Activities are self-directed. If a Governmental Authority is exercising jurisdiction over the Remedial Activities, the Environmental Guidance Standards actually selected by the Governmental Authority shall be the applicable standards for that project. The foregoing sentence does not determine whether commercial use standards or unrestricted use standards apply at a Demised Property, but only how the standards, once selected and determined to be applicable, are to be defined.

Section 29.04 Tenant shall promptly inform Landlord in writing of (a) any and all enforcement actions, initiation of Remedial Activities where no Remedial Activities are currently being conducted upon receipt of such notification, or other Governmental Authority or regulatory actions (excluding routine actions such as permit renewals) instituted, completed (including “case closure” or “no further action” determinations) or threatened by any Person pursuant to any Environmental Laws affecting the Demised Property; (b) all claims made or threatened by any Person against Tenant or the Demised Property relating in any way whatsoever to Hazardous Materials or Environmental Conditions (the matters set forth in clauses (a) and (b) are hereinafter referred to as “**Environmental Claims**”); (c) Tenant’s knowledge of any material Release of Hazardous Materials at, on, in, under to or from the Demised Property or on, in or under any adjoining property, including any previously undetected Existing Environmental Conditions. Tenant shall also supply to Landlord within ten (10) Business Days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, asserted violations or other material communications relating to the matters described in this Section.

Section 29.05 (1) In addition to any other obligations herein, Tenant shall be solely responsible for and shall indemnify, protect, save, defend, and hold harmless all Landlord Parties from

and against any and all Losses directly or indirectly arising out of or associated in any manner whatsoever with any actual or alleged violation of Environmental Law, and/or with Tenant's Use, or the presence of Hazardous Materials, or the Release by any Person of Hazardous Materials at, on, under, about or from the Demised Property during the Lease Term (and in the event of any holding over by Tenant, during any period that Tenant occupies the Demised Property) or any Environmental Conditions, including Existing Environmental Conditions. The indemnities and releases contained in this Article 29 include: (a) the costs associated with Remedial Activities, including all necessary plans and reports, incurred by the U.S. Environmental Protection Agency, or any other federal, state or local governmental agency or entity or by any other Person, incurred pursuant to the CERCLA, RCRA, or any other applicable Environmental Laws; (b) any oversight charges, fines, damages or penalties arising from the presence or Release of Hazardous Materials, and any related Remedial Activities, incurred pursuant to the provisions of CERCLA, RCRA, or any other applicable Environmental Laws; (c) any liability to third parties arising out of the presence or Release of Hazardous Materials for personal injury, bodily injury, or property damage arising under any statutory or common law theory, including damages assessed for the maintenance of a public or private nuisance, the costs of Remedial Activities, or for the carrying on of an abnormally dangerous activity; (d) all damages arising out of any claim based on the presence or Release of Hazardous Materials or damage or threatened damage to Environmental Conditions; (e) any and all reasonable costs, fees and expenses of attorneys, consultants and experts incurred or sustained in making any investigation on account of any claim, in prosecuting or defending any action brought in connection therewith, in obtaining or seeking to obtain a release therefrom, or in enforcing any of the agreements herein contained; (f) Rent during any period of Remedial Activities if such Remedial Activities substantially interfere with the surface use of the Demised Property and then only to the portion of the surface use substantially interfered with and such Rent shall be based on the Base Rent then in effect, or if this Lease has terminated, the Base Rent that was in effect on the Termination Date; and (g) any action or omission or use of the Demised Property by any subtenant. (A subtenant shall not be deemed an offsite third party hereunder with respect to the Demised Property.) The foregoing indemnity shall apply to Tenant's Use of Hazardous Materials irrespective of whether any of Tenant's activities were or will be undertaken in accordance with Environmental Laws or other applicable Laws. This indemnity is intended to be operable under 42 U.S.C. 9607(e)(1). Tenant specifically agrees that it shall not seek contribution from any Landlord Party in any matter relating to any Hazardous Material liability. All costs and expenses paid or incurred by Landlord for which Tenant is obligated to indemnify Landlord under this Section shall be paid promptly by Tenant to Landlord.

(2) This Section shall survive termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this section shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant), and Tenant's obligations shall not terminate with respect to any Environmental Conditions caused or permitted by Tenant, or by any other Person, which first arose during the Lease Term.

(3) Notwithstanding the foregoing, Tenant's obligations under this Section 29.05 shall terminate two (2) years after the end of the Lease Term exclusively as to Losses arising from or related to Existing Environmental Conditions and Environmental Conditions created by an offsite third party, unless Tenant has commenced Remedial Activities, or is obligated hereunder to have done so, in which case Tenant shall diligently pursue those specific Remedial Activities to achieve "case closure" or a "no further action" determination or, if applicable to the Demised Property, Tenant exhausted the monetary cap set forth in Section 29.07. At Tenant's option, in lieu of termination two (2) years from the end of the Lease Term, the termination date shall be at the termination of the Lease Term (excepting ongoing Remedial Activities being diligently pursued, as described above) if Tenant has prepared and

submitted a Phase I in accordance with then-current ASTM standards, within six (6) months prior to the end of the Lease Term (but no later than three (3) months prior to the end of the Lease Term), and if necessary also completes Phase II work, using only experienced and reputable consultants, and submitted a completion report for the Phase II work prior to one (1) month before the Lease Term termination. Landlord shall have the right to disapprove the first recommended consultant in its sole discretion, in which case Tenant shall suggest a second consultant. If Landlord disapproves the second consultant it shall set forth good cause for doing so, in which case Tenant shall recommend a third consultant, subject again to Landlord's disapproval only for good cause shown. Landlord shall have fifteen (15) Business Days to review and approve or comment on the submittals, Landlord's approval not to be unreasonably withheld. If Landlord's approval is not tendered, the parties shall meet and confer to develop a resolution of the identified issues within thirty (30) calendar days. All indemnity obligations under this Article 29 shall continue until Landlord shall approve the Phase I and/or Phase II reports, such approval not to be unreasonably withheld. Upon Landlord's approval, the subject indemnity obligations shall terminate as to Losses arising from or related to Existing Environmental Conditions and Environmental Conditions created by an offsite third party, but not as to other Losses covered under this Section 29.05. For the sake of clarity, the parties acknowledge that the subset of Tenant's indemnification obligations under this Section 29.05 concerning the costs of Remedial Activities to address Existing Environmental Conditions and Environmental Conditions created by an offsite third party may have terminated previously pursuant to the provisions of 29.07 below, if Tenant previously reached the monetary cap on such expenditures applicable to the Demised Property.

Section 29.06 Without limiting the foregoing or anything contained in Article 8, Tenant acknowledges that Governmental Authorities have imposed, and from time to time may impose, obligations affecting some or all of the Demised Property, or operations thereon, in response to climate change including energy efficiency mandates, water conservation mandates, restrictions on sales or use of certain fuels, mandates for alternative fuels, permitting obligations, restrictions on or a duty to inventory and report green house gas emissions, requirements to purchase carbon credits, construction, operational or other measures to mitigate risks of drought, fire, flood, rising sea levels, storm surge risks, so-called "extreme weather" risks and other legal obligations, whether adopted pursuant to Environmental Laws or other Laws. Tenant at its sole cost and expense shall ensure the Demised Property, and operations thereon, comply with any such applicable Laws, permits, and requirements of all Governmental Authorities having jurisdiction over the Demised Property during the term of the Lease. Moreover, Tenant agrees that the cost or disruption to operations imposed by any such applicable Laws, permits, and requirements of all Governmental Authorities having jurisdiction over the Demised Property shall not excuse full performance of this Lease by Tenant. Tenant shall not be obligated by this Lease to undertake the energy efficiency and similar measures set forth in this Section 29.06 unless compelled by applicable Law.

Section 29.07 (1) Notwithstanding anything contained herein to the contrary [excepting the Santa Barbara Demised Property], with respect to Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term, Tenant's liability under this Article 29 and Schedule 29.08 for the cost of Remedial Activities to address such Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term shall be limited to a maximum amount of [\$210,000 for the Demised Property] [and \$500,000 for the Eagle Rock Demised Property] [The Santa Barbara Demised Property has no cap.]⁷

⁷ Only for applicable Demised Property

(2) Tenant shall advise Landlord in writing as soon as Tenant knows, or reasonably should have known, such monetary cap for the Demised Property is likely to be met or exceeded. Without limiting Section 36.02, time is of the essence for this covenant. The parties then shall meet and confer at the earliest practicable time (not to exceed fifteen (15) Business Days after Tenant's notice) to develop a plan to manage such costs for Remedial Activities to address Existing Environmental Conditions and/or Environmental Conditions created by an offsite third party during the Lease Term, which are projected to exceed the monetary cap. Tenant shall advise Landlord on the date that the monetary cap is reached for the Demised Property, and on that date the obligations in Section 29.02, Section 29.03, Section 29.05, Section 29.06 and Schedule 29.08 (if applicable) shall terminate as to Existing Environmental Conditions and as to Environmental Conditions created by an offsite third party during the Lease Term; provided, however, that although the contractual indemnification obligations in Section 29.05 shall have terminated, thereafter the parties shall bear the costs of their respective obligations regarding such Existing Environmental Conditions and as to Environmental Conditions created by an offsite third party during the Lease Term, if any, as determined under applicable Law. If the monetary cap is reached as to the costs of Remedial Activities to address Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term, then as between Landlord and Tenant, Tenant shall not be liable for sums exceeding the applicable cap at the Demised Property for the costs of Remedial Activities to address Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term.

Section 29.08 [Tenant hereby agrees to undertake and perform those obligations set forth in the SB Environmental Covenant at Schedule 29.08 attached hereto and the parties hereby incorporate the terms of the SB Environmental Covenant as though set forth in full herein. The obligations in Schedule 29.08 are subject to the terms of this Article 29; provided, however, in the event of a conflict between the general terms of Article 29 and the specific terms and covenants in the SB Environmental Covenant, the specific terms and covenants in the SB Environmental Covenant shall prevail.]

ARTICLE 30 LANDLORD ASSIGNMENT

Section 30.01 This Lease shall be fully assignable by Landlord or its successors and assigns, subject to the terms of Article 27 and this Article.

Section 30.02 Landlord and Tenant agree that this Lease constitutes a true lease and not a financing or other form of transaction (including for federal income tax purposes). In furtherance of the foregoing, Landlord and Tenant each irrevocably waives any claim or defense based upon the characterization of this Lease as anything other than a true lease and irrevocably waives any claim or defense that asserts that this Lease is anything other than a true lease. Landlord and Tenant covenant and agree that they will not assert that this Lease is anything but a true lease. Landlord and Tenant each stipulate and agree not to challenge the validity, enforceability or characterization of this Lease of the Demised Property as a true lease and further stipulate and agree that nothing contained in this Lease creates or is intended to create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like. Landlord and Tenant each shall support the intent of the parties that the lease of the Demised Property pursuant to this Lease is a true lease and does not create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like, if, and to the extent that, any challenge occurs. Landlord and Tenant agree to treat this Lease as an operating lease (rather than a capital lease) for federal, state and local income tax purposes, unless required to do otherwise pursuant to a final resolution as determined by an applicable taxing authority that this Lease is not properly classified as an operating lease. Landlord shall claim all depreciation for United States federal, state and local income tax purposes

with respect to the Demised Property, other than the costs for Alterations, replacements, Remedial Activities and other capital expenditures in connection with the Demised Property as permitted or required under this Lease that are incurred by the Tenant after the Commencement Date but during the term of this Lease, which costs may be deducted, amortized, or depreciated by Tenant for United States federal, state and local income tax purposes to the extent permitted under the Code and the Treasury Regulations promulgated thereunder (and corresponding provisions of state and local tax law), and which costs of Alterations, replacements, Remedial Activities and other capital expenditures (or the value thereof) are not intended to be in substitution for additional rent payable to Landlord; provided, however, that notwithstanding the foregoing, any such Alterations, replacements, benefits of Remedial Activities and other capital expenditures shall immediately become the property of the Landlord for all purposes other than to the extent set forth herein for United States federal, state, and local income tax purposes. Upon any Lease assignment pursuant to Section 30.01, Landlord shall endeavor to reasonably cooperate with Tenant in any attempt by Tenant to obtain from Tenant's auditors a written acknowledgment that, after giving effect to such assignment, the Lease as so modified qualifies for operating lease treatment for accounting and tax purposes. In no event shall failure of Tenant to obtain any such written acknowledgment affect Landlord's right to assign pursuant to Section 30.01 or constitute a breach of this Lease by Landlord.

ARTICLE 31 REPLACEMENTS

Section 31.01 Property Replacements. Tenant, at its election, may substitute the Demised Property (the "**Replaced Property**") with a tract of similar real property on which Tenant operates another [grocery store or other Permitted Use][DC ALTERNATIVE: distribution center] (the "**Replacement Property**"). Tenant shall submit for Landlord's review at least thirty (30) days prior to any substitution (such period, the "**Consideration Period**"), evidence of the fair market value of the proposed Replacement Property reasonably satisfactory to Landlord and any Landlord's Lender and compliant with Landlord's Lender's regulatory requirements, as well as current survey, current environmental report, records of any administrative proceedings or environmental claims involving the proposed Replacement Property, current title report [and profit/loss statements for the previous two years of the Replacement Property and similar data with respect thereto,][DC ALTERNATIVE: DELETE] as well as evidence of the fair market value of the proposed Replaced Property reasonably satisfactory to Landlord and any Landlord's Lender and compliant with Landlord's Lender's regulatory requirements, and other information with respect to the Replaced Property as Landlord and Landlord's Lender may reasonably request. Provided that (a) Landlord, in its reasonable discretion, and Landlord's Lenders and Landlord's Mortgagees, in their reasonable discretion acting in accordance with prudent institutional lender standards relating to transactions similar to the transactions contemplated by this Lease, approve the substitution (such approval rights encompassing, without limitation, Landlord's reasonable determination as to whether the substitution will qualify as a like-kind exchange in which no gain is recognized pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended), and (b) if any Landlord's Lender has transferred all or any portion of its loan to a "real estate mortgage investment conduit" ("**REMIC**") such substitution is in compliance with all the provisions of the federal income tax law relating to REMICs, which appear in Sections 860A through 860G of the Internal Revenue Code of 1986, as amended from time to time ("**Code**"), then such substitution of the Replacement Property for the Replaced Property shall be permitted hereunder. Without limiting the foregoing, upon the written request of Landlord or Landlord's Lenders or Landlord's Mortgagees, as the case may be, Tenant shall deliver to Landlord as a condition precedent to any approval of the substitution of the Replacement Property for the Replaced Property, a legal opinion, in form and substance acceptable to Landlord or Landlord's Lenders or Landlord's Mortgagees, as the case may be, in its reasonable discretion, to the effect that, with respect to any REMIC trust that holds any loan secured by a mortgage on the Demised Property, the release of the

Replaced Property and the substitution of the Replacement Property will not cause (x) such loan to fail to be a “qualified mortgage” within the meaning of Section 860G(a)(3) of the Code, (y) any failure of such REMIC trust to qualify as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code for federal income tax purposes, or (z) the imposition of any tax upon the REMIC trust or any of such REMIC trust’s assets, including, without limitation, any tax on “prohibited transactions” imposed under Section 860F(a)(2) of the Code. Subject to the foregoing, in the event that there is a failure to approve the proposed substitution, Landlord shall deliver to Tenant a written notice within ten (10) days following the expiration of the Consideration Period, disapproving the proposed substitution and describing which of Landlord’s and/or Landlord’s Lenders’ or Landlord’s Mortgagees’ conditions have not been satisfied. In the event of any such disapproval, Tenant shall have an additional fifteen (15) day period from and after the date Landlord’s disapproval notice is delivered to Tenant to submit any additional information or documentation to Landlord regarding satisfaction of the foregoing conditions. In the event all the foregoing conditions are still not satisfied, then Landlord shall deliver to Tenant a second written notice within ten (10) days following the expiration of such fifteen (15) day period disapproving the proposed substitution and describing which of said conditions have not been satisfied. If all other reasonable conditions of Landlord, Landlord’s Lenders and Landlord’s Mortgagees regarding the proposed substitution have been satisfied except that Landlord believes that the Replacement Property does not have equivalent or greater fair market value to the Replaced Property, then Tenant may, by written notice delivered to Landlord within twenty (20) days after Landlord delivers to Tenant Landlord’s second written notice of Landlord’s disapproval of the proposed substitution, invoke the following arbitration procedure to determine whether the Replacement Property has an equivalent or greater fair market value to the Replaced Property (in which event the proposed substitution shall be deemed approved), or a fair market value less than the Replaced Property (in which event the proposed substitution shall remain disapproved). The date when such Tenant’s notice invoking the arbitration is delivered to Landlord is referred to in this Section as the “**Notice Date**”). For the avoidance of doubt Landlord will reasonably cooperate with Tenant in the event a substitution is required by judicial or other governmental requirement applicable to Tenant.

(1) Submission of Proposed Value. Within five (5) days after the Notice Date, (a) Landlord shall deliver to Tenant an MAI fair market value appraisal for each of the Replacement Property and the Replaced Property supporting its assertion that the fair market value of the Replacement Property is less than the fair market value of the Replaced Property, and (b) Tenant shall deliver to Landlord an MAI fair market value appraisal for each of the Replacement Property and the Replaced Property supporting its assertion that the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property. If either party (as referred to this Section, a “**Failing Party**”) fails to deliver its appraisals to the other party on or before the last day of such five (5)-day period, but the other party delivers its appraisals to the Failing Party on or before the last day of such five (5)-day period, the assertion supported by such other party’s appraisals delivered pursuant to subsection (1), above (i.e. that the fair market value of the Replacement Property is less than, or equal to or greater than (as the case may be), the fair market value of the Replaced Property) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such five (5)-day period.

(2) Appointment and Qualifications of Arbitrator. If the arbitration is not deemed concluded pursuant to subsection (1), above, then within fifteen (15) days after the Notice Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous ten-year (10-year) period in the appraisal of [grocery stores or other applicable Permitted Uses] [DC ALTERNATIVE: distribution centers] within the county in

which the applicable Replacement Property is located (each such appraiser chosen pursuant to this subsection (2), an “**Arbitrator**”). Each of Landlord and Tenant shall notify the other party, in writing, of its Arbitrator (and the business address thereof) within two Business Days after the appointment thereof (collectively, the “**Arbitrator Appointment Notices**”). Each of Landlord and Tenant agrees that any Arbitrator may be (but is not required to be) an appraiser who prepared one or both of the fair market value appraisals delivered by Landlord and Tenant pursuant to subsection (1), above.

(3) Appointment of Third Arbitrator. If each party appoints an Arbitrator and notifies the other party in accordance with subsection (2), above, then the two Arbitrators shall, within ten (10) days after delivery of the later of the two Arbitrator Appointment Notices, agree on and appoint a third Arbitrator (whom shall be a licensed real estate appraiser with all other qualifications for the initial two Arbitrators chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Arbitrator and the business address thereof. If the two Arbitrators fail to agree on and appoint a third Arbitrator within such ten (10) day period, then either Landlord or Tenant may elect to have the third Arbitrator selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Arbitrator and the parties shall cooperate reasonably with each other and the AAA (including by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Arbitrator. If any fees of the third Arbitrator or the AAA are required to be paid in advance (prior to the completion of the arbitration procedure described in this Section) in order for such Arbitrator, or the AAA, as the case may be, to commence or continue its work in connection with the arbitration described in this Section, each party shall promptly pay one-half of such fees as and when due, and if either Landlord or Tenant fails to pay its one-half share of any such fees as and when due (such party is referred to in this Section as the “**Delinquent Party**”), and the other party does pay its one-half share of any such fees as and when due, then if the Delinquent Party fails to pay its one-half share of all such fees within ten (10) days after written notice from the other party, the assertion supported by such other party’s appraisals delivered pursuant to subsection (1) (i.e. that the fair market value of the Replacement Property is less than, or equal to or greater than (as the case may be), the fair market value of the Replaced Property) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such ten (10)-day period.

(4) Arbitrators’ Decision. If the arbitration is not previously deemed concluded pursuant to subsection (3), above, then within thirty (30) days after the appointment of the third Arbitrator, the three Arbitrators shall decide whether the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property and shall notify Landlord and Tenant in writing of each Arbitrator’s decision. The determination of each Arbitrator shall be limited to the sole issue of, and each Arbitrator shall have neither the right nor the power to determine any issue other than, whether the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property, as determined by such Arbitrator. The decision of the majority of the three Arbitrators shall be binding on Landlord and Tenant (subject to subsection (5), below), and the arbitration shall be deemed concluded upon delivery to Landlord and Tenant of such notifications of the Arbitrators’ decisions.

(5) If Only One Arbitrator Is Appointed. If the arbitration is not previously deemed concluded pursuant to subsection (1), and if either Landlord or Tenant fails to appoint an Arbitrator within fifteen (15) days after the Notice Date or fails to deliver an Arbitrator Appointment Notice in accordance with subsection (2), above, and the other party does appoint an Arbitrator within such fifteen (15) day period and delivers an Arbitrator Appointment Notice in accordance with subsection (2), above, then the Arbitrator timely appointed by such other party shall reach a decision regarding whether the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property, as determined by such Arbitrator, and notify Landlord and Tenant of that decision within thirty (30) days after such Arbitrator's appointment. Such decision of the Arbitrator shall be binding on Landlord and Tenant, and the arbitration shall be deemed concluded upon delivery of such notification of the Arbitrator's decision.

(6) Cost of Arbitration. If the Arbitrators (or Arbitrator, pursuant to subsection (5), above) determine that the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property, then Tenant shall be deemed the "**Winning Party**" under this subsection (6) and Landlord shall be deemed the "**Losing Party**" under this subsection (6). If the Arbitrators (or Arbitrator, pursuant to subsection (5), above) determine that the fair market value of the Replacement Property is less than the fair market value of the Replaced Property, then Landlord shall be deemed the "**Winning Party**" under this subsection (6) and Tenant shall be deemed the "**Losing Party**" under this subsection (6). In addition, in the event the arbitration is deemed concluded due to a Failing Party not timely delivering its appraisals as described in subsection (1), or a Delinquent Party failing to pay its share of fees after written notice as described in subsection (3), such Failing Party or Delinquent Party (as the case may be) shall be deemed the "**Losing Party**" under this subsection (6), and the party that is not the Failing Party or Delinquent Party (as the case may be) shall be deemed the "**Winning Party**" under this subsection (6). Each party shall initially pay the fees and expenses of its legal counsel, appointed arbitrator, any written reports prepared by any appraiser in connection with its duties under this Section, one-half of the fees of the third arbitrator, and one-half the fees of the AAA (if applicable), provided, however, that the Losing Party shall be obligated to reimburse the Winning Party for all such fees and expenses of the arbitration paid by the Winning Party promptly upon the completion of the arbitration procedure described in this Section.

In the event Landlord approves the substitution of the Replacement Property for the Replaced Property, Tenant shall execute and deliver to Landlord such instruments and documents as Landlord shall reasonably require in connection therewith, including a special warranty or similar deed, an amendment to this Lease, and an amended or new memorandum of lease (or similar instrument) covering the Replacement Property, and Landlord shall convey the Replaced Property to Tenant (or Tenant's designee) as is, with all faults, without any express or implied warranties. Any substitution of a Replacement Property for a Replaced Property shall not alter any of the other obligations of Landlord or Tenant under this Lease, including the Base Rent due from Tenant hereunder. Without limitation, Tenant shall be responsible for all Additional Rent (including real property taxes) regarding the Replaced Property up to the date of transfer. Tenant shall pay all reasonable out-of-pocket expenses paid or incurred by Landlord pursuant to this Section, including, (i) Landlord's, Affiliates of Landlord's and Landlord's Lenders' legal fees and expenses, the costs of any title policies (owner's and/or lender's) on the Replacement Property, recording costs, and, without limiting any of Tenant's obligations set forth in Article 3 of this Lease, any sales, transfer, and other taxes and recording fees, and any taxes required to be withheld, which may be payable in connection with the conveyance of Replacement Property by Tenant or Replaced Property to

Tenant (including any interest or penalties imposed with respect to the late payment of any such taxes), and (ii) such amount, which, when added to such payment, shall yield to Landlord (after deduction of all expenses payable by Landlord with respect to all such payments) a net amount which Landlord would have realized from such payment had no such expenses been incurred; provided, however, that so long as no Event of Default has occurred and is continuing, if an arbitration has been completed under subsections (1) through (6) of this Section, and if Tenant was the Winning Party (as defined above in subsection (6)), then Tenant shall not be obligated to reimburse Landlord for fees and expenses incurred by Landlord in connection with such arbitration, and Landlord shall be obligated to reimburse Tenant for fees and expenses incurred by Tenant in connection with such arbitration.

ARTICLE 32 INTENTIONALLY OMITTED

ARTICLE 33 LANDLORD'S RIGHTS UNDER LEASE

Any and all rights of Landlord under this Lease shall inure to the benefit of Landlord's successors and assigns, as well as Landlord's Lenders and/or any Landlord's Mortgagees and their respective successors and assigns as third party beneficiaries.

ARTICLE 34 INTENTIONALLY OMITTED⁸

ARTICLE 35 LIQUOR

Landlord may require Tenant to obtain Commercial General Liability insurance regarding liquor liability (in amounts and otherwise consistent with the requirements set forth in Article 10) for any sites that serve liquor or other alcoholic beverages, and in connection with any repossession of the Demised Property pursuant to Article 15, Tenant (on behalf of itself and any Tenant's Affiliate holding liquor licenses with respect to the Demised Property) shall provide reasonable cooperation to Landlord in transferring any liquor licenses to Landlord, or in assisting Landlord in obtaining a liquor license, where necessary or advisable in Landlord's reasonable discretion. This Article shall survive any termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 36 INTERPRETATION; MISCELLANEOUS

Section 36.01 For purposes of this Lease, (a) the words "include", "includes" and "including" shall be deemed to be followed by the words "without limitation" (unless already expressly followed by such phrase), and (b) the words "herein", "hereof", "hereby", "hereto" and "hereunder" refer to this Lease as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Exhibits, and Schedules mean the Articles and Sections of, and the Exhibits and Schedules attached to, this Lease; (y) to a lease, instrument or other document means such lease, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Lease; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The

⁸ Tenant shall maintain its right of first offer under Section 34.01 of the Master Lease after a Landlord assignment in connection with which assignment the rights of Tenant under Section 34.01 do not apply.

Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Lease to the same extent as if they were set forth verbatim herein. Titles to Articles and headings of Sections are inserted for convenience of reference only and shall not be deemed a part of or to affect the meaning or interpretation of this Lease. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any one or more of the members of the relevant class. All references in this Lease to sums denominated in dollars or with the symbol "\$" refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. Where a provision of this Lease requires that that consent of a party shall not be unreasonably withheld, or that such consent is in such party's reasonable discretion, such provision shall be deemed to require that such consent not be unreasonably withheld, conditioned, or delayed, and unless a party is expressly given hereunder the right to consent in its sole discretion, any consent required hereunder shall not be unreasonably withheld, conditioned or delayed.

Section 36.02 This Lease may be executed in counterparts and shall be binding on all the parties hereto as if one document had been signed. The delivery of an executed copy of this Lease by facsimile transmission shall have the same force and effect as the delivery of the original, signed copy of this Lease. Time is of the essence of every provision of this Lease. Any provision of this Lease explicitly providing for the performance by Tenant of obligations upon or after the expiration or termination of this Lease shall survive any such expiration or termination as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, such obligations shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant), unless otherwise provided. This Lease and the Exhibits attached hereto, all of which form a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Demised Property, and there are no covenants, promises, agreements, conditions or understandings heretofore made, either oral or written, between them other than as herein set forth. No modification, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party. The captions, section numbers, and index 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 nor in any way affect this Lease. Nothing contained in this Lease shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of landlord and tenant. Except as explicitly set forth in this Lease, there shall be no third party beneficiaries of this Lease or any of the agreements contained herein. The failure of Landlord or Tenant to insist upon strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any rights or remedies that party or any other such party may have, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

ARTICLE 37 QUIET ENJOYMENT SUBJECT TO DILIGENCE MATTERS

From and after the Commencement Date until the expiration or termination of the Lease Term, and provided no Event of Default has occurred, Landlord covenants that Tenant shall have quiet enjoyment of the Demised Property, subject however, to all Diligence Matters.

ARTICLE 38 NO MERGER OF TITLE

There shall be no merger of this Lease with any of the leasehold estates created hereunder with any fee estate or other leasehold interest in the Demised Property, whether by reason of the fact that the same Person may acquire, hold or own, directly or indirectly more than one or all of such legal

interests in the Demised Property unless and until (a) under applicable Law such estates may be merged, and (b) all Persons having any leasehold interest or fee estate in the Demised Property, or any part thereof sought to be merged, shall enter into a written agreement effecting such a merger under applicable Law and shall duly record same; provided, however, no such merger shall occur unless in each instance Landlord (if Landlord is a party to such estates) and any Landlord's Lender (if Landlord is a party to such estates) shall be a party to such agreement.

ARTICLE 39 ADDITIONAL CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES

(a) Tenant hereby represents, warrants and certifies to Landlord as follows: Tenant is not a "foreign person" within the meaning of Section 1445(f) of the Internal Revenue Code and, after making due inquiry, no person who owns a controlling interest in or otherwise controls Tenant is, (a) listed on the Specially Designated Nationals and Blocked Persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists" and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (b) a person (a "Designated Person") either (i) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (ii) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "Executive Orders"). Neither Tenant nor any person or entity who owns a controlling interest in or otherwise controls Tenant (x) is a person or entity with which Landlord is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law or (y) is a person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Orders or (z) is affiliated or associated with a person or entity listed in the preceding clause (x) or clause (y). To Tenant's knowledge, Tenant does not (I) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders or (II) engage in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. As used herein, "Anti-Terrorism Law" means the OFAC Laws and Regulations, the Executive Orders and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as amended.

(b) Landlord hereby represents, warrants and certifies to Tenant as follows: Landlord is not a "foreign person" within the meaning of Section 1445(f) of the Internal Revenue Code and, after making due inquiry, no person who owns a controlling interest in or otherwise controls Landlord is (a) listed on any of the Lists; or (b) a Designated Person. Neither Landlord nor any person who owns a controlling interest in or otherwise controls Landlord is (x) a person or entity with which Tenant is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law or (y) a person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Orders or (z) is affiliated or associated with a person or entity listed in the preceding clause (x) or clause (y). To Landlord's knowledge, Landlord does not (I) deal in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders or (II) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(c) Tenant hereby represents that, as of the Commencement Date, the organizational chart of Tenant attached hereto as Exhibit G is a true, correct and complete depiction of all direct and indirect equity interests in Tenant and its subsidiaries.

(d) Each of Tenant and Landlord hereby represents that it does not intend to apply the constant rental accrual method (within the meaning of section 1.467-3(d) of the Treasury Regulations promulgated under the Internal Revenue Code of 1986) to any Rent paid by Tenant under this Lease, unless required to do so pursuant to a final resolution of liability for any tax as determined by an applicable taxing authority.

ARTICLE 40 NO PLAN ASSETS; NO GOVERNMENT PLAN

Tenant represents that it is not and shall not at any time during the Lease Term become (1) an employee benefit plan defined in Section 3(3) of ERISA which is subject to ERISA, (2) a plan as defined in Section 4975(e)(1) of the Code which is subject to Section 4975 of the Code, (3) a “governmental plan” within the meaning of Section 3(32) of ERISA or (4) an entity any of whose underlying assets constitute “plan assets” of any such employee benefit plan, plan or governmental plan for purposes of Title I or ERISA, Section 4975 of the Code or any state statutes applicable to Persons regulating investments of governmental plans.

ARTICLE 41 BROKERS

Landlord and Tenant each (a) represents to the other party that such representing party has dealt with no broker or brokers in connection with the negotiation, execution and delivery of this Lease and (b) agrees to indemnify, defend, protect (with counsel selected by the indemnified party, subject to the approval of the indemnifying party (unless the indemnifying party is the Tenant and an Event of Default has occurred)) and hold such other party free and harmless of, from and against any and all Losses arising from (including all brokerage commissions and/or finder’s fees due or alleged to be due as a result of) any agreement or purported agreement made by such indemnifying party.

ARTICLE 42 INDEMNITIES NOT LIMITED

In no event shall any indemnification by Tenant of Landlord or any Landlord Party under this Lease or any other Transaction Document be limited by the existence or policy limits of any insurance carried by Tenant. In no event shall any indemnification by Landlord of Tenant under this Lease or any other Transaction Document be limited by the existence or policy limits of any insurance carried by Landlord (for the avoidance of doubt, Landlord is not required to carry any insurance pursuant to this Lease).

ARTICLE 43 STATE SPECIFIC PROVISIONS⁹

Section 43.01 California. Without limiting the choice of law provision set forth in Article 26, the following provisions shall apply to the extent that the laws of the State of California govern the interpretation or enforcement of this Lease with respect to the Demised Property located in the State of California:

⁹ Only included in assignment lease if property is in applicable state

(a) Effect of Waivers. Each of Landlord and Tenant hereby waives the benefits of California Civil Code Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

(b) Eminent Domain. The provisions of this Lease, including those in Article 12, constitute an express agreement between Landlord and Tenant that applies in the event there is any taking of any part of the Demised Property for any public or quasi-public use under any statute or by right of eminent domain or by purchase in lieu thereof (collectively, "Condemnation"). Tenant and Landlord each hereby waives all rights it may have under California Code of Civil Procedure Section 1265.130, or otherwise, to terminate this Lease based on a total or partial Condemnation.

(c) Damage and Destruction. The provisions of this Lease, including those in Article 11, constitute an express agreement between Landlord and Tenant that applies in the event that the Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature. Landlord and Tenant, each therefore, fully waives the provisions of any statute or regulation, including California Civil Code Sections 1932(2) and 1933(4), relating to any rights or obligations concerning any such fire or other casualty.

(d) Notices. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by California Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Article 17 shall replace and satisfy the statutory service-of-notice procedures, including those required by California Code of Civil Procedure Section 1162 or any similar or successor statute.

(e) Remedies. It is intended that Landlord shall have the remedy described in California Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign, the landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all rent as it becomes due.

Section 43.02 Nevada. With respect to the Demised Property located in the State of Nevada:

(a) Prior to commencing any Alterations, Tenant shall (a) provide five Business Days prior written notice to Landlord, so that Landlord may post notices on and about the Demised Property with respect to Landlord's non-responsibility for mechanics' liens (which Tenant shall not permit to be defaced or removed) and (b) at its expense either: (1) obtain and record with the Office of the County Recorder of the county in which the Demised Property is located a surety bond that satisfies the requirements Nevada Revised Statutes ("NRS") §108.2403(2) or (2) establish a construction disbursement account as required by NRS §108.2403(1), and do each of the following: (i) notify each person who gives Tenant a notice of right to lien of the recording of the surety bond or establishment of the construction disbursement account as required by NRS §108.2403(2)(f); (ii) record a notice of posted security satisfying the requirements of NRS §104.2403; (iii) serve the notice of posted security upon persons in accordance with NRS §108.2403(2)(f); (iv) otherwise comply with all requirements of Chapter 108 of the

NRS applicable to the construction of any such Alterations; and (v) provide evidence satisfactory to Landlord that Tenant has complied with the foregoing requirements.

(b) PURSUANT TO NRS §108.234(3)(e), LANDLORD HEREBY NOTIFIES TENANT THAT TENANT IS REQUIRED TO COMPLY WITH THE PROVISIONS OF NRS CHAPTER 108 APPLICABLE TO A LESSEE, WHICH PROVISIONS INCLUDE, AMONG OTHERS, OBTAINING SECURITY FOR MECHANICS' AND MATERIALMEN'S LIENS AND RECORDING A NOTICE OF POSTED SECURITY BEFORE CAUSING A WORK OF IMPROVEMENT TO BE CONSTRUCTED, ALTERED OR REPAIRED UPON PROPERTY THE LESSEE IS LEASING IN ACCORDANCE WITH NRS §108.2403. TENANT ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THE EFFECT OF THIS PROVISION AND NRS §108.2403.

Section 43.03 Arizona. Without limiting the choice of law provision set forth in Article 26, the following provisions shall apply to the extent that the laws of the State of Arizona govern the interpretation or enforcement of this Lease with respect to the Demised Property located in the State of Arizona:

(a) Waiver. The provisions of this Lease, including those in Article 11, constitute an express agreement between Landlord and Tenant that applies in the event that the Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature. Each of Landlord and Tenant, therefore, fully waives the provisions of any statute or regulation, including Arizona Revised Statutes (“A.R.S.”) Section 33-343, relating to any rights or obligations concerning any such fire or other casualty.

(b) Indemnity. In any instance in this Lease where the phrase “harmless of, from and against” or the phrase “harmless from and against” appears, such phrase is amended to read in its entirety as follows: “harmless of, for, from and against”.

(c) Effective Rate of Interest. Tenant agrees to pay an effective rate of interest equal to the rate stated in this Lease and in any other documents evidencing the obligations of Tenant to Landlord, plus any additional rate, if any, resulting from any charge or fee in the nature of interest paid or to be paid by Tenant in connection therewith, or any benefit received or to be received by Landlord in connection therewith.

(d) Environmental Laws. The definition of “**Environmental Laws**” shall include, without limitation, the Arizona Hazardous Waste Management Act, A.R.S. Section 49-921 *et seq.*; and the Arizona Environmental Quality Act, A.R.S. Section 49-1001 *et seq.*

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the date first above written.

LANDLORD:

_____,
a _____

First Witness

By: _____
Name: _____
Title: _____

Printed Name of First Witness

Second Witness

Printed Name of Second Witness

TENANT:

_____,
a _____

First Witness

By: _____
Name: _____
Title: _____

Printed Name of First Witness

Second Witness

Printed Name of Second Witness

Signature Page

LAND AND BUILDING LEASE
(Individual Lease Form)

ACKNOWLEDGMENTS

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of , before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)

Notary Public

My commission expires:

[ACKNOWLEDGMENTS CONTINUE ON NEXT PAGE]

Acknowledgment

LAND AND BUILDING LEASE
(Individual Lease Form)

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of , before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)

Notary Public

My commission expires:

Acknowledgment

LAND AND BUILDING LEASE
(Individual Lease Form)

SCHEDULE 1

DEFINED TERMS

The following capitalized terms used in this Lease have the following meanings.

“AAA” means the American Arbitration Association or any successor thereto.

“Additional Rent” means any and all fees, expenses, taxes and charges of every kind and nature arising in connection with or relating to the Demised Property that Tenant is obligated to pay under the terms of this Lease (other than Base Rent), including (i) any and all taxes (including Real Estate Taxes), fees, utility service charges, insurance premiums, and other costs, and any amounts owed by Tenant under any indemnity to Landlord hereunder, including as set forth in Article 9 and Article 29; (ii) all fees and penalties that may accrue on any amounts due from Tenant hereunder if Tenant fails to pay such amounts in a timely manner; and (iii) all other Losses that Landlord may suffer or incur in enforcing this Lease (whether or not any formal action is brought by Landlord against Tenant) or in otherwise taking actions permitted under this Lease following a Default (as hereinafter defined) by Tenant (including making Repairs (as hereinafter defined) and fulfilling other obligations of Tenant as provided in Article 7, and purchasing insurance required to be maintained by Tenant under this Lease, as provided in Article 10), or as a result of, arising out of, or in connection with any notice, request or other action by Tenant, whether or not expressly permitted by the terms of this Lease. In addition, “Additional Rent” includes any rent or other income received by Tenant from any subtenant of the Demised Property to the extent applicable to periods after the expiration or termination of this Lease as to the Demised Property.

“Adjustment Dates” is defined in Section 3.02(a).

“Affiliate” means in relation to any Person, any other Person: (i) directly or indirectly controlling, controlled by, or under common control with, the first Person; (ii) directly or indirectly owning or holding five percent or more of any equity interest in the first Person; or (iii) five percent or more of whose voting stock or other equity interest is directly or indirectly owned or held by the first Person. For purposes of this definition, “control” (including with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Without limiting the foregoing, the Affiliates of any Person that is an entity shall include all natural persons who are officers, agents, directors, members, partners, or employees of the entity Person.

“Alteration Information” is defined in Article 6.

“Alterations” is defined in Article 6.

“Arbitrator” is defined in Section 31.01.

“Arbitrator Appointment Notices” is defined in Section 31.01.

“Base Date” is defined in Section 3.02(a).

“Base Rent” is defined in Section 3.02(b).

“Base Rent Escalation” is defined in Section 3.02(a).

“Base Rent Reduction Arbitration” means the arbitration process set forth on Schedule 4a.

“Base Rent Reduction Arbitration Date” is defined in Schedule 4a.

“Base Rent Reduction Arbitrator” is defined in Schedule 4a.

“Base Rent Reduction Arbitrator Appointment Notices” is defined in Schedule 4a.

“Base Rent Reduction Delinquent Party” is defined in Schedule 4a.

“Beneficial Owner” is defined in Article 39.

“Building Equipment” is defined in the Recitals to this Lease.

“Business Day” means any day excluding (i) Saturday, (ii) Sunday, (iii) any day that is a legal holiday under the Laws of the State of New York or the State in which the Demised Property is located, and (iv) any day on which banking institutions located in the State of New York or the State in which the Demised Property is located are generally not open for the conduct of regular business.

“Capital Alteration” means an Alteration that consists of a capital repair and/or replacement to maintain or improve a Demised Property, including structural repairs, roof replacements, material HVAC repairs and replacements, material mechanical and plumbing repairs and replacements and material boiler repair and replacements.

“Casualty Termination Arbitration” is defined in Section 11.02.

“Casualty Termination Arbitration Date” is defined in Schedule 4b.

“Casualty Termination Arbitrator” is defined in Schedule 4b.

“Casualty Termination Arbitrator Appointment Notices” is defined in Schedule 4b.

“Casualty Termination Delinquent Party” is defined in Schedule 4b.

“Code” is defined in Section 31.01.

“Commencement Date” is defined in the first paragraph of this Lease.

“Condemnation Date” means, as to the Demised Property subject to condemnation, the earliest of (a) the date on which the applicable authority takes possession of the Demised Property, or portion thereof, or (b) the date on which title to the Demised Property, or portion thereof, is vested in the applicable authority.

“Consideration Period” is defined in Section 31.01.

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items (1982-84=100), published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI is not published for any month during the Lease Term, Landlord, in its reasonable discretion, shall substitute a comparable index published by the Bureau of Labor Statistics of the U.S. Department of

SCHEDULE 1

LAND AND BUILDING LEASE
(Individual Lease Form)

Labor. If such an index is not published by the Bureau of Labor Statistics, Landlord, in its reasonable discretion, shall select a comparable index published by a nationally recognized responsible financial periodical.

“De Minimis Amounts” means, with respect to any given level of Hazardous Materials, that level or quantity of Hazardous Materials in any form or combination of forms, the use, storage or release of which does not constitute a violation of, or require regulation, remediation, reporting or monitoring under, any Environmental Laws and is customarily employed in the ordinary course of, or associated with, similar businesses located in the states in which the Demised Property is located.

“Default” is defined in Section 15.01.

“Delinquent Party” has the meaning set forth in Section 31.01.

“Demised Property” is defined in the Recitals to this Lease.

“Designated Person” is defined in Article 39.

“Diligence Matters” is defined in Article 5.

“Disclosures” is defined in Section 23.02.

“End of Term Casualty” has the meaning set forth in Section 11.02.

“Environmental Claims” is defined in Section 29.04.

“Environmental Conditions” means the conditions of Environmental Media and the conditions of any part of the Demised Property, including building or structural materials, that affect or may affect Environmental Media. Environmental Conditions include the Release of Hazardous Materials to Environmental Media.

“Environmental Guidance Standards” means guidance documents, health and safety screening standards, policy manuals, remedial action guidelines, public health goals, risk screening levels, vapor intrusion investigation and mitigation guidance, and similar policy or procedure documents which a Governmental Authority has published, made publicly available, and which a reputable, experienced and credentialed environmental professional likely would consult or employ in undertaking a voluntary project, or which a Governmental Authority likely would employ if overseeing an investigation, risk assessment, abatement, remediation, monitoring, or longer term “operations and maintenance” work at the Demised Property. Examples, without limitation, are US EPA Region IX Preliminary Remediation Goals, the LUFT Fuel Manual, California Regional Water Quality Control Board Risk Based Screening Levels and Cal EPA, DTSC’s Final Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion into Indoor Air.

“Environmental Laws” means any federal, state or local law, statute, ordinance, permit condition, regulation or written policy pertaining to public or worker health or safety, natural resources, climate change, or the regulation or protection of the indoor or outdoor environment, the regulation or reporting of Hazardous Materials, including the following: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq. as amended (“CERCLA”), the Solid Waste Disposal Act, 42 U.S.C. §§ 6901, et seq. as amended (“RCRA”), the Federal Water Pollution

Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C. §§ 1251, et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601, et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001, et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 USC §§ 7401, et seq.; the National Environmental Policy Act of 1970, as amended, 42 USC §§ 4321, et seq.; the Rivers and Harbors Act of 1899, as amended, 33 USC §§ 401, et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. §§ 801, et seq. the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531, et seq.; the Occupational Safety and Health Act of 1970, as amended 29 U.S.C. §§ 651, et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f), et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq. as amended, and all regulations, published governmental policies, and administrative or judicial orders promulgated under or implementing or enforcing said laws; and (ii) all state or local laws which implement the foregoing federal laws or which pertain to public health and safety, occupational health and safety, natural resources or environmental protection, or the regulation or reporting of Hazardous Materials, all as amended from time to time, and all regulations, published governmental policies, and administrative or judicial orders promulgated under the foregoing laws; (iii) all federal and state common law, including the common law of public or private nuisance, trespass, negligence or strict liability, where such common law pertains to public health and safety, occupational health and safety, natural resources, and environmental protection.

“Environmental Media” means soil, fill material, or other geologic materials at all depths, groundwater at all depths, surface water including storm water and sewerage, indoor and outdoor air, and all living organisms, including all animals and plants, whether such Environmental Media are located on or off the Demised Property. For purposes of this Lease groundwater underlying the Demised Property shall be deemed part of the Demised Property even if such groundwater is owned by a third party.

“ER and SLO Environmental Covenant” is defined in Schedule 29.08.

“ERISA” means the Employee Retirement Income Security Act of 1974, and all rules and regulations promulgated thereunder.

“Estoppel Certificate” is defined in Article 24.

“Event of Default” is defined in Section 15.01.

“Excluded Personal Property” is defined in the Recitals to this Lease.

“Executive Orders” is defined in Article 39.

“Existing Environmental Conditions” means those Environmental Conditions which exist as of the Commencement Date, due to an act or omission by any person at any time prior to the Commencement Date, in, on, under at, about the Demised Property, or any Hazardous Materials migrating to or from the Demised Property. Existing Environmental Conditions include any “daughter” or “breakdown” Hazardous Materials for any original Release that pre-dates the Lease Term. Existing Environmental Conditions shall not include Environmental Conditions which are the subject of a final “case closure” or “no further action” determination by a Governmental Authority, unless during the Lease Term: (1) a Governmental Authority reopens the matter, or (2) Tenant or any person fails to comply with any applicable activity and use limitations respecting the Environmental Conditions, or (3) changes in Law, including Environmental Law, require the Existing Environmental Conditions be addressed.

“Extension Notice” is defined in Section 2.02(a).

“Failing Party” has the meaning set forth in Section 31.01.

“First Option Period” is defined in Section 2.02(a).

“GAAP” means generally accepted accounting principles as in effect in the United States of America from time to time.

“Governmental Authority” means (i) any international, foreign, federal, state, county or municipal government, or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (iii) any court, administrative tribunal or public utility.

“Hazardous Materials” means any ignitable, reactive, explosive, corrosive, carcinogenic, mutagenic, toxic or radioactive material, whether virgin material, secondary material, by-product, waste or recycled material, defined, regulated or designated as a contaminant, pollutant, hazardous or toxic substance, material, waste, contaminant or pollutant under any Environmental Laws or any other federal, state or local law, statute, regulation, ordinance, or governmental policy presently in effect or as amended or promulgated in the future, and shall specifically include: (i) those materials included within the definitions of “hazardous substances,” “extremely hazardous substances,” “hazardous materials,” “toxic substances” “toxic pollutants,” “hazardous air pollutants” “toxic air contaminants,” “solid waste,” “hazardous waste,” “pollutants,” contaminants,” “greenhouse gasses” or similar categories under any Environmental Laws; and (ii) specifically including any material, waste or substance that contains: (A) petroleum or petroleum derivatives byproducts, including crude oil and any fraction thereof and waste oil; (B) asbestos; (C) polychlorinated biphenyls; (D) formaldehyde; (E) radon; and (F) any methane. If not already defined as a Hazardous Material under any of the foregoing terms, mold and fungi of any type or concentration shall be deemed a Hazardous Material hereunder if present in any Improvements under such conditions or circumstance as to represent a condition hazardous to human health or safety. Hazardous Materials may be man-made or naturally occurring.

“Holdback Agreement” means [_____].

“Improvements” is defined in the Recitals to this Lease.

“Land” is defined in the Recitals to this Lease.

“Landlord” is defined in the first paragraph of this Lease.

“Landlord Award Amount” means the amount of the award actually received by Landlord for any taking of any portion of the Demised Property, less any and all costs and expenses incurred by Landlord in connection with such taking (including any and all costs and expenses incurred by Landlord in connection with obtaining such award).

“Landlord Parties” means, collectively, (i) Landlord, Affiliates of Landlord, Landlord’s Lenders and any Landlord’s Mortgagee, and (ii) any members, partners, shareholders, officers, directors, employees, agents, attorneys, contractors, affiliates, heirs, successors or assigns of any of Landlord, Affiliates of Landlord, Landlord’s Lenders, or any Landlord’s Mortgagee.

“**Landlord’s Account**” is defined in Section 3.01.

“**Landlord’s Lenders**” means any persons or entities providing financing to Landlord or Affiliates of Landlord.

“**Landlord’s Mortgagee**” means any Persons holding a mortgage, deed of trust, deed to secure debt or similar instrument encumbering Landlord’s interest in the Demised Property or portion thereof (whether or not any such Person is also a Landlord’s Lender).

“**Late Fee**” is defined in Section 15.06.

“**Law**” means all international, foreign, federal, state and local statutes, treaties, rules, regulations, ordinances, codes, directives, orders, or written policies issued pursuant thereto, and published administrative or judicial precedents.

“**Lease**” is defined in the first paragraph of this agreement.

“**Lease Term**” is defined in Section 2.01(a).

“**Leasehold Mortgage**” means any leasehold deed of trust, mortgage, deed to secure debt, assignment of leases and rents, assignment, security agreement, or other security document securing financing from a lender of Tenant and encumbering Tenant’s leasehold interest in the Demised Property.

“**Licensed Equipment**” is defined in the Recitals to this Lease.

“**Liens**” means liens, security interests, charges and encumbrances.

“**Lists**” is defined in Article 39.

“**Losing Party**” has the meaning set forth in Section 31.01.

“**Losses**” means all losses, claims, demands, actions, causes of action, settlements, obligations, duties, indebtedness, debts, controversies, remedies, choses in action, liabilities, costs, penalties, fines, damages, injuries, judgments, forfeitures, or expenses (including reasonable attorneys’, consultant, testing and investigation and expert fees and court costs), whether known or unknown, and whether liquidated or unliquidated.

“**Minor Project**” means (i) a non-structural minor maintenance or repair project or (ii) a “cosmetic refresh” project involving only painting, carpeting, floor covering and installation of moveable replacement Tenant Equipment and similar items, unless in either case (i) or (ii) the costs exceed, in the aggregate for any such project, for the Demised Property, \$500,000.

“**Notice Date**” has the meaning set forth in Section 31.01.

“**OFAC**” is defined in Article 39.

“**OFAC Laws and Regulations**” is defined in Article 39.

“**Option Period**” is defined in Section 2.02(a).

“Original Lease Term” is defined in Section 2.01(a).

“Other Lists” is defined in Article 39.

“Other Parties” is defined in Section 29.02.

“Permitted Assignee” is defined in Section 22.01(b).

“Permitted Liens” means (i) Liens to secure claims for labor, material or supplies in respect of obligations not overdue; (ii) Liens in respect of judgments or awards that have been in force for less than the applicable period for making an appeal so long as execution is not levied thereunder or in respect of which Tenant shall at the time in good faith be prosecuting an appeal or proceedings for review and in respect of which a stay of execution shall have been obtained pending such appeal or review; (iii) Liens of carriers, warehousemen, mechanics and materialmen and other like Liens that have been in existence less than 120 days after the date of creation thereof in respect of obligations not overdue; and (iv) purchase money Liens on Tenant Equipment to secure purchase money indebtedness incurred in connection with the acquisition of such Tenant Equipment, which Liens cover only the Tenant Equipment so acquired.

“Permitted Uses” means any lawful retail use other than the uses listed on Schedule 3.

“Person” means an individual, corporation, partnership, joint venture, association, joint-stock company, trust, estate, limited liability company, non-incorporated organization or association, or any other entity, any Government Authority or any agency or political subdivision thereof.

“Petition” means a petition in bankruptcy (including any such petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief) under the Bankruptcy Code of the United States of America, or under any other present or future federal or state statute, law or regulation of similar intent or application.

“Rating Agency” means any of the following: Standard & Poor’s Ratings Group; Moody’s Investors Service, Inc., Fitch Ratings, Inc.; and any other nationally-recognized statistical rating agency.

“Real Estate Taxes” means (i) all taxes and general and special assessments and other impositions in lieu thereof, or as a supplement thereto and any other tax measured by the value of real property and assessed on a uniform basis against the owners of real property, including any substitution in whole or in part therefor due to a future change in the method of taxation, and including any increase in any of the foregoing resulting from any sale, exchange, mortgage, encumbrance, or other disposition by Landlord, in each case assessed against, or allocable or attributable to, the Demised Property and accruing during or prior to the Lease Term, and (ii) all transfer taxes imposed in connection with this Lease, and any and all transfer taxes assessed against, or allocable or attributable to, the Demised Property and accruing during or prior to the Lease Term (except that the transferor or transferee, as applicable, shall pay all transfer taxes attributable to transfers to third parties during the Lease Term). For the avoidance of doubt, the term “Real Estate Taxes” shall include any interest or penalty, addition to tax or other additional amount imposed with respect to the foregoing clauses (i) and (ii).

“Reassessment” is defined in Section 3.03(c).

“Release” means any active or passive spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into any Environmental Media. For the purposes of this Lease, “Release” also includes any threatened Release.

“Remedial Activities” means any investigation, work plan preparation removal, repair, cleanup, abatement, remediation, monitored natural attenuation, natural resource damage assessment and restoration, closure, post-closure, detoxification or remedial activity of any kind whatsoever necessary to address Environmental Conditions.

“REMICs” is defined in Section 31.01.

“Rent” means Base Rent plus Additional Rent.

“Repairs” means all replacements (other than Restoration Work and restoration in connection with eminent domain), renewals, alterations, additions and betterments necessary for Tenant to properly maintain the Demised Property in good order and condition, safe and fit for its permitted use under this Lease.

“Replaced Property” is defined in Section 31.01.

“Replacement Property” is defined in Section 31.01.

“Restoration Work” is defined in Section 11.01.

[**“SB Environmental Covenant”** is defined in Schedule 29.08.]

“SDN List” is defined in Article 39.

“Second Option Period” is defined in Section 2.02(a).

“SNDA” is defined in Section 23.01.

“Subordination and Attornment Provisions” is defined in Section 22.01(b).

“Subtenant Minor Project” means (i) a non-structural minor maintenance or repair project or (ii) a “cosmetic refresh” project involving only painting, carpeting, floor covering and installation of moveable replacement Tenant Equipment and similar items, unless the costs exceed, in the aggregate for any such project, for the Demised Property, the percentage of the square footage of the Demised Property subject to subtenant’s sublease multiplied by \$500,000.

“Subtenant SNDA” is defined in Section 23.01.

“Tenant” is defined in the first paragraph of this Lease.

“Tenant Equipment” is defined in the Recitals to this Lease.

“Tenant’s Lender” means any lender of Tenant that holds a Leasehold Mortgage.

“Third Option Period” is defined in Section 2.02(a).

“Transaction Documents” means this Lease and any other agreements entered into by and between Landlord and Tenant regarding the Lease or the Demised Property.

“Transfer Parties” is defined in Section 23.02.

“Unreimbursed Costs” means any fees or other costs that are not reimbursed or subject to reimbursement pursuant to applicable Law or regulations, insurance, contractual indemnities or any other means.

“Use” means the receipt, handling, generation, storage, treatment, recycling, disposal, transfer, transportation, introduction, or incorporation into, on, about, under or from the Demised Property.

“Winning Party” has the meaning set forth in Section 31.01.

SCHEDULE 2

EXCLUDED PERSONAL PROPERTY

The following property shall be Tenant's Equipment, not Building Equipment:

- Refrigeration Equipment (Cases, Compressors, Racks – excluding HVAC and any walk-in coolers or freezers)

SCHEDULE 3

Permitted Use Exceptions

“Permitted Uses” shall not include:

- (1) any unlawful use;
- (2) any use which constitutes a public or private nuisance or produces objectionable noise, smell or vibration;
- (3) any noise or sound audible beyond the boundaries of a tenant’s space that is reasonably objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (4) tanning, bowling alley, karate center, skating rink, or other live sports facility other than a first class or nationally recognized gym, fitness center or spa;
- (5) any laundromat or commercial laundry or dry cleaning plant (other than shops serving as a drop-off and pick-up cleaning establishment which do no processing on their premises);
- (6) funeral parlor, crematorium, mortuary or similar service;
- (7) off track betting or bingo parlor, or other betting or gambling establishment;
- (8) any liquor store (a grocery store or similar establishment that sells liquor with such sales representing 20% or less of gross sales shall not be an excluded use) other than a first class wine boutique or nationally recognized chain such as BevMo;
- (9) any tavern or bar, billiard, pool room; provided, however, that first class restaurants with food service as a primary function that also serve liquor such as Applebee’s or Chili’s shall not be prohibited uses;
- (10) any cash for gold, or so called “second hand” or surplus store, pawn shop, flea market, swap meet, junk yard, or auction fire sale, liquidation, second hand or surplus store or flea market (excluding any store that is part of a recognized national or regional chain of first class stores selling second hand merchandise, including, but not limited to, Funcholand, Play It Again Sports and Once Upon A Child, and excluding quality antique stores);
- (11) massage parlor (excluding (a) facilities for therapeutic massage incidental to a permitted retail use such as a first class or nationally recognized day spa and (b) nationally recognized massage chains of comparable quality to Massage Envy);
- (12) living quarters (including, without limitation, drug rehabilitation or “halfway” house) or for residential purposes;
- (13) theater (movie or live), movie theater, auditorium or meeting hall, catering or banquet facility, night club, discotheque, dance hall or ballroom; provided, however, that use of electronic media incidental to another permitted use shall not be a prohibited use
- (14) church or other place of public assembly or religious worship, except that retail stores selling religious merchandise are expressly not prohibited;
- (15) any gun range or use which involves any unusual firing, explosive or other damaging or dangerous hazard (including the storage, display or sales of explosives or fireworks);
- (16) pornographic use (i.e., the exhibition, sale or display of sexually explicit printed materials, audio or video tapes, videocassettes, or film, or sexual devices or sexually oriented entertainment unless, (i) incidental to a permitted use, (ii) permitted by law, and (iii) commonly exhibited, sold, rented or displayed in first class shopping centers similar in the metropolitan area where the property is located), adult book or video tape store (i.e., stores a significant part of the inventory of which is not available for sale or rental to

SCHEDULE 3

LAND AND BUILDING LEASE
(Individual Lease Form)

- children under 15 years old because such inventory explicitly deals with or depicts human sexuality);
- (17) hotel or motel;
 - (18) school (except training incidental to a retail use; provided same is conducted within the applicable retail premises), library, reading room, beauty school, barber college or house of worship;
 - (19) drug paraphernalia store or so called "head" shop;
 - (20) medical marijuana store;
 - (21) any car wash or the performance of any automobile or boat body and fender repair work or other business servicing boats or motor vehicles (including quick lube oil change service, tire center, gasoline or service station, dispensing of petroleum products);
 - (22) any trailer court, mobile home park, sales office or lot for sale, rental or leasing of new or used boats, automobiles, motorcycles, trucks, mobile homes, trailers or other vehicles, labor camp, junk yard, stock yard;
 - (23) off track betting, gambling, gaming or check cashing facility (other than a bona fide banking institution);
 - (24) Amusement park, carnival, circus, fair, disco, nightclub or other entertainment facility including video game room, pool hall, arcade, indoor children's recreational facility or other amusement center (provided, however, that incidental interactive kiosks, games and equipment related to the otherwise permitted primary use of an owner, occupant or tenant, will not be prohibited hereunder);
 - (25) any business operated primarily only on a seasonal or part time basis;
 - (26) any office use; provided that the foregoing shall not prohibit (i) office use which is incidental to a retail operation and which is conducted from within the applicable retail premises, and (ii) quasi-retail offices providing services to the general public and customarily found in first class retail shopping centers in the metropolitan area where the Demised Property is located (such as medical or dental services, travel agencies, insurance services, and real estate offices);
 - (27) animal raising or boarding (other than pet supply stores and veterinarian offices that are an incidental use in a national or regional pet store, provided the same does not sell animals raised in puppy mills);
 - (28) any assembling, manufacturing, distribution facility;
 - (29) any factory, processing or rendering plant, warehouse or storage facility (except reasonable storage of items incidental to another permitted use);
 - (30) any noxious, toxic, caustic or corrosive fuel or gas;
 - (31) any dust, dirt or fly-ash in excessive quantities;
 - (32) any heavy industrial use or for a purpose which causes strong or offensive odors, fumes, dust or vapors and/or untidiness; provided, however, that restaurants are not precluded hereby; any distilling, refining, smelting, agriculture or mining operation; or drilling for or removal of subsurface substances, dumping, disposal, incineration or reduction of garbage or refuse (other than handling or reducing such waste produced on the premises from otherwise authorized uses and, in such latter event, only if handled in a reasonably clean and sanitary manner), provided, however, that such activities will be permitted in connection with the construction of buildings and tenant improvements).

SCHEDULE 4a

Base Rent Reduction Arbitration

In the event that Landlord and Tenant fail agree on the monthly fair market rental for the applicable portion of the Demised Property in connection with the determination of a Base Rent reduction pursuant to Section 12.05 then:

(1) Submission of Proposed Base Rent. Within five (5) days after the date provided in Section 12.05, as applicable, that Landlord and Tenant shall submit to Base Rent Reduction Arbitration (the “**Base Rent Reduction Arbitration Date**”), (a) Landlord shall deliver to Tenant an appraisal setting forth an estimate of the monthly fair market rental attributable to the applicable portion of the Demised Property together with any supporting documentation for its assertion, and (b) Tenant shall deliver to Landlord an appraisal setting forth an estimate of the monthly fair market rental attributable to the applicable portion of the Demised Property together with any supporting documentation for its assertion. If either party fails to deliver its appraisal to the other party on or before the last day of such five (5)-day period, but the other party delivers its appraisal on or before the last day of such five (5)-day period, the assertion supported by such other party’s appraisal delivered pursuant to this subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such five (5)-day period.

(2) Appointment and Qualifications of Arbitrator. If the arbitration is not deemed concluded pursuant to subsection (1), above, then within fifteen (15) days after the Base Rent Reduction Arbitration Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous ten-year (10-year) period in the appraisal of net leased retail properties within the county in which the Demised Property is located (each such appraiser chosen pursuant to this subsection (2), a “**Base Rent Reduction Arbitrator**”). Each of Landlord and Tenant shall notify the other party, in writing, of its Arbitrator (and the business address thereof) within two (2) Business Days after the appointment thereof (collectively, the “**Base Rent Reduction Arbitrator Appointment Notices**”). Each of Landlord and Tenant agrees that any Arbitrator may be (but is not required to be) an appraiser who prepared one or both of the appraisals delivered by Landlord and Tenant pursuant to subsection (1), above.

(3) Appointment of Third Arbitrator. If each party appoints a Base Rent Reduction Arbitrator and notifies the other party in accordance with subsection (2), above, then the two Base Rent Reduction Arbitrators shall, within ten (10) days after delivery of the later of the two Base Rent Reduction Arbitrator Appointment Notices, agree on and appoint a third Base Rent Reduction Arbitrator (whom shall be a licensed real estate appraiser with all other qualifications for the initial two Base Rent Reduction Arbitrators chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Base Rent Reduction Arbitrator and the business address thereof. If the two Base Rent Reduction Arbitrators fail to agree on and appoint a third Base Rent Reduction Arbitrator within such ten (10) day period, then either Landlord or Tenant may elect to have the third Base Rent Reduction

Arbitrator selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Base Rent Reduction Arbitrator and the parties shall cooperate reasonably with each other and the AAA (including by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Base Rent Reduction Arbitrator. If any fees of the third Base Rent Reduction Arbitrator or the AAA are required to be paid in advance (prior to the completion of the arbitration procedure described in this Schedule) in order for such Base Rent Reduction Arbitrator, or the AAA, as the case may be, to commence or continue its work in connection with the arbitration described in this Schedule, each party shall promptly pay one-half of such fees as and when due, and if either Landlord or Tenant fails to pay its one-half share of any such fees as and when due (such party is referred to in this Schedule as the “**Base Rent Reduction Delinquent Party**”), and the other party does pay its one-half share of any such fees as and when due, then if the Base Rent Reduction Delinquent Party fails to pay its one-half share of all such fees within ten (10) days after written notice from the other party, the assertion supported by such other party’s appraisals delivered pursuant to subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such ten (10)-day period.

(4) Base Rent Reduction Arbitrators’ Decision. If the arbitration is not previously deemed concluded pursuant to subsection (3), above, then within thirty (30) days after the appointment of the third Base Rent Reduction Arbitrator, the three Base Rent Reduction Arbitrators shall decide the appraisal that best estimates the monthly fair market rental attributable to the applicable portion of the Demised Property and shall notify Landlord and Tenant in writing of each Base Rent Reduction Arbitrator’s decision. The determination of each Base Rent Reduction Arbitrator shall be limited to the sole issue of, and each Base Rent Reduction Arbitrator shall have neither the right nor the power to determine any issue other than, the monthly fair market rental attributable to the applicable portion of the Demised Property, as determined by such Base Rent Reduction Arbitrator. The decision of the majority of the three Base Rent Reduction Arbitrators shall be binding on Landlord and Tenant (subject to subsection (5), below), and the arbitration shall be deemed concluded upon delivery to Landlord and Tenant of such notifications of the Base Rent Reduction Arbitrators’ decisions.

(5) If Only One Base Rent Reduction Arbitrator Is Appointed. If the arbitration is not previously deemed concluded pursuant to subsection (1), and if either Landlord or Tenant fails to appoint a Base Rent Reduction Arbitrator within fifteen (15) days after the Base Rent Reduction Arbitration Date or fails to deliver a Base Rent Reduction Arbitrator Appointment Notice in accordance with subsection (2), above, and the other party does appoint a Base Rent Reduction Arbitrator within such fifteen (15) day period and delivers a Base Rent Reduction Arbitrator Appointment Notice in accordance with subsection (2), above, then the Base Rent Reduction Arbitrator timely appointed by such other party shall reach a decision regarding the applicable Base Rent reduction, as determined by such Base Rent Reduction Arbitrator, and notify Landlord and Tenant of that decision within thirty (30) days after such Base Rent Reduction Arbitrator’s appointment. Such decision of the Base Rent Reduction Arbitrator shall be binding on Landlord and Tenant, and the arbitration shall be deemed concluded upon delivery of such notification of the Base Rent Reduction Arbitrator’s decision.

(6) Cost of Base Rent Reduction Arbitration. If the Base Rent Reduction Arbitrators (or Base Rent Reduction Arbitrator, pursuant to subsection (5), above)

determine that the monthly fair market rental attributable to the applicable portion of the Demised Property is closer to Tenant's estimate of the applicable Base Rent reduction, then Tenant shall be deemed the "**Removal Base Rent Winning Party**" under this subsection (6) and Landlord shall be deemed the "**Removal Base Rent Losing Party**" under this subsection (6). If the Base Rent Reduction Arbitrators (or Base Rent Reduction Arbitrator, pursuant to subsection (5), above) determine that the monthly fair market rental attributable to the applicable portion of the Demised Property is closer to Landlord's estimate of the applicable Base Rent reduction, then Landlord shall be deemed the "**Removal Base Rent Winning Party**" under this subsection (6) and Tenant shall be deemed the "**Removal Base Rent Losing Party**" under this subsection (6). In addition, in the event the arbitration is deemed concluded due to a party not timely delivering its estimate as described in subsection (1), or a Base Rent Reduction Delinquent Party failing to pay its share of fees after written notice as described in subsection (3), such failing party or Base Rent Reduction Delinquent Party (as the case may be) shall be deemed the "**Removal Base Rent Losing Party**" under this subsection (6), and the party that is not such failing party or Base Rent Reduction Delinquent Party (as the case may be) shall be deemed the "**Removal Base Rent Winning Party**" under this subsection (6). Each party shall initially pay the fees and expenses of its legal counsel, appointed arbitrator, any written reports prepared by any appraiser in connection with its duties under this Schedule, one-half of the fees of the third arbitrator, and one-half the fees of the AAA (if applicable), provided, however, that the Removal Base Rent Losing Party shall be obligated to reimburse the Removal Base Rent Winning Party for all such fees and expenses of the arbitration paid by the Removal Base Rent Winning Party promptly upon the completion of the arbitration procedure described in this Schedule.

SCHEDULE 4b**Casualty Termination Arbitration**

In the event that Landlord and Tenant fail agree on whether the cost to complete the Restoration Work at the Demised Property is in excess of twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property pursuant to Section 11.02 then:

(1) Submission of Proposed Value. Within five (5) days after the date provided in Section 11.02 that Landlord and Tenant shall submit to Casualty Termination Arbitration (the “**Casualty Termination Arbitration Date**”), (a) Landlord shall deliver to Tenant its estimate of the cost to complete such Restoration Work together with an MAI fair market value appraisal for the replacement value of the Demised Property supporting its assertion that the cost to complete the Restoration Work at the Demised Property is less than or equal to twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property, and (b) Tenant shall deliver to Landlord its estimate of the cost to complete such Restoration Work together with an MAI fair market value appraisal for the replacement value of the Demised Property supporting its assertion that the cost to complete the Restoration Work at the Demised Property is greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property. If either party fails to deliver its estimate and appraisal to the other party on or before the last day of such five (5)-day period, but the other party delivers its estimate and appraisal to the failing party on or before the last day of such five (5)-day period, the assertion supported by such other party’s estimate and appraisal delivered pursuant to subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such five (5)-day period.

(2) Appointment and Qualifications of Arbitrator. If the arbitration is not deemed concluded pursuant to subsection (1), above, then within fifteen (15) days after the Casualty Termination Arbitration Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous ten-year (10-year) period in the appraisal of grocery stores or other applicable Permitted Uses within the county in which the Demised Property is located (each such appraiser chosen pursuant to this subsection (2), a “**Casualty Termination Arbitrator**”). Each of Landlord and Tenant shall notify the other party, in writing, of its Casualty Termination Arbitrator (and the business address thereof) within two Business Days after the appointment thereof (collectively, the “**Casualty Termination Arbitrator Appointment Notices**”). Each of Landlord and Tenant agrees that any Casualty Termination Arbitrator may be (but is not required to be) an appraiser who prepared one or both of the replacement value appraisals delivered by Landlord and Tenant pursuant to subsection (1), above.

(3) Appointment of Third Casualty Termination Arbitrator. If each party appoints a Casualty Termination Arbitrator and notifies the other party in accordance with subsection (2), above, then the two Casualty Termination Arbitrators shall, within ten (10) days after delivery of the later of the two Casualty Termination Arbitrator Appointment Notices, agree on and appoint a third Casualty Termination Arbitrator (whom shall be a licensed real estate appraiser with all other

qualifications for the initial two Casualty Termination Arbitrators chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Casualty Termination Arbitrator and the business address thereof. If the two Casualty Termination Arbitrators fail to agree on and appoint a third Casualty Termination Arbitrator within such ten (10) day period, then either Landlord or Tenant may elect to have the third Casualty Termination Arbitrator selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Casualty Termination Arbitrator and the parties shall cooperate reasonably with each other and the AAA (including by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Casualty Termination Arbitrator. If any fees of the third Casualty Termination Arbitrator or the AAA are required to be paid in advance (prior to the completion of the arbitration procedure described in this Schedule) in order for such Casualty Termination Arbitrator, or the AAA, as the case may be, to commence or continue its work in connection with the arbitration described in this Schedule, each party shall promptly pay one-half of such fees as and when due, and if either Landlord or Tenant fails to pay its one-half share of any such fees as and when due (such party is referred to in this Schedule as the **"Casualty Termination Delinquent Party"**), and the other party does pay its one-half share of any such fees as and when due, then if the Casualty Termination Delinquent Party fails to pay its one-half share of all such fees within ten (10) days after written notice from the other party, the assertion supported by such other party's estimate and appraisal delivered pursuant to subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such ten (10)-day period.

(4) Arbitrators' Decision. If the arbitration is not previously deemed concluded pursuant to subsection (3), above, then within thirty (30) days after the appointment of the third Casualty Termination Arbitrator, the three Casualty Termination Arbitrators shall decide whether the estimated cost to complete such Restoration Work is equal to or greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property and shall notify Landlord and Tenant in writing of each Casualty Termination Arbitrator's decision. The determination of each Casualty Termination Arbitrator shall be limited to the sole issue of, and each Casualty Termination Arbitrator shall have neither the right nor the power to determine any issue other than, whether the estimated cost to complete such Restoration Work is equal to or greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property, as determined by such Casualty Termination Arbitrator. The decision of the majority of the three Casualty Termination Arbitrators shall be binding on Landlord and Tenant (subject to subsection (5), below), and the arbitration shall be deemed concluded upon delivery to Landlord and Tenant of such notifications of the Casualty Termination Arbitrators' decisions.

(5) If Only One Casualty Termination Arbitrator Is Appointed. If the arbitration is not previously deemed concluded pursuant to subsection (1), and if either Landlord or Tenant fails to appoint a Casualty Termination Arbitrator within fifteen (15) days after the Casualty Termination Arbitration Date or fails to deliver a Casualty Termination Arbitrator Appointment Notice in accordance with subsection (2), above, and the other party does appoint a Casualty Termination Arbitrator within such fifteen (15) day period and delivers a Casualty Termination Arbitrator Appointment Notice in accordance with subsection (2), above, then the Casualty Termination Arbitrator timely appointed by such other party shall reach a decision regarding whether the

estimated cost to complete such Restoration Work is greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property, as determined by such Casualty Termination Arbitrator, and notify Landlord and Tenant of that decision within thirty (30) days after such Casualty Termination Arbitrator's appointment. Such decision of the Casualty Termination Arbitrator shall be binding on Landlord and Tenant, and the arbitration shall be deemed concluded upon delivery of such notification of the Casualty Termination Arbitrator's decision.

6. Cost of Casualty Termination Arbitration. If the Casualty Termination Arbitrators (or Casualty Termination Arbitrator, pursuant to subsection (5), above) determine that the estimated cost to complete such Restoration Work greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property, then Tenant shall be deemed the "**Casualty Termination Winning Party**" under this subsection (6) and Landlord shall be deemed the "**Casualty Termination Losing Party**" under this subsection (6). If the Casualty Termination Arbitrators (or Casualty Termination Arbitrator, pursuant to subsection (5), above) determine that the estimated cost to complete such Restoration Work is less than or equal to twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property, then Landlord shall be deemed the "**Casualty Termination Winning Party**" under this subsection (6) and Tenant shall be deemed the "**Casualty Termination Losing Party**" under this subsection (6). In addition, in the event the arbitration is deemed concluded due to a failing party not timely delivering its estimate and appraisal as described in subsection (1), or a Casualty Termination Delinquent Party failing to pay its share of fees after written notice as described in subsection (3), such failing party or Casualty Termination Delinquent Party (as the case may be) shall be deemed the "**Casualty Termination Losing Party**" under this subsection (6), and the party that is not the failing party or Casualty Termination Delinquent Party (as the case may be) shall be deemed the "**Casualty Termination Winning Party**" under this subsection (6). Each party shall initially pay the fees and expenses of its legal counsel, appointed arbitrator, any written reports prepared by any appraiser in connection with its duties under this Schedule, one-half of the fees of the third arbitrator, and one-half the fees of the AAA (if applicable), provided, however, that the Casualty Termination Losing Party shall be obligated to reimburse the Casualty Termination Winning Party for all such fees and expenses of the arbitration paid by the Casualty Termination Winning Party promptly upon the completion of the arbitration procedure described in this Schedule.

[SCHEDULE 4.03

Option Rights

1960 West Baseline Road, Phoenix, AZ (the “Property”)

That certain purchase option as disclosed in the Memorandum of Site Development Agreement dated May 29, 2007, by and between South Mountain Pavilion, LLC (“**Developer**”), as seller, and Fresh and Easy, as buyer, granting Developer the right to repurchase the Property under certain circumstances, as more fully disclosed in that certain Site Development Agreement between the parties.

Reverter Rights

691 3rd Ave, Chula Vista, CA

Those certain reverter rights as disclosed in that certain Deed recorded in Deed Book 919, Page 316, dated November 28, 1922, by Pacific Building Company (“**Pacific**”), as grantor, to Kate Schmelsel and Lulu C. Steen, as grantees, reserving to Pacific reverter rights in the Property under certain circumstances, as more fully disclosed in such Deed.

Those certain reverter rights as disclosed in that certain Deed recorded in Deed Book 908, Page 254, dated November 28, 1922, by Pacific Building Company (“**Pacific**”), as grantor, to E. Kelville, as grantee, reserving to Pacific reverter rights in the Property under certain circumstances, as more fully disclosed in such Deed.

685 E. Bonita Ave., San Dimas, CA

Those certain reverter rights as disclosed in that certain Indenture recorded in Deed Book 436, Page 293, dated April 28, 1888, by the San Jose Ranch Company (“**Ranch Co.**”), as grantor, to B.F. Chamberlain, as grantee, reserving to Ranch Co. reverter rights in the Property under certain circumstances, as more fully disclosed in the Indenture.

Those certain reverter rights as disclosed in that certain Indenture recorded in Deed Book 919, Page 170, dated January 15, 1894, by the San Jose Ranch Company (“**Ranch Co.**”), as grantor, to M.L. Torrey and A.A. Torrey, as grantees, reserving to Ranch Co. reverter rights in the Property under certain circumstances, as more fully disclosed in such Indenture.]

**[SCHEDULE 22.05
UNOCCUPIED SPACE**

Store	Mailing Address	City	State	Zip	Unoccupied Space (sf)
1058	1400 S. Boulder Hwy.	Henderson	NV	89015	3,300
1003	4211 Eagle Rock Blvd.	Los Angeles	CA	90065	17,142
1275	691 3 rd Avenue	Chula Vista	CA	91910	2,049] ¹⁰

¹⁰ Only in applicable lease

SCHEDULE 29.08

ENVIRONMENTAL COVENANTS

“SB Environmental Covenant”

Tenant specially represents and warrants that Remedial Activities at the Demised Property (the **“SB Remediation Property”**) are being undertaken pursuant to Clean-up and Abatement Order No. R3-2011-0017 issued in November 2011 (the **“CAO”**) by the Central Coast Regional Water Quality Control Board (**“RWQCB”**).

Tenant represents and warrants that to the best of its knowledge Fresh & Easy Neighborhood Market, Inc., a Delaware corporation and Fresh & Easy Property Co. LLC, a Delaware limited liability company (the **“F&E Sellers”**) are in compliance with the CAO.

As to the obligations of the F&E Sellers under the CAO, even if amended from time to time, or under any successor Clean-up and Abatement Order, Tenant shall diligently pursue to completion all work required, pay all RWQCB oversight costs when due (subject to any right to contest the accuracy of such invoices), and secure a “no further action” or “case closure” determination from the RWQCB at the earliest practicable time. Tenant may petition for closure under a commercial use standard, but if the RWQCB requires achievement of an unrestricted use standard then Tenant shall achieve that standard. If case closure under a commercial use standard is pursued, Landlord shall be entitled to review prior to final approval any activity and use limitations and/or any proposed deed restrictions. Landlord may in its sole discretion refuse to consent to any activity and use limitations or deed notices which imposes operations and maintenance obligations on current or future surface users of the SB Remediation Property, or which raises repair, operating or maintenance costs. Landlord agrees that a prohibition on use of ground water underlying the SB Remediation Property is an acceptable onsite activity and use restriction.

Tenant shall either produce from its files, or diligently pursue with an appropriate Governmental Authority, issuance of a “case closure” or “no further action” letter respecting the removal of an underground storage tank from the SB Remediation Property, such removal having taken place circa 2011 (the **“UST Closure Letter”**).

Within thirty (30) days of commencement of the Lease Term, Tenant shall notify the Regional Board in writing that Tenant shall be the successor responsible party to the F&E Sellers under the CAO. Tenant shall use its best efforts to ensure a seamless transition regarding performance under the CAO. If Landlord is named in any CAO respecting the same conditions which are the subject of the current CAO, Tenant shall diligently pursue performance of Landlord’s obligations.

Tenant agrees that Landlord (by and through its agents and consultants) may enter the SB Remediation Property to conduct such additional Remedial Activities as Landlord shall from time to time for good cause shown may need to conduct. Such Remedial Activities shall include Phase II work, including indoor air quality assessments. Good cause to conduct such Remedial Activities shall include, without limitation, investigations required by a Governmental Authority (whether under an order or styled as a letter request), investigations required in connection with pending or threatened litigation under Environmental Laws against Landlord, investigations to determine whether indoor air quality is affected by Hazardous Materials in excess of Environmental Guidance Standards, or an investigation of a public or worker health or safety threat which is not being addressed actively or directly under the CAO. Such Landlord Remedial Activities shall not materially interfere with Tenant’s quiet enjoyment and authorized use of the SB Remediation Property, nor shall such Remedial Activities materially interfere with Tenant’s (or any other party’s) orderly implementation of the CAO. Tenant shall cooperate in all reasonable respects to allow such Landlord Remedial Activities, but Tenant shall not be responsible for the cost (other than to the extent such cost is paid out of funds under the Holdback Agreement) of such Landlord Remedial Activities. Landlord may use funds under the Holdback Agreement respecting the SB

SCHEDULE 29.08

LAND AND BUILDING LEASE
(Individual Lease Form)

Remediation Property to fund this work, except that Landlord may not use Holdback Agreement funds to pay for due diligence investigations in connection with or in anticipation of a prospective purchaser or tenant, such as a Phase I report or a Phase II report in connection with the sale or lease of the SB Remediation Property.

Landlord also may elect to pursue such Remedial Activities which Tenant fails to diligently pursue, or to timely complete, as required under this Schedule 29.08, or if Tenant fails to pursue or achieve an unrestricted use standard for all or any portion of the SB Remediation Property when required by a Governmental Authority. Landlord may use funds under the Holdback Agreement respecting the SB Remediation Property to fund this work.

Tenant shall provide to Landlord periodic progress reports of Remedial Activities under the CAO, in connection with the UST Closure Letter, and any other material Remedial Activities. Tenant shall provide Landlord a copy of all submittals to the RWQCB documenting Remedial Activities under the CAO (excluding non-substantive or informal e-mails). Tenant shall advise Landlord in writing when Tenant assumes the obligations of the F&E Sellers under the CAO.

Tenant and its consultants shall comply with all applicable Laws, including Environmental Laws, and use due care in the conduct of the Remedial Activities. Tenant shall employ only experienced and reputable consultants. Landlord shall have the right to disapprove the first recommended consultant in its sole discretion, in which case Tenant shall suggest a second consultant. If Landlord disapproves the second consultant it shall set forth good cause for doing so, in which case Tenant shall recommend a third consultant, subject again to Landlord's disapproval only for good cause shown.

As between Landlord and Tenant, Tenant shall conduct all Remedial Activities at Tenant's sole cost and expense, excepting those Remedial Activities Landlord may conduct under this SB Environmental Covenant using funds pursuant to the applicable Holdback Agreement. Tenant hereby agrees to repair and restore, at Tenant's sole cost and expense, damage caused by Tenant or its consultants pursuant to the Remedial Activities at and near the SB Remediation Property.

Tenant shall take all necessary actions and implement all protections necessary to ensure that all actions taken in connection with the Remedial Activities performed by Tenant (including its consultants) with respect to the SB Remediation Property and all equipment, materials and substances generated, used or brought onto the SB Remediation Property pose no threat to the safety of persons or the environment and cause no (unrepaired) damage to the SB Remediation Property, or to the property of other persons.

The CAO includes both onsite and offsite Remedial Activities. The obligations herein apply to such offsite locations only to the extent Remedial Activities under the CAO or otherwise under Environmental Laws are or must be conducted by the F&E Sellers or by Tenant on the property of others. Ground water underlying the SB Remediation Property shall be deemed part of the SB Remediation Property for purposes of the obligations herein, even if such ground water is owned by a third party.

Tenant shall be the generator of record for all wastes generated as a result of any Remedial Activities, and liable and responsible for all costs, fees, permits, taxes, oversight charges, associated with the Remedial Activities including, if necessary, payment of sums to access third party property to conduct or complete the Remedial Activities.

At the completion of any Remedial Activity, Tenant shall cause its consultants to remove such equipment, wells, materials and wastes (if any) for proper offsite disposal and shall restore any affected portion of the SB Remediation Property (and the property of others, if applicable) to the condition it was in prior to initiation of the Remedial Activities.

Tenant shall not permit any mechanic's or materialmen's liens or any other liens to attach to the SB Remediation Property by reason of the performance of any Remedial Activities. The provisions of this paragraph

shall survive the termination of this SB Environmental Covenant for a period of one year.

Tenant shall maintain, at its expense, and shall cause the approved consultant to maintain, at their expense, insurance coverages in the following amounts:

- (i) Worker's Compensation – Coverage A: statutory amount
Coverage B: Employer's Liability insurance:
\$500,000 Each Accident
- (ii) Commercial General Liability including contractual liability coverage, on an occurrence basis, including Bodily Injury and Property Damage Liability for the following limits:
General Aggregate \$ 2,000,000
Each Occurrence \$ 1,000,000
- (iii) Owned, Hired and Non-Owned Business Automobile liability insurance in an amount no less than \$1,000,000 per accident Combined Single Limit for bodily injury and property damage
- (iv) Umbrella Policy (Occurrence form with defense costs outside the limits): \$1,000,000 Each Occurrence/\$1,000,000 Aggregate Excess of the Employer's Liability, Commercial General Liability and Automobile Liability coverages on a following form basis, including coverage for Additional Insureds.

Within ten (10) days after the Effective Date, Tenant shall furnish Landlord with Certificates of Insurance. The insurance shall remain in effect until completion of all Remedial Activities required under this SB Environmental Covenant.

This SB Environmental Covenant shall remain in effect during the Lease Term.

Tenant and Landlord shall cooperate with each other in all reasonable respects so as to effectuate the implementation of this SB Environmental Covenant.

These obligations under this SB Environmental Covenant shall be governed by the laws of the State of California, including the applicable California Environmental Laws, and including Environmental Guidance Standards. The definition of the term "commercial use standards," or "unrestricted use standards" (also known as "residential use standards") shall be the most stringent of the applicable definitions used in Environmental Guidance Standards in use in the State of the Demised Property, including Maximum Contaminant Levels for ground water, if the Remedial Activities are self-directed. If a Governmental Authority is exercising jurisdiction over the Remedial Activities, the Environmental Guidance Standards actually selected by the Governmental Authority shall be the applicable standards for that project. The foregoing sentence does not determine whether commercial use standards or unrestricted use standards apply at a Demised Property, but only how the standards, once selected and determined to be applicable, are to be defined.

The covenants, promises and undertakings in this SB Environmental Covenant are cumulative and in addition to all other obligations under the Lease, but remain subject to the terms of Article 29; provided, however, in the event of a conflict between the general terms of Article 29 and the specific terms and covenants in this SB Environmental Covenant, the specific terms and covenants in this Environmental Covenant shall prevail.

ENVIRONMENTAL COVENANT

“ER and SLO Environmental Covenant”¹¹

Tenant has agreed to conduct Phase II work to determine if Hazardous Materials are located at or emanating from the Demised Property (the **“Remediation Properties”**) and, if necessary, Remedial Activities to abate such Hazardous Materials as set forth below.

If Landlord’s Phase II investigation identifies Hazardous Materials above unrestricted use standards, Tenant shall prepare a Phase II scope of work within thirty (30) days and submit the same to Landlord. Landlord shall review such Phase II scope of work proposal and provided comments within fifteen (15) days of receipt. Tenant shall revise the Phase II scope of work proposal to incorporate Landlord’s reasonable comments. If the Phase II workplan involves a self-directed clean-up, and if the reasonably projected time period to achieve the remedial action objectives is expected to exceed five (5) years, then Landlord’s comments respecting technologies or approaches to achieve the remedial action objectives more quickly shall be deemed reasonable, provided the cost is not materially greater (i.e., estimated at less than 25%). If the approach involves enrollment in a voluntary cleanup program, or otherwise suggests resort to Governmental Authority oversight, then Landlord shall be entitled to communicate to the Governmental Authority its preferences, should Tenant not accept Landlord’s suggestions on the Phase II scope of work, but the Governmental Authority shall determine the final scope of work.

The Phase II work may be conducted iteratively, in phases. If the investigations document exceedances of unrestricted use screening standards, then Tenant shall diligently pursue such Remedial Activities as are necessary to achieve unrestricted use standards at the earliest practicable time, except as otherwise provided for in this ER and SLO Environmental Covenant. If groundwater is impacted above Maximum Contaminant Levels, the Remedial Activities shall include notice to the Regional Water Quality Control Board. Tenant may petition for closure under a commercial use standard with the applicable Governmental Authority, but if such Governmental Authority requires achievement of an unrestricted use standard then Tenant shall achieve that standard. If case closure under a commercial use standard is pursued by Tenant, Landlord shall be entitled to review prior to final approval any activity and use limitations and/or any proposed deed restrictions. Landlord may in its sole discretion refuse to consent to any activity and use limitations or deed notices which impose operations and maintenance obligations on current or future surface users of any of the Remediation Properties. Landlord agrees that a prohibition on use of ground water underlying any of the Remediation Properties is an acceptable onsite activity and use restriction.

Tenant shall diligently pursue to completion at its own expense all Remedial Activities mandated hereunder. If a Governmental Authority is exercising jurisdiction over any Remedial Activities, Tenant shall comply with all orders, or agreements and shall pay all oversight costs when due (subject to any right to contest the accuracy of such invoices), as applicable.

The Remedial Activities shall continue until the later of: (a) achievement of unrestricted use standards, including Maximum Contaminant Levels in ground water; or (b) if a Governmental Authority is exercising jurisdiction, until Tenant secures a “no further action” or “case closure” determination. Tenant may petition a Governmental Authority for case closure under a commercial use standard, but not if the Remedial Activities are self-directed (in which case unrestricted use standards shall be documented as achieved) and only if Landlord consents to such standard (as set forth above). Tenant bears the risk of Landlord’s refusal to consent to a less stringent standard than an unrestricted use standard and Landlord shall not be held liable for additional costs or time expended by Tenant to achieve an unrestricted use standard.

Landlord also may elect to pursue such Remedial Activities which Tenant fails to diligently

¹¹ Conform for applicable property

pursue, or to timely complete, as required under this Schedule 29.08, or if Tenant fails to pursue or achieve an unrestricted use standard for all or any portion of the applicable Remediation Property when required by a Governmental Authority. Landlord may use funds under the Holdback Agreement respecting the Remediation Properties to fund this work.

Tenant shall provide to Landlord periodic progress reports of Remedial Activities, and any other material Remedial Activities.

Tenant and its consultants shall comply with all applicable Laws, including Environmental Laws, and use due care in the conduct of the Remedial Activities. Tenant shall employ only experienced and reputable consultants. Landlord shall have the right to disapprove the first recommended consultant in its sole discretion, in which case Tenant shall suggest a second consultant. If Landlord disapproves the second consultant it shall set forth good cause for doing so, in which case Tenant shall recommend a third consultant, subject again to Landlord's disapproval only for good cause shown.

As between Landlord and Tenant, Tenant shall conduct all Remedial Activities at Tenant's sole cost and expense, excepting those Remedial Activities Landlord may conduct under this ER and SLO Environmental Covenant using funds pursuant to the applicable Holdback Agreement. Tenant hereby agrees to repair and restore, at Tenant's sole cost and expense, damage caused by Tenant or its consultants pursuant to the Remedial Activities at and near the Remediation Properties.

Tenant shall take all necessary actions and implement all protections necessary to ensure that all actions taken in connection with the Remedial Activities performed by Tenant (including its consultants) with respect to the Remediation Properties and all equipment, materials and substances generated, used or brought onto any of the Remediation Properties pose no threat to the safety of persons or the environment and cause no (unrepaired) damage to any of the Remediation Properties, or to the property of other persons.

The obligations herein apply to offsite locations to the extent Remedial Activities are or must be conducted on the property of others by Tenant. Ground water underlying any of the Remediation Properties shall be deemed part of any of the Remediation Properties for purposes of the obligations herein, even if such ground water is owned by a third party.

Tenant shall be the generator of record for all wastes generated as a result of any Remedial Activities, and liable and responsible for all costs, fees, permits, taxes, oversight charges, associated with the Remedial Activities including, if necessary, payment of sums to access third party property to conduct or complete the Remedial Activities.

At the completion of any Remedial Activity by Tenant, Tenant shall cause its consultants to remove such equipment, wells, materials and wastes (if any) for proper offsite disposal and shall restore any affected portion of any of the Remediation Properties (and the property of others, if applicable) to the condition it was in prior to initiation of the Remedial Activities.

Tenant shall not permit any mechanic's or materialmen's liens or any other liens to attach to any of the Remediation Properties by reason of the performance of any Remedial Activities. The provisions of this paragraph shall survive the termination of this ER and SLO Environmental Covenant for period of one year.

Unless agreed in writing by the Parties, Tenant shall maintain, at its expense, and shall cause the approved consultant to maintain, at their expense, insurance coverages in the following amounts:

- (i) Worker's Compensation – Coverage A: statutory amount
Coverage B: Employer's Liability insurance:

SCHEDULE 29.08

LAND AND BUILDING LEASE
(Individual Lease Form)

\$500,000 Each Accident

- (ii) Commercial General Liability including contractual liability coverage, on an occurrence basis, including Bodily Injury and Property Damage Liability for the following limits:

General Aggregate	\$ 2,000,000
Each Occurrence	\$ 1,000,000
- (iii) Owned, Hired and Non-Owned Business Automobile liability insurance in an amount no less than \$1,000,000 per accident Combined Single Limit for bodily injury and property damage
- (iv) Umbrella Policy (Occurrence form with defense costs outside the limits): \$1,000,000 Each Occurrence/\$1,000,000 Aggregate Excess of the Employer's Liability, Commercial General Liability and Automobile Liability coverages on a following form basis, including coverage for Additional Insureds.

Within ten (10) days of the Effective Date, Tenant shall furnish Landlord with Certificates of Insurance. The insurance shall remain in effect until completion of all Remedial Activities required under this ER and SLO Environmental Covenant.

This ER and SLO Environmental Covenant shall remain in effect during the Lease Term.

Tenant and Landlord shall cooperate with each other in all reasonable respects so as to effectuate the implementation of this ER and SLO Environmental Covenant.

The obligations under this ER and SLO Environmental Covenant shall be governed by the laws of the State of California, including the applicable California Environmental Laws, and including Environmental Guidance Standards. The definition of the term "commercial use standards," or "unrestricted use standards" (also known as "residential use standards") shall be the most stringent of the applicable definitions used in Environmental Guidance Standards in use in the State of the Demised Property, including Maximum Contaminant Levels for ground water, if the Remedial Activities are self-directed. If a Governmental Authority is exercising jurisdiction over the Remedial Activities, the Environmental Guidance Standards actually selected by the Governmental Authority shall be the applicable standards for that project. The foregoing sentence does not determine whether commercial use standards or unrestricted use standards apply at a Demised Property, but only how the standards, once selected and determined to be applicable, are to be defined.

The covenants, promises and undertakings in this ER and SLO Environmental Covenant are cumulative and in addition to all other obligations under the Lease, but remain subject to the terms of Article 29.

EXHIBIT A

LEGAL DESCRIPTION OF DEMISED PROPERTY

EXHIBIT A

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT B
FORM OF SNDA

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (“*Agreement*”) is entered into as of [____], 20[___] (the “*Effective Date*”) by and among [_____] (together with any other holder of the Loan (defined below) and their respective successors and assigns, the “*Mortgagee*”), [_____] a [_____] (hereinafter, the “*Tenant*”) and [_____] a [_____] (the “*Landlord*”), with reference to the following facts:

A. Landlord owns fee simple title in the real property described in Exhibit “A” attached hereto (the “*Property*”).

B. Mortgagee has made or intends to make a loan to Landlord (the “*Loan*”).

C. To secure the Loan, Landlord has or will encumber the Property by entering into a mortgage or deed of trust in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the “*Mortgage*”) to be recorded in land records.

D. Pursuant to the Lease dated [____], (the “*Lease*”) between Landlord and Tenant, Landlord leased to Tenant a portion of the Property, as said portion is more particularly described in the Lease (the “*Leased Premises*”).

E. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in the Property and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Mortgagee agree:

1. Definitions. The following terms shall have the following meanings for purposes of this agreement.

a. Foreclosure Event. A “*Foreclosure Event*” means: (i) foreclosure under the Mortgage; (ii) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which Mortgagee becomes owner of the Property; or (iii) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord’s interest in the Property in lieu of any of the foregoing.

b. Former Landlord. A “*Former Landlord*” means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

c. Offset Right. An “**Offset Right**” means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant’s payment of Rent or performance of Tenant’s other obligations under the Lease, arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

d. Rent. The “**Rent**” means any fixed rent, base rent or additional rent under the Lease.

e. Successor Landlord. A “**Successor Landlord**” means any party that becomes owner of the Property as the result of a Foreclosure Event.

f. Termination Right. A “**Termination Right**” means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

g. Other Capitalized Terms. If any capitalized term is used in this Agreement and no separate definition is contained in this Agreement, then such term shall have the same respective definition as set forth in the Lease.

2. Subordination. The Lease, as the same may hereafter be modified, amended or extended, shall be, and shall at all times remain, subject and subordinate to the Mortgage (but not to the terms thereof), the lien imposed by the Mortgage, and all advances made under the Mortgage. notwithstanding the foregoing, Mortgagee may elect, in its sole and absolute discretion, to subordinate the lien of the Mortgage to the Lease.

3. Nondisturbance, Recognition and Attornment.

a. No Exercise of Mortgage Remedies Against Tenant. So long as the Tenant is not in default under the Lease beyond any applicable grace or cure periods (an “Event of Default”), Mortgagee (i) shall not terminate or disturb Tenant’s possession of the Leased Premises or rights under the Lease, except in accordance with the terms of the Lease and (ii) shall not name or join Tenant as a defendant in any exercise of Mortgagee’s rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant’s rights under the Lease or this Agreement in such action.

b. Recognition and Attornment. Upon Successor Landlord taking title to the Property (i) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (ii) Tenant shall recognize and attorn to Successor Landlord as Tenant’s direct landlord under the Lease as affected by this Agreement; and (iii) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant. Tenant hereby acknowledges that pursuant to the Mortgage and assignment of rents, leases and profits, Landlord has granted to the Mortgagee an absolute, present assignment of the Lease and Rents

which provides that Tenant continue making payments of Rents and other amounts owed by Tenant under the Lease to the Landlord and to recognize the rights of Landlord under the Lease until notified otherwise in writing by the Mortgagee. After receipt of such notice from Mortgagee, the Tenant shall thereafter make all such payments directly to the Mortgagee or as the Mortgagee may otherwise direct, without any further inquiry on the part of the Tenant. Landlord specifically agrees that Tenant may conclusively rely upon any written notice Tenant receives from Mortgagee notwithstanding any claim by Landlord contesting the validity of any term or condition of such notice, including, but not limited to, any default claimed by Mortgagee, and that Landlord shall not make any claim of any kind whatsoever against Tenant or Tenant's leasehold interest with respect to any amounts paid to Mortgagee by Tenant or any acts performed by Tenant pursuant to such written notice and such amounts paid to Mortgagee shall be credited to amounts due under the Lease as if such amounts were paid directly to Landlord.

c. Further Documentation. The provisions of this Article 3 shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article 3 in writing upon request by either of them within ten (10) days of such request.

4. Protection of Successor Landlord. Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

a. Claims Against Former Landlord. Any Offset Right that Tenant may have against any Former Landlord, unless (i) such Offset Right arises after the date Mortgagee encumbers the Property with the Mortgage and (ii) Tenant shall have given written notice to Mortgagee of such Offset Right promptly upon Tenant's actual knowledge of the occurrence of the event(s) giving rise to such Offset Right. The foregoing shall not limit either (x) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of a Foreclosure Event or because of events occurring on or before the date of a Foreclosure Event, notice of which shall have been given to Mortgagee, or (y) Successor Landlord's obligation to correct any conditions that existed as of the date of a Foreclosure Event that violate Successor Landlord's obligations as landlord under the Lease.

b. Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of a Foreclosure Event and Tenant's receipt of notice of such Foreclosure Event other than, and only to the extent that, the Lease expressly required such a prepayment or such payment was delivered to Mortgagee or Successor Landlord.

c. Security Deposit; Representations and Warranties. Any obligation (i) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee or Successor Landlord; or (ii) arising from a breach by Former Landlord of representations and warranties contained in the Lease; or (iii) without in any way superceding subsection (a) above, to pay Tenant any sum(s) accrued prior to Successor Landlord becoming

owner of the Property and owed to Tenant by Former Landlord, unless actually paid over to Successor Landlord.

d. Modification, Amendment or Waiver. Any modification or amendment of the Lease, or any waiver of the terms of the Lease, made without Mortgagee's written consent (which consent shall not be unreasonably withheld, conditioned or delayed), excepting, however, commercially reasonable non-material amendments or modifications of the Lease (for the avoidance of doubt, such non-material modifications do not include any changes in the rights of any "Lender" as such term is defined in the Lease, reductions in rent, reductions in length of term, imposition of material obligations on Landlord or material reductions of the obligations of Tenant under the Lease) which are the result of good faith, arm's length negotiations between Landlord and Tenant and of which Mortgagee receives prompt notice together with a copy of such amendment.

e. Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

5. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor landlord's (or its successors' or assigns') interest, if any, in the Property from time to time, including insurance and condemnation proceeds, security deposits, escrows, Successor Landlord's interest in the Lease, and the proceeds from any sale, lease or other disposition of the Property (or any portion thereof) by Successor Landlord (collectively, the "**Successor Landlord's Interest**"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord. Nothing set forth in this paragraph shall be construed to limit Tenant's equitable remedies, including specific performance and injunctive relief.

6. Casualty and Condemnation. Mortgagee agrees that, notwithstanding any provision of the Mortgage or any instrument secured by the Mortgage, any insurance proceeds and any condemnation awards which may be received by any party hereto and which relate to the Property shall be used or disbursed in accordance with the terms of the Lease.

7. Mortgagee's Right to Cure. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Offset Right or Termination Right:

a. Notice to Mortgagee. Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "**Default Notice**") and, thereafter, the opportunity to cure such breach or default as provided for below.

b. Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and, without limiting anything contained in Section 4(a) above, shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing. In addition, as to any breach or default by Landlord the cure of which requires possession and control of the Property, if Mortgagee undertakes such cure or causes such cure to be commenced by a receiver within the period permitted by this paragraph, and so long as Mortgagee continues to or causes a receiver to diligently and in good faith cure such breach or default, Mortgagee's cure period shall continue for such additional time as Mortgagee may reasonably require to either (i) obtain possession and control of the Property with due diligence and thereafter cure the breach or default with reasonable diligence and continuity; or (ii) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default. Nothing set forth in this paragraph shall limit Tenant's offset rights or rights to cure a breach or default and receive any reimbursement to which it is entitled under the Lease.

8. Miscellaneous.

a. Notices. Any notice or request given or demand made under this Agreement by one party to the other shall be in writing, and may be given or be served by hand delivered personal service, or by depositing the same with a reliable overnight courier service or by deposit in the United States mail, postpaid, registered or certified mail, and addressed to the party to be notified, with return receipt requested or by telefax transmission, with the original machine-generated transmit confirmation report as evidence of transmission. Notice deposited in the mail in the manner hereinabove described shall be effective from and after the expiration of three (3) days after it is so deposited; however, delivery by overnight courier service shall be deemed effective on the next succeeding business day after it is so deposited and notice by personal service or telefax transmission shall be deemed effective when delivered to its addressee or within two (2) hours after its transmission unless given after 3:00 p.m. on a business day, in which case it shall be deemed effective at 9:00 a.m. on the next business day. For purposes of notice, the addresses and telefax number of the parties shall, until changed as herein provided, be as follows:

(a) If to the Mortgagee, at:

and

(b) If to the Tenant, at:

and:

b. Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

c. Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

d. Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage.

e. Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If a Foreclosure Event occurs, then all rights and unaccrued obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement or under the Lease.

f. Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of New York, excluding such State's principles of conflict of laws.

g. Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

h. Due Authorization. Tenant represents to Mortgagee that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions. Mortgagee represents to Tenant that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

i. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Mortgagee, Tenant and Landlord have caused this Agreement to be executed as of the date first above written.

MORTGAGEE:

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

TENANT:

EXHIBIT B

LAND AND BUILDING LEASE
(Individual Lease Form)

LANDLORD:

EXHIBIT B

LAND AND BUILDING LEASE
(Individual Lease Form)

MORTGAGEE'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

EXHIBIT B

LAND AND BUILDING LEASE
(Individual Lease Form)

TENANT'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

EXHIBIT B

LAND AND BUILDING LEASE
(Individual Lease Form)

LANDLORD'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

EXHIBIT B

LAND AND BUILDING LEASE
(Individual Lease Form)

LIST OF EXHIBITS

If any exhibit is not attached hereto at the time of execution of this Agreement, it may thereafter be attached by written agreement of the parties, evidenced by initialing said exhibit.

Exhibit "A" - Legal Description of the Land

EXHIBIT B

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT C

FORM OF TENANT'S ESTOPPEL CERTIFICATE

The undersigned, _____, whose address is _____
_____ represents and certifies as follows:

1. The undersigned is the tenant ("**Tenant**") under that certain Land and Building Lease dated _____ with _____ as Landlord (the "**Lease**"), covering the property described therein (collectively the "**Demised Property**"), a true and correct copy of which (together with all amendments thereof) is attached hereto as Exhibit A. [Tenant understands that _____ ("**Secured Party**") intends to enter into financing arrangements with Landlord, as borrower, to be secured, among other things, by certain mortgages, deeds of trust and assignments of leases and rents, as amended, covering the Demised Property.]

2. The Lease constitutes the only agreement, promise, understanding or commitment (either written or oral) Tenant has with respect to the Demised Property and any right of occupancy or use thereof, except as follows:

3. The Lease is in full force and effect and has not been assigned, subleased, supplemented, modified or amended, in whole or in part, except as follows:

4. Tenant has not given Landlord any notice of termination under the Lease.

5. Tenant took possession of the Demised Property on or about _____, _____, and commenced paying rent on or about _____, _____. Tenant presently occupies the Demised Property, is open for business and operating at all of the Demised Property, and is paying rent on a current basis. No rent has been paid by Tenant in advance except for the monthly rental that becomes due on _____, and no deposits, including security deposits and prepayments of rent, have been made in connection with the Lease.

6. The monthly base rental is the sum of _____ Dollars (\$_____). Landlord has not agreed to reimburse Tenant for or to pay Tenant's rent obligation under any other lease.

7. The Lease term commenced on _____, expires on _____, and there are no options to renew except: _____.

EXHIBIT C

LAND AND BUILDING LEASE
(Individual Lease Form)

8. To the best knowledge of Tenant, there are no defaults under the Lease by Landlord, nor have any events occurred that with the passage of time or giving of notice or both, will result in any such default, except as follows: _____ . To the best knowledge of Tenant, Tenant does not presently have (nor with the passage of time or giving of notice or both will have) any offset, charge, lien, claim, termination right or defense under the Lease.

9. Tenant has no right of first offer, right of first refusal, or option to purchase, with respect to all or any portion of the Demised Property[.], except as set forth in Article [__] of the Lease].

10. Tenant is aware that Landlord and the other addressees hereto[, including Secured Party,] intend to rely upon this Certificate and the statements set forth herein and that the statements and facts set forth above shall be binding on Tenant to the extent of such reliance by Landlord and any other addressee hereto; provided, however, that Tenant's liability shall be limited to being estopped from claiming that its statements in this Certificate are not accurate (subject to, as applicable, the "best knowledge" limitations expressly set forth in this Certificate).

11. To the best of Tenant's knowledge, Tenant is not entitled to any concession or rebate of rent or other charges from time to time due and payable under the Lease, except as expressly set forth in the Lease, and there are no unpaid or unreimbursed construction allowances or other offsets due Tenant under the Lease.

12. To the best of Tenant's knowledge and belief, there are no rental, lease or similar commissions payable with respect to the Lease.

13. Any notices to be provided hereunder shall be provided pursuant to the notice provisions of the Lease.

14. Tenant and the persons executing this Certificate on behalf of Tenant have the power and authority to execute and deliver this Certificate, thereby binding Tenant.

IN WITNESS WHEREOF, Tenant has executed this Certificate this ____ day of _____, 20____.

"TENANT"

a _____

By: _____
Name: _____
Title: _____

EXHIBIT C

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT D

FORM OF MEMORANDUM OF LEASE

(Above space reserved for recorder and recording information)

This instrument prepared by and
after recording return to:

Pircher, Nichols & Meeks
1925 Century Park East
Suite 1700
Los Angeles, California 90067-2512
Attention: Real Estate Notices (SAH
#5602.3)
Facsimile: 310-201-8922

MEMORANDUM OF LEASE

This Memorandum of Lease is made and entered into as of _____, _____, _____ by and between _____, a _____ (“**Landlord**”), and _____, a _____, whose address is _____ (“**Tenant**”), who agree as follows:

1. Terms and Premises. Pursuant to a certain Master Land and Building Lease (the “**Lease**”) dated on or about the date hereof entered into between Landlord and Tenant, Landlord has leased to Tenant and Tenant has leased from Landlord that certain real property, together with all the improvements thereon and appurtenances thereunto belonging (the “**Premises**”), more particularly described on Exhibit “A” attached hereto and incorporated herein, for a term of [_____] ([____]) YEARS from _____, _____, expiring on _____, _____. Tenant has [_____] ([____]) [____]-year options to extend the term of the Lease, all as more particularly set forth in the Lease.

2. Purpose of Memorandum of Lease. This Memorandum of Lease is executed and recorded to give public notice of the Lease between the parties and all terms and conditions of the Lease are incorporated by reference into this Memorandum and this Memorandum of Lease does not modify the provisions of the Lease. If there are any conflicts between the Lease and this Memorandum of Lease, the provisions of the Lease shall prevail. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any term not defined herein shall have the meaning as set forth in the Lease.

EXHIBIT D

LAND AND BUILDING LEASE
(Individual Lease Form)

[SIGNATURES AND ACKNOWLEDGMENTS ON NEXT PAGE]

EXHIBIT D

LAND AND BUILDING LEASE
(Individual Lease Form)

LANDLORD:

TENANT:

_____,
a _____

_____,
a _____

By: _____

By: _____

Date: _____

Date: _____

Signed, sealed, and delivered this _____
day of _____, _____ in the presence of:

Signed, sealed, and delivered this _____
day of _____, _____ in the presence of:

Witness

Witness

Notary Public, County of _____,
State of _____

Notary Public, County of _____,
State of _____

My commission expires: _____

My commission expires: _____

(Notary Seal)

(Notary Seal)

[SIGNATURES CONTINUE ON NEXT PAGE]

EXHIBIT D

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT "A"

EXHIBIT D

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT E
INTENTIONALLY OMITTED

EXHIBIT E

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT F
INTENTIONALLY OMITTED

EXHIBIT F

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT F

LAND AND BUILDING LEASE
(Individual Lease Form)

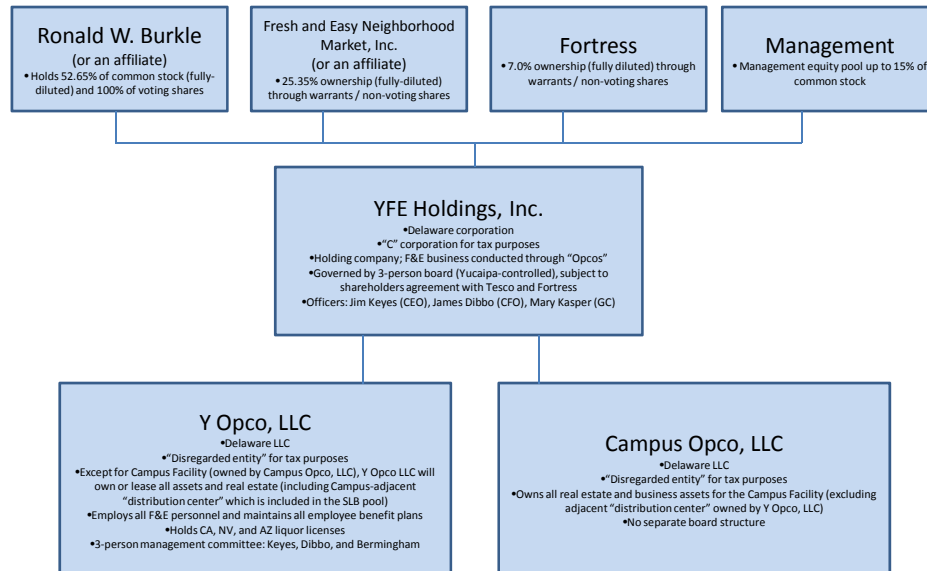
EXHIBIT G**[TENANT ORGANIZATIONAL CHART]**

EXHIBIT G

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT H

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT H

INTENTIONALLY OMITTED

EXHIBIT F
INTENTIONALLY OMITTED

EXHIBIT F

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

EXHIBIT F

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

EXHIBIT G

TENANT ORGANIZATIONAL CHART

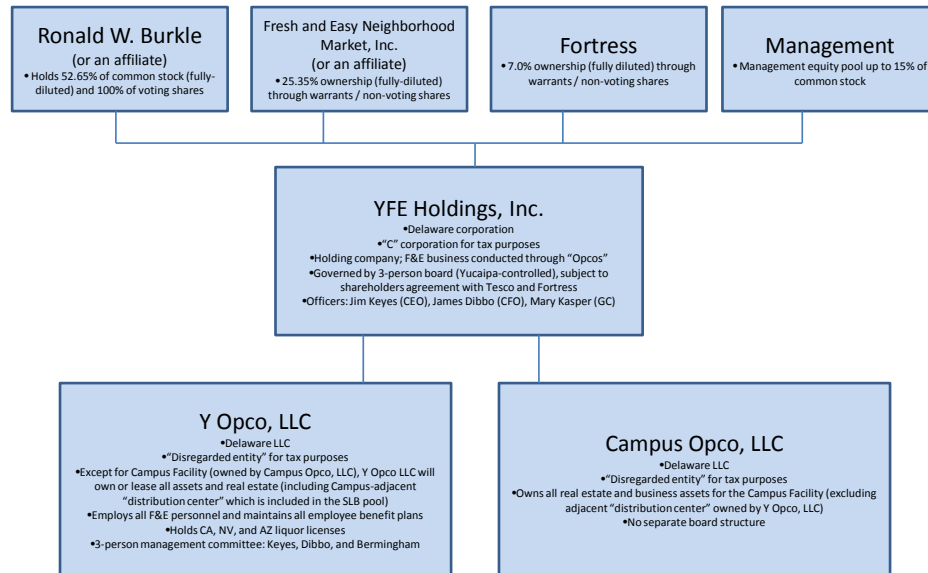


EXHIBIT H

FORM OF MEMORANDUM OF ROFO

RECORDING REQUESTED BY:
AND WHEN RECORDED RETURN TO:

Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013
Attention: Edward Prokop, Esq.

Space Above For Recorder's Use Only

MEMORANDUM OF RIGHT OF FIRST OFFER

This Memorandum of Right of First Offer (this "Memorandum") is made this ____ day of _____, 2013, by and between _____, a _____ (together with its successors and assigns, collectively, "Option Party") and _____, a _____ (together with its successors and assigns, collectively, "Owner").

RECITALS

A. Owner has granted Option Party a right of first offer pursuant to Section 34.02 of that certain Master Land and Building Lease dated as of _____, 2013 (such section, and related defined terms, the "ROFO Agreement") to purchase certain real property ("Real Property") described on Exhibit "A" attached hereto and incorporated herein by this reference, under certain circumstances, as described in the ROFO Agreement.

B. Owner and Option Party desire to execute and record this Memorandum to make the existence of such right of first offer a matter of public record in order to bind Owner and any successor owner of the Real Property.

NOW, THEREFORE, Owner and Option Party hereby agree as follows:

1. Right of First Offer. Owner has granted Option Party a right of first offer, pursuant to which, prior to offering any Real Property to a third party, Owner has an obligation to provide written notice to Option Party describing the material terms of such offer, along with a written offer to sell the applicable Real Property on the same material terms, prior to Owner selling such property, all as more fully described in (and subject to the further terms and conditions of) the ROFO Agreement. Such right of first offer survives certain assignments, sales or other dispositions of the Real Property by Owner pursuant to the terms of the ROFO Agreement and, subject to the terms of the ROFO Agreement, an owner of the Real Property after the originally named Owner above may be subject to the right of first offer evidenced hereby and in the ROFO Agreement.

2. Incorporation of Agreement. The ROFO Agreement is incorporated herein by this reference. If there are any inconsistencies between the provisions of this Memorandum and the provisions of the ROFO Agreement, the provisions of the ROFO Agreement shall control. All capitalized terms used in this Memorandum

EXHIBIT H

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)

that are not defined in this Memorandum shall have the meanings given to such terms in the ROFO Agreement.

3. Counterparts. This Memorandum may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one document.

4. Runs With Land. All restrictions, conditions, covenants and agreements contained in the ROFO Agreement shall operate as restrictions, conditions, covenants and agreements running with the land and shall bind the land in perpetuity.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be duly executed by their duly authorized representatives, all as of the day and year first above written.

OPTION PARTY:

OWNER:

_____,
a _____

_____,
a _____

By: _____

By: _____

Date: _____

Date: _____

Signed, sealed, and delivered this _____
day of _____, _____ in the presence of:

Signed, sealed, and delivered this _____
day of _____, _____ in the presence of:

Witness

Witness

Notary Public, County of _____,
State of _____

Notary Public, County of _____,
State of _____

My commission expires: _____

My commission expires: _____

(Notary Seal)

(Notary Seal)

EXHIBIT A

EXHIBIT B

**MASTER
LAND AND BUILDING LEASE (PORTFOLIO 2)**

between

**EM-50 UAV SLBCO LLC,
a Delaware limited liability company,**

as LANDLORD

and

**Y-OPCO, LLC,
a Delaware limited liability company,**

as TENANT

November 25, 2013

MASTER LAND AND BUILDING LEASE (PORTFOLIO 2)

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**MASTER
LAND AND BUILDING LEASE (PORTFOLIO 2)**

THIS MASTER LAND AND BUILDING LEASE (PORTFOLIO 2) (this “**Lease**”) is made and entered into as of November 25, 2013 (the “**Commencement Date**”), by and between EM-50 UAV SLBCO LLC, a Delaware limited liability company (“**Landlord**”) and Y-OPCO, LLC, a Delaware limited liability company (“**Tenant**”).

R E C I T A L S

A. Landlord owns (i) good and indefeasible title in fee simple to the land described on Exhibit A attached hereto (collectively, the “**Land**”); and (ii) all improvements and other structures located on any of the Land; any rights of way, easements, parking covenants, entitlements, privileges and other rights appurtenant to the Land, including regarding any street adjoining any portion of the Land and any air and development rights related to the Land and any and all fixtures at or on the Land, including all of the machinery, equipment and systems at or on any of the Land (collectively, “**Building Equipment**”), including, without limitation, the following (but specifically excluding any of the following that are not “fixtures” pursuant to applicable Law): built-in equipment; elevators; escalators; compressors; appliances; engines; electrical, telecommunications, plumbing, heating and lighting (including emergency lighting) fixtures, systems and equipment; radio frequency identification fixtures, systems and equipment; ventilating, and air conditioning fixtures, systems and equipment; data and other storage fixtures, systems and equipment; security fixtures, systems and equipment; fire sprinklers and fire suppression fixtures, systems and equipment; private telephone fixtures, systems and equipment; security cameras, systems and other equipment; paging and sound fixtures, systems and equipment; cleaning fixtures, systems and equipment; walk-in coolers and grill hoods; built-in sinks; built-in shelving; awnings, and supports for signs (all of the foregoing in this clause (ii), collectively, “**Improvements**”). The Land and all Improvements thereon are collectively referred to herein as “**Demised Properties**” and each individually as a “**Demised Property**.”

B. The personal property, trade fixtures and equipment owned or leased by Tenant located at any Demised Properties and used in connection with the operation of the business at the Demised Properties (other than the Building Equipment) are referred to herein collectively as the “**Tenant Equipment**.”

C. Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, the Demised Properties so that Tenant may, in accordance with and subject to the terms, conditions and restrictions of this Lease, operate (or cause the operation of) a grocery store or another Permitted Use at each Demised Property.

D. Notwithstanding any other provision of this Lease, this Lease constitutes a single and indivisible lease of all the Demised Properties collectively, and is not an aggregation of leases for the separate Demised Properties. Neither Landlord nor Tenant would have entered into this Lease except as a single and indivisible lease, and the rental herein has been established on the basis of the specific structure of the subject transaction and the economic benefits and risk profile of the transaction as a whole, and not based on the valuation or price of any individual Demised Property. Tenant’s rights to any one Demised Property are dependent on Tenant’s full performance of its obligations as to every other Demised Property, and consideration supporting any agreements under this Lease regarding any Demised Property also supports the agreements under this Lease regarding all other Demised Properties.

NOW, THEREFORE, in consideration of the lease of the Demised Properties and the rents, covenants and conditions herein set forth, and with reference to the definitions of various terms used herein as set forth on Schedule 1 hereto, Landlord and Tenant do hereby covenant, promise and agree as follows:

ARTICLE 1 DEMISE OF PREMISES

Subject to the terms and conditions contained herein, Landlord does hereby lease unto Tenant, and Tenant does hereby hire from Landlord, for the term hereinafter provided in Article 2, the Demised Properties for the use thereof by Tenant, Tenant's employees, customers and invitees.

ARTICLE 2 TERM

Section 2.01

(a) This Lease shall commence on the Commencement Date and terminate on November 25, 2033 (the "**Original Lease Term**") unless sooner terminated as hereinafter set forth. The "**Lease Term**," as such term is used herein, means the Original Lease Term as extended (or as may be extended) pursuant to Section 2.02 below, unless sooner terminated as hereinafter set forth.

(b) This Lease shall be deemed to be in full force and effect upon the Commencement Date. Tenant shall be deemed in possession of the Demised Properties upon the Commencement Date.

Section 2.02

(a) Tenant shall have the option to extend the term of this Lease for up to three (3) separate option periods upon and subject to the terms set forth below in this Section 2.02. The first option period (the "**First Option Period**") shall commence at the expiration of the Original Lease Term. The second option period (the "**Second Option Period**") shall commence at the expiration of the First Option Period. The third option period (the "**Third Option Period**") shall commence at the expiration of the Second Option Period. The First Option Period, the Second Option Period and the Third Option Period are sometimes referred to herein collectively as the "**Option Periods**" and individually as an "**Option Period**." Each of the First Option Period and the Second Option Period shall continue for a period of five (5) years from and after the commencement date of such Option Period, and the Third Option Period shall continue for a period of three (3) years from and after the commencement date of such Option Period. Except as otherwise expressly provided herein, all of the terms and conditions of this Lease applicable to the Original Lease Term shall continue to apply during each Option Period. In no event shall Tenant have any options to extend the term of this Lease except as expressly provided herein. A notice delivered by Tenant to Landlord in order to extend the term of this Lease for any Option Period pursuant to the terms hereof is referred to herein as an "**Extension Notice**".

(b) To validly extend the Lease Term for the First Option Period for all the Demised Properties subject to this Lease at the date of Tenant's delivery to Landlord of an Extension Notice for the First Option Period (i) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the Original Lease Term and not later than ten (10) months prior to the expiration of the Original Lease Term, and (ii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the First Option Period is scheduled to commence there shall be no existing Default or Event of Default under

this Lease. Each Extension Notice shall describe all Portfolio Properties that Tenant proposes to extend for the applicable Option Period under this Lease and the applicable Other Lease Option Periods under the Other Leases (i.e. the Other Lease Option Periods commencing on the same date as such Option Period under this Lease).

(c) To validly extend the Lease Term for the First Option Period for some, but not all, Portfolio Properties subject to this Lease at the date of Tenant's delivery to Landlord of an Extension Notice for the first Option Period (a "**PE First Option Period**" and such option, a "**PE First Option**") (i) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the Original Lease Term and not later than ten (10) months prior to the expiration of the Original Lease Term; (ii) such Extension Notice shall list the Portfolio Properties under this Lease that Tenant desires be subject to such extension (the Portfolio Properties listed on such Extension Notice and subject to this Lease, the "**First Option Extension Properties**") provided, however, that the First Option Extension Properties together with the Other Leases First Option Extension Properties described in such Extension Notice must comprise at least two-thirds (2/3) of all the Portfolio Properties as of the date of Tenant's delivery to Landlord of such Extension Notice (and in no event less than seven (7) Portfolio Properties); and (iii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the First Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease. For the avoidance of doubt, if the seven (7) Portfolio Property minimum for valid extension of the Lease Term as to some, but not all, of the Portfolio Properties under this Lease contained in this clause (c) renders partial extension unavailable to Tenant under this clause (c), then if all other applicable conditions contained in this Lease are met, Tenant may still validly extend the Lease Term for all Portfolio Properties then subject to this Lease pursuant to clause (b) of this Section 2.02 (even if the number of Portfolio Properties subject to this Lease and the Other Leases is less than seven (7) at the time of such extension, and whether or not Tenant elects to exercise its right to extend all Portfolio Properties under any of the Other Leases).

(d) To validly extend the Lease Term for the Second Option Period for all the Demised Properties subject to this Lease at the date of Tenant's delivery to Landlord of an Extension Notice for the Second Option Period (i) Tenant must have validly extended this Lease for the First Option Period (whether such First Option Period is for all Demised Properties under this Lease or a PE First Option Period) (ii) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the First Option Period and not later than ten (10) months prior to the expiration of the First Option Period, and (iii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the Second Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease.

(e) To validly extend the Lease Term for the Second Option Period for some, but not all, Portfolio Properties subject to this Lease at the date of Tenant's delivery to Landlord of an Extension Notice for the Second Option Period (a "**PE Second Option Period**" and such option, a "**PE Second Option**") (i) Tenant must have validly extended this Lease for the First Option Period (whether such First Option Period is for all Demised Properties under this Lease or a PE First Option Period), (ii) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the First Option Period and not later than ten (10) months prior to the expiration of the First Option Period; (iii) such Extension Notice shall list the Portfolio Properties under this Lease that Tenant desires be subject to such extension (the Portfolio Properties listed on such Extension Notice and subject to this Lease, the "**Second Option Extension Properties**") provided, however, that the Second Option Extension Properties together with the Other Leases Second Option Extension Properties described in

such Extension Notice must comprise at least two-thirds (2/3) of all the Portfolio Properties as of the date of Tenant's delivery to Landlord of such Extension Notice (and in no event less than seven (7) Portfolio Properties); and (iv) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the Second Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease. For the avoidance of doubt, if the seven (7) Portfolio Property minimum for valid extension of the Lease Term as to some, but not all, of the Portfolio Properties under this Lease contained in this clause (e) renders partial extension unavailable to Tenant under this clause (e), then if all other applicable conditions contained in this Lease are met, Tenant may still validly extend the Lease Term for all Portfolio Properties then subject to this Lease pursuant to clause (d) of this Section 2.02 (even if the number of Portfolio Properties subject to this Lease and the Other Leases is less than seven (7) at the time of such extension, and whether or not Tenant elects to exercise its right to extend all Portfolio Properties under any of the Other Leases).

(f) To validly extend the Lease Term for the Third Option Period for all the Demised Properties subject to this Lease at the date of Tenant's delivery to Landlord of an Extension Notice for the Third Option Period (i) Tenant must have validly extended this Lease for the Second Option Period (whether such Second Option Period is for all Demised Properties under this Lease or a PE Second Option Period) (ii) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the Second Option Period and not later than ten (10) months prior to the expiration of the Second Option Period, and (iii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the Third Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease.

(g) To validly extend the Lease Term for the Third Option Period for some, but not all, Portfolio Properties subject to this Lease at the date of Tenant's delivery to Landlord of an Extension Notice for the Third Option Period (a "**PE Third Option Period**" and such option, a "**PE Third Option**") (i) Tenant must have validly extended this Lease for the Second Option Period (whether such Second Option Period is for all Demised Properties under this Lease or a PE Second Option Period), (ii) Tenant must and shall deliver to Landlord such Extension Notice not earlier than (15) months prior to the expiration of the Second Option Period and not later than ten (10) months prior to the expiration of the Second Option Period; (iii) such Extension Notice shall list the Portfolio Properties under this Lease that Tenant desires be subject to such extension (the Portfolio Properties listed on such Extension Notice and subject to this Lease, the "**Third Option Extension Properties**"); provided, however, that the Third Option Extension Properties together with the Other Leases Third Option Extension Properties described in such Extension Notice must comprise at least two-thirds (2/3) of all the Portfolio Properties as of the date of Tenant's delivery to Landlord of such Extension Notice (and in no event less than seven (7) Portfolio Properties); and (iv) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the Third Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease. For the avoidance of doubt, if the seven (7) Portfolio Property minimum for valid extension of the Lease Term as to some, but not all, of the Portfolio Properties under this Lease contained in this clause (g) renders partial extension unavailable to Tenant under this clause (g), then if all other applicable conditions contained in this Lease are met, Tenant may still validly extend the Lease Term for all Portfolio Properties then subject to this Lease pursuant to clause (f) of this Section 2.02 (even if the number of Portfolio Properties subject to this Lease and the Other Leases is less than seven (7) at the time of such extension, and whether or not Tenant elects to exercise its right to extend all Portfolio Properties under any of the Other Leases).

(h) Without limiting anything contained in Section 36.02 hereof, time is of the strictest essence in the performance of each provision of this Section 2.02. Either party, upon request of the other, shall execute and acknowledge, in form suitable for recording, an instrument confirming any Option Period, with Tenant paying all applicable recording costs.

ARTICLE 3 RENT

Section 3.01 Rent. Tenant shall pay all Base Rent and Additional Rent, from and after the Commencement Date and thereafter throughout the Lease Term, without offset, deduction, or abatement, except as may be otherwise expressly provided herein. Notwithstanding the foregoing, any amounts due by Tenant to Landlord hereunder for which no due date is expressly specified herein shall be due within twenty-five (25) days following the delivery to Tenant by Landlord of written notice of such amounts due. Except as otherwise expressly provided herein, in the event of nonpayment by Tenant of any Rent, Landlord shall have the same rights and remedies in respect thereof regardless of whether such Rent is Base Rent or Additional Rent. All payments of Rent due to Landlord shall be paid to Landlord (at its election from time to time) in one of the following manners: (a) by electronic deposit into an account designated by Landlord (a “**Landlord’s Account**”), (b) by mail at Landlord’s address set forth in Article 17, or (c) by mail to any other place in the United States designated by Landlord upon at least thirty (30) days’ prior written notice to Tenant.

Section 3.02 Base Rent.

(a) The following terms shall have the following meanings:

(i) “**Base Date**” means (A) if the Commencement Date is the first day of a calendar month, the Commencement Date, and (B) if the Commencement Date is other than the first day of a calendar month, the first day of the first calendar month occurring after the Commencement Date.

(ii) “**Adjustment Dates**” means, collectively, each anniversary of the Base Date.

(iii) “**Base Rent Escalation**” means one and one-half percent (1.5%).

(iv) “**PE Option**” means any of the First PE Option, the Second PE Option or the Third PE Option.

(v) “**PE Option Initial Base Rent**” means, for any PE Option the product of (A) the quotient of (i) the total dollar amount of all sales at all PE Option Extension Properties for the latest consecutive twelve (12) calendar month period for which sales information has been delivered to Landlord under Section 13.02 as of the calculation date, divided by (ii) the total dollar amount of all sales at all Demised Properties for the latest consecutive twelve (12) calendar month period for which sales information has been delivered to Landlord under Section 13.02 as of the calculation date, multiplied by (B) the Base Rent applicable immediately prior to the PE Option Period caused by the exercise of such PE Option, multiplied by (C) 101.5%.

(vi) “**PE Option Extension Properties**” means any of the First PE Option Extension Properties, the Second PE Option Extension Properties or the Third PE Option Extension Properties.

(vii) “**PE Option Period**” means any of the First PE Option Period, the Second PE Option Period or the Third PE Option Period.

(b) The base rent amount for the Demised Properties for each month of the Lease Term shall be \$186,078.87, as increased as hereinafter provided (“**Base Rent**”). Tenant shall pay to Landlord Base Rent, in advance, without demand therefor, on or before the first day of each and every calendar month during the Lease Term and if the Commencement Date is not the first day of a calendar month, Tenant shall pay to Landlord pro-rated Base Rent on the Commencement Date for the partial calendar month in which the Commencement Date occurs.

(c) Subject to the terms of Section 3.02(d) below, on each of the Adjustment Dates, the Base Rent shall increase by the Base Rent Escalation.

(d) Notwithstanding Section 3.02(c) above, Base Rent for the first year of any PE Option Period shall be the PE Option Initial Base Rent. Thereafter, on each of the Adjustment Dates, the Base Rent shall increase by the Base Rent Escalation (subject to a subsequent PE Option Period, whereupon the Base Rent for the first year thereof, and thereafter, shall be as described in the foregoing terms of this Section 3.02(d)). After delivery to Landlord by Tenant of a timely and valid exercise of a PE Option, and not later than thirty (30) days prior to the commencement of the applicable PE Option Period, the parties shall enter into a written agreement setting forth the amount of the PE Option Initial Base Rent.

Section 3.03 Additional Rent.

(a) If by applicable Law, any general or special assessment or like charge may be paid in installments without any penalty whatsoever, then such assessment may be paid in such installments and Tenant shall only be liable for the portion thereof that is allocable or attributable to the Lease Term or any portion thereof. If such assessment or charge may be payable in installments with interest, Tenant may pay such assessment or charge in installments, together with all interest thereon.

(b) Tenant shall pay all Real Estate Taxes directly to the collecting authority no less than five (5) days prior to the delinquency date thereof and shall provide Landlord not less than three (3) Business Days prior to such delinquency date written evidence of payment in full reasonably acceptable to Landlord. Nothing in this Lease shall obligate Tenant to pay any estate, inheritance, franchise, net income or similar taxes of Landlord (other than any rental taxes imposed upon the Landlord that are measured by or based in whole or in part directly upon the Rent payable under this Lease, whether existing at the date hereof or hereinafter imposed by any Governmental Authority) nor shall any of same be deemed Real Estate Taxes, unless the same shall be specifically imposed in substitution for, or in lieu of, Real Estate Taxes. Notwithstanding the first sentence of this clause (b), upon the occurrence of both of the following events, Tenant shall pay Real Estate Taxes to Landlord no less than thirty (30) days prior to the delinquency date thereof in lieu of payment directly to the applicable collecting authority: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) the occurrence and continuance of any Default under this Section 3.03(b) by Tenant, or the occurrence and the continuance of any Event of Default under any provision in this Lease. Real Estate Taxes paid by Tenant to Landlord pursuant to this Section shall be used only for the payment of the Real Estate Taxes. If Tenant fails to pay the appropriate party (Landlord or the collecting authority, as provided herein) all Real Estate Taxes when due hereunder, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and all penalties or interest, or portion thereof, paid or incurred by Landlord as a result of such nonpayment or late payment by Tenant. Without limitation of the foregoing, Tenant shall deposit with

Landlord no later than thirty (30) days prior to the end of the Lease Term an amount sufficient to pay unpaid Real Estate Taxes and other accrued liabilities that will encumber the Demised Properties after the end of the Lease Term to the extent that Real Estate Taxes and such other liabilities have accrued and will accrue through the end of the Lease Term. Landlord shall segregate all such deposits from its other funds and use such deposits solely to pay such accrued liabilities as they come due.

(c) Beginning with the second (2nd) Landlord assignment involving any particular Demised Property located in California, and for each Landlord assignment thereafter involving such particular Demised Property located in California, provided such assignment results in any such Demised Property located in California being reassessed (a “**Reassessment**”) for real estate tax purposes by the appropriate government authority under the terms of Proposition 13 (as adopted by the voters of the State of California in the June 1978 election), Tenant shall not be liable for any increase in Real Estate Taxes solely attributable to such assignment and Reassessment; provided, however, that if the first (1st) Landlord assignment involving any particular Demised Property located in California shall occur in the first two (2) years of the Lease Term and result in a Reassessment, then Tenant shall not be liable for any increase in Real Estate Taxes solely attributable to such assignment and Reassessment from and after such assignment and Reassessment until the end of the second year of the Lease Term, but shall be liable thereafter for any such increase in Real Estate Taxes solely attributable to such assignment and Reassessment. For the avoidance of doubt, Tenant shall be liable for any increase in Real Estate Taxes that would have resulted absent any assignment and Reassessment.

(d) Tenant shall have the right to undertake an action or proceeding against the applicable collecting authority seeking an abatement of Real Estate Taxes or a reduction in the valuation of the Demised Properties and/or contest the applicability of any Real Estate Taxes (including, without limitation, a reduction in the value of any Demised Properties located in California under the terms of Proposition 8 (as adopted by the voters of the State of California in the November 1978 election)); provided, however, that Tenant delivers to Landlord prior written notice of any such action or proceeding by Tenant, and that Tenant has paid timely (and continues to pay timely) all Real Estate Taxes as provided in this Lease to the extent required by applicable Law. In any instance where any such permitted action or proceeding is being undertaken by Tenant, (i) Landlord shall cooperate reasonably with Tenant, at no cost or expense to Landlord, and execute any and all documents approved by Landlord and reasonably required in connection therewith and (ii) Tenant shall provide Landlord with all information reasonably requested by Landlord with respect to such action or proceeding within five (5) days after receipt of Landlord’s written request. Tenant shall be entitled to any refund (after the deduction therefrom of all expenses incurred by Landlord in connection therewith) of any Real Estate Taxes (including penalties or interest thereon) received by Tenant or Landlord, whether or not such refund was a result of actions or proceedings instituted by Tenant, to the extent such refund relates to Real Estate Taxes actually paid by Tenant to Landlord or the collecting authority, as applicable.

(e) Tenant shall be solely responsible for, and shall pay directly to the applicable service providers, the cost of all utility services provided to the Demised Properties throughout the Lease Term. Notwithstanding the foregoing, upon the occurrence of both of the following events, Tenant shall pay to Landlord the cost of any and all utility services provided to the Demised Properties in lieu of payment directly to the applicable service providers: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) any Default under this Section 3.03(d) by Tenant, or any Event of Default. Funds paid by Tenant to Landlord pursuant to the immediately preceding sentence shall be used only for the payment of the cost of utility services to the Demised Properties. If Tenant fails to pay the appropriate party (Landlord or the service providers, as provided herein) all such costs when due hereunder, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and

all penalties or interest, or portion thereof, paid or incurred by Landlord as a result of such nonpayment or late payment by Tenant.

(f) Without limiting any of Tenant's other obligations set forth in this Article, Tenant shall pay to Landlord, with each payment due to Landlord hereunder (and as a part of Rent due hereunder), all sales and excise tax on rental income and all other similar taxes imposed upon Landlord with respect to rental or other payments under this Lease (including Real Estate Taxes paid to Landlord pursuant to Section 3.03(b), or directly to the applicable taxing authority, in each case to the extent deemed includible in Landlord's gross income or gross receipts) in the nature of a gross receipts tax, gross income tax, margins tax, sales tax, occupancy tax, occupation tax, commercial activity tax, commercial rents tax, business and occupation tax, privilege tax or the like, whether imposed by a federal, state or local taxing authority (but, for purposes of clarity, not including any tax imposed on net income or any franchise taxes of Landlord measured by net income or net worth), which, when added to such payment, shall yield to Landlord after deduction of all such tax payable by Landlord with respect to all such payments a net amount which Landlord would have realized from such payment had no such tax been imposed. To the extent permitted by applicable Law, Tenant may pay any such tax directly to the taxing authority, provided Tenant establishes such right to Landlord's satisfaction prior to making any such payment, and Tenant within ten (10) days after any such payment delivers to Landlord written evidence satisfactory to Landlord that such payment has been made.

(g) Any indemnity payments due to Landlord from Tenant hereunder that are attributable to liabilities, fixed or contingent, known or unknown (i) that existed as of the date hereof, or relate to periods prior to and including the date hereof, or (ii) to which the Demised Properties were subject as of the date hereof, or that existed on the date hereof and ran with the Demised Properties and became a liability of the Landlord as the transferee or assignee of the previous owner of the Demised Properties, shall not be treated as additional rent or other gross income of the Landlord for federal income tax purposes, but as an adjustment to the Landlord's adjusted basis in the Demised Properties, which adjusted basis shall prior to the receipt by Landlord of such indemnity payments be deemed to include the amount of such liabilities. Tenant agrees that it will take no position inconsistent herewith for federal income tax purposes.

ARTICLE 4 USE

Section 4.01 Tenant shall use the Demised Properties to operate, and shall not suffer or permit any Person (including any subtenant) to use any of the Demised Properties other than to operate, grocery stores or other Permitted Uses, and the Demised Properties shall be used for no other purpose without the prior written consent of Landlord, which approval may be granted or withheld in the reasonable discretion of Landlord. Subject to applicable Law, Tenant shall open and operate, and shall cause any other Person (including any subtenant) using the Demised Properties to open and operate, a grocery store or another Permitted Use at each of the Demised Properties during all hours that are customary for similarly situated sites of the applicable grocery store or other Permitted Use. This covenant of continuous operation is an additional consideration and a material inducement for Landlord to enter into this Lease. Tenant shall deliver written notice to Landlord within ten (10) days after operation of a grocery store or other Permitted Use at any Demised Property has ceased, which notice shall specify the first date when such operation ceased. Notwithstanding the foregoing covenant of continuous operation, (a) Tenant shall have the right to cease operations at no more than two (2) Portfolio Properties in the aggregate each for not more than a single period not to exceed ninety (90) days during the Original Lease Term and (b) Tenant shall have the right to cease operations at an unlimited number of Portfolio

Properties during any Option Period (for the avoidance of doubt, this Section 4.01 is subject to Article 16 regarding Force Majeure and the last paragraph of Article 6 regarding Alterations).

Section 4.02 Notwithstanding any other provision of this Article, Tenant shall not use, or suffer or permit any Person (including any subtenant) to use, the Demised Properties or any portion thereof for any purpose in violation of any applicable Law, or in violation of any warranties or guaranties, or in violation of any covenants or restrictions of record in effect as of the date of this Lease and any other covenants or restrictions of record encumbering the Demised Properties during the Lease Term, provided such other covenants or restrictions of record are consented to by Tenant (such consent not to be unreasonably withheld, conditioned or delayed) or, without limiting any of the express terms of this Lease, caused by Tenant. From the Commencement Date and thereafter throughout the Lease Term, Tenant shall conduct its business in a commercially reasonable and reputable manner with respect to each of the Demised Properties and in compliance with the terms and provisions of this Lease. The character of the occupancy of the Demised Properties is an additional consideration and a material inducement for the granting of this Lease by Landlord to Tenant.

Section 4.03 Without limiting the foregoing covenants in this Article 4, Tenant hereby agrees that it shall not cause any event or circumstance that triggers any purchase right, termination right, recapture right or option regarding any Third-Party Option Property set forth on Schedule 4.03, provided, however, that with respect to the "Reverter Rights" identified on Schedule 4.03, Tenant shall not be in breach of the foregoing covenant unless such rights are actually exercised. For the avoidance of doubt, Tenant shall not be in breach of the foregoing covenant in this Section by reason of any action of Landlord, including any attempted or actual partial assignment of this Lease by Landlord under Article 30.

Section 4.04 Without limitation, no provision of this Article 4 shall limit any of the covenants of Tenant contained in Article 22.

ARTICLE 5 PERFORMANCE OF OBLIGATIONS; ACCEPTANCE OF DEMISED PROPERTIES

Tenant hereby represents, warrants and covenants to Landlord that Tenant has the right and lawful authority to enter into this Lease and perform Tenant's obligations hereunder. Landlord hereby represents, warrants and covenants to Tenant that Landlord has the right and lawful authority to enter into this Lease and perform Landlord's obligations hereunder. Tenant acknowledges that it has had access to the Demised Properties prior to execution of this Lease and has had the opportunity to perform all tests, studies, inspections and investigations (including any investigations regarding zoning and use issues regarding all Demised Properties) and has in fact evaluated the Demised Properties to the extent required for its operations, that it desires, and that Tenant is accepting each Demised Property in its AS IS condition existing on the date Tenant executes this Lease. Tenant hereby accepts each Demised Property in its condition as of the date of possession hereunder, subject to all applicable Law, as well as private easements and restrictions, governing and regulating the use, operation or maintenance of the Demised Properties, whether or not of record (collectively, the "**Diligence Matters**"), and accepts this Lease subject thereto and to all matters disclosed hereby, and by any exhibits attached hereto. Tenant waives to the fullest extent allowed by Law any rights to notice by Landlord regarding the condition of the Demised Properties, whether at law or in equity, and hereby waives any rights and remedies thereunder based in any alleged or actual failure of Landlord to provide any such notices. Tenant acknowledges that (a) neither Landlord nor any of its Affiliates has made any representation or warranty as to the suitability of any Demised Property for the conduct of the Tenant's business and (b) Tenant is entering into this Lease

solely on the basis of its own investigations and familiarity with the Demised Properties and not on the basis of any representation, warranty, covenant, agreement, undertaking, promise, statement, arrangement or understanding by, on behalf of, or with, Landlord or any of its Affiliates, except as expressly set forth in this Lease.

ARTICLE 6 ALTERATIONS

Subject to the provisions of this Article 6, Tenant shall have no right to make alterations or additions to the Improvements (collectively, “**Alterations**”) at any single Demised Property that (i) involve structural changes (unless otherwise approved by Landlord), (ii) would reduce the value of the Improvements as they existed prior to the time that said Alterations are made; or (iii) would adversely affect the structural integrity of the Improvements. Tenant shall not install any underground storage tanks and any above ground storage tanks shall include secondary containment sufficient to prevent spills, overfills or tank ruptures from causing a release to the environment. Any and all Alterations made by Tenant shall be at Tenant’s sole cost and expense. Prior to the commencement of construction, Tenant shall deliver promptly to Landlord detailed cost estimates for any such proposed Alterations, as well as all drawings, plans and other information regarding such Alterations (such estimates, drawings, plans and other information are collectively referred to herein as the “**Alteration Information**”). Landlord’s review and/or approval (if required) of any Alteration Information shall in no event constitute any representation or warranty of Landlord regarding (x) the compliance of any Alteration Information with any applicable Law, (y) the presence or absence of any defects in any Alteration Information, or (z) the safety or quality of any of the Alterations constructed in accordance with any plans or other Alteration Information. Landlord’s review and/or approval of any of the Alteration Information shall not preclude recovery by Landlord against Tenant based upon the Alterations, the Alteration Information, or any defects therein. In the event that Landlord’s consent is required for particular Alterations, Tenant shall request Landlord’s consent to such Alterations in writing, and Landlord will endeavor to respond to such request within ten (10) Business Days following Landlord’s receipt of such request. In the event that Landlord fails to so respond to Tenant’s request within the foregoing ten (10) Business Day period, then Tenant may deliver a second written request for Landlord’s consent to such Alterations containing a sentence in the header of the first page of the request set in at least 14-point bold font, all capital letters, stating “**LANDLORD’S FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS AFTER LANDLORD’S RECEIPT HEREOF SHALL CONSTITUTE LANDLORD’S CONSENT TO THE ALTERNATIONS PROPOSED HEREIN,**” and Landlord will endeavor to respond to such second request within ten (10) Business Days following receipt of the same. In the event that Landlord fails to so respond to Tenant’s second request within the foregoing ten (10) Business Day period, then Landlord shall be deemed to have consented to the Alterations set forth in Tenant’s written request. In making any and all Alterations, Tenant also shall comply with all of the following conditions:

(a) No Alterations shall be undertaken until Tenant shall have (i) procured and paid for, so far as the same may be required, all necessary permits and authorizations of all Governmental Authorities having jurisdiction over such Alterations, and (ii) delivered to Landlord at least five (5) days prior to commencing any such Alterations written evidence acceptable to Landlord, in its reasonable discretion, of all such permits and authorizations. Landlord shall, to the extent necessary (but at no cost, expense, or risk of loss to Landlord), join in the application for such permits or authorizations whenever necessary, promptly upon written request of Tenant.

(b) Any and all structural Alterations of the Improvements shall be performed under the supervision of an architect and/or structural engineer reasonably acceptable to Landlord.

(c) Except for minor, non-structural projects bearing no material risk of any liens for labor and/or materials being filed by third party contractors in connection therewith against Landlord or any applicable Demised Property (but in all cases for any project that is not a Minor Project), Tenant shall notify Landlord at least fifteen (15) days' prior to commencing any Alterations, and Tenant shall permit Landlord access to the relevant Demised Properties in order to post and keep posted thereon such notices as may be provided or required by applicable Law to disclaim responsibility for any construction on the relevant Demised Properties. In addition, Landlord may require Tenant to file or record any such notices, or other similar notices, each in form and substance reasonably satisfactory to Landlord, in accordance with local law or custom.

(d) Any and all Alterations shall be conducted and completed in a commercially reasonable time period, in a good and workmanlike manner, and in compliance with all applicable Law, permits, and requirements of all Governmental Authorities having jurisdiction over the relevant Demised Properties, and of the local Board of Fire Underwriters, if any; and, upon completion of any and all Alterations, Tenant shall obtain and deliver to Landlord a copy of the amended certificate of occupancy for the relevant Demised Properties, if required under applicable Law or by any Governmental Authority. If any Alterations involve the generation, handling, treatment, storage, disposal, permitting, abatement or reporting of Hazardous Materials, Tenant shall prepare and retain any and all records, permits, reports and other documentation necessary or advisable to document and evidence all such Hazardous Materials were handled in compliance with applicable Law.

(e) The cost of any and all Alterations shall be promptly paid by Tenant so that the Demised Properties at all times shall be free of any and all liens for labor and/or materials supplied for any Alterations subject to the next succeeding sentence. In the event any such lien shall be filed, Tenant shall, within ten (10) days after receipt of notice of such lien, deliver written notice to Landlord thereof, and Tenant shall, within forty-five (45) days after Tenant's receipt of notice of such lien, discharge the same by bond or payment of the amount due the lien claimant. Tenant may in good faith contest any such lien provided that within such forty-five (45) day period Tenant provides Landlord with a surety bond or other form of security reasonably acceptable to Landlord, protecting against said lien. Tenant shall provide Landlord promptly with evidence satisfactory to Landlord that all contractors, subcontractors or materialmen have been paid in full with respect to such Alterations and that their lien rights have been waived or released. In the event Tenant fails to either discharge such lien or protect against such lien in accordance with the foregoing, then Landlord shall have the option (but not the obligation) upon not less than fifteen (15) days' prior notice, and Tenant's failure to either discharge such lien or protect against such lien in accordance with the foregoing, to pay such lien or post a bond to protect against such lien and pass through such costs to Tenant as Additional Rent.

(f) The interest of Landlord in the Demised Properties shall not be subject in any way to any liens for improvements to or other work performed to the Demised Properties by or on behalf of Tenant. Tenant shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion, or other interest of Landlord in the Demised Properties. All mechanics, materialmen, contractors, laborers, artisans, suppliers, and other parties contracting with Tenant, its representatives or contractors with respect to the Demised Properties are hereby given notice that they must look solely to Tenant to secure payment for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding any of the Demised Properties through or under Tenant during the term of this Lease. Tenant shall notify every contractor making improvements to the Demised Properties that the interest of Landlord in the Demised Properties shall not be subject to liens for improvements to or other work performed with respect to the Demised Properties by or on behalf of

Tenant. Notwithstanding anything to the contrary set forth in this Lease, no restrictions contained in this Lease as to liens shall apply to Permitted Liens.

(g) Tenant shall discharge any lien filed against the Demised Properties, the Building or the Land, or any part thereof, for work done or materials furnished at Tenant's request with respect to the Demised Properties as provided above in subsection (e) of this Article 6. If Tenant fails to keep this covenant, in addition to any other remedies available to Landlord under this Lease, Tenant agrees to pay Landlord, as Additional Rent, the sum equal to the amount of the lien thus discharged by Landlord, plus all actual and reasonable costs and expenses, including without limitation third party attorney's and paralegal's fees and court costs, incurred by Landlord in discharging such lien.

Notwithstanding anything contained in Section 4.01, so long as Tenant is diligently pursuing completion of an Alteration permitted under this Lease, Tenant may cease operations at the applicable Demised Property, as reasonably required to complete such Alteration, and only to the extent and for a time period reasonably necessary to complete such Alteration, and any such cessation of operations without diligent pursuit of completion of such Alteration or extending beyond such reasonable scope and time to complete such Alteration shall constitute a default under Section 4.01 (subject to the terms thereof).

ARTICLE 7 REPAIRS AND MAINTENANCE

Except as otherwise provided in this Article, Tenant, at its sole cost and expense, shall maintain each of the Demised Properties and each part thereof, structural and non-structural, in good order and condition, including all areas outside of any buildings (including all sidewalks, driveways, landscaping, trash enclosures, and trash compacting and loading areas on the Demised Properties), and including any roof on any buildings, in a neat and clean condition, and ensuring that debris from the operation of each grocery store or other Permitted Use on the Demised Properties is cleaned and removed on a regular basis) and, subject to the terms and conditions of Article 6, shall make any necessary Repairs thereto, interior and exterior, whether extraordinary, foreseen or unforeseen, but subject to Article 11 and Article 12. Without limitation, (a) no Repairs shall result in any structural damage to any Demised Properties or any injury to any persons, (b) Tenant shall ensure that the quality of materials and workmanship of any Repairs meets or exceeds the quality of materials and workmanship of the Improvements prior to the need for such Repairs; (c) all Repairs shall fully comply with applicable Law, the requirements of any covenants, conditions, restrictions or other permitted encumbrances that are of record regarding the applicable Demised Property, and any applicable repair standards and requirements promulgated by Tenant for its (or its subsidiaries' or Affiliates' or franchisees') properties. Tenant promptly shall abate mold in the Demised Properties if such mold creates a material unsanitary or unsightly condition. Landlord shall have no duty whatsoever to maintain, replace, upgrade, or repair any portion of the Demised Properties, including any structural items, roof or roofing materials, or any aboveground or underground storage tanks, and Tenant hereby expressly waives the right to make Repairs at the expense of Landlord, which right may be provided for in any applicable Law now or hereinafter in effect. In addition to Landlord's rights under Section 15.05, if Tenant fails or neglects to commence and diligently proceed with all Repairs or fulfill its other obligations as set forth above within fifteen (15) days after receipt of written notice of the need therefor describing the applicable Repair or other obligation, then Landlord or its agents may, subject to the terms of Article 18 below, enter the Demised Properties for the purpose of making such Repairs or fulfilling those obligations; provided, however, without limiting Landlord's rights pursuant to Article 18 below, in the event that Tenant reasonably disputes Tenant's obligation to make such Repairs or other obligations set forth above, then Landlord's right to enter the Demised Properties for the purpose of making such Repairs or fulfilling those obligations shall be postponed pending a determination of such dispute (however, if in Landlord's

reasonable determination such Repairs or performance of such obligations is necessary to avoid an imminent threat of injury or harm to persons or material damage or loss of value to property, then Landlord may, whether or not such dispute has been resolved, with or without notice (provided, however, that Landlord shall endeavor to give such notice as is practical under the circumstances, if any, which notice may be oral and need not be in writing), and without regard to whether or not any applicable cure period expressly provided herein has expired, elect to perform such Repairs or obligations). All actual and reasonable costs and expenses incurred by Landlord as a consequence of such Landlord's actions, plus an administrative charge of five percent (5%) of such costs and expenses, shall be due to Landlord from Tenant within ten (10) days after written demand from Landlord, which written demand shall include reasonably detailed evidence of such costs and expenses.

ARTICLE 8 COMPLIANCE WITH LAW

Tenant shall, throughout the Lease Term, at its sole cost and expense, comply with, and cause any subtenants or other occupants at the Demised Properties to comply with, applicable Law. Without limiting the foregoing, and as a condition to being permitted hereunder to sell alcoholic beverages at the Demised Properties, Tenant shall maintain, or cause to be maintained, all licenses or permits required by applicable Law in order to sell alcoholic beverages at the Demised Properties and shall deliver to Landlord any information regarding such licenses or permits that Landlord may reasonably request from time to time.

ARTICLE 9 DISCLAIMER AND INDEMNITIES

Section 9.01 To the extent not prohibited by applicable Law, none of the Landlord Parties shall be liable for, under any circumstances, and Tenant hereby releases all Landlord Parties from, any loss, injury, death or damage to person or property (including any business or any loss of income or profit therefrom) of Tenant, Tenant's members, officers, directors, shareholders, agents, employees, contractors, customers, invitees, or any other Person in or about the Demised Properties, whether the same are caused by (a) fire, explosion, falling plaster, steam, dampness, electricity, gas (including methane gas), water, rain; (b) breakage, leakage or other defects of Tenant Equipment, Building Equipment, sprinklers, wires, appliances, plumbing fixtures, water or gas pipes, roof, air conditioning, lighting fixtures, street improvements, or subsurface improvements; (c) theft, acts of God, acts of the public enemy, riot, strike, insurrection, civil unrest, war, court order, requisition or order of governmental body or authority; (d) any act or omission of any other occupant of the Demised Properties; (e) operations in construction of any private, public or quasi-public work; (f) Landlord's reentering and taking possession of the Demised Properties in accordance with the provisions of this Lease or removing and storing the property of Tenant as herein provided; or (g) any other cause, including damage or injury that arises from the condition of the Demised Properties, from occupants of adjacent property, from the public, or from any other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same are inaccessible to Tenant, or that may arise through repair, alteration or maintenance of any part of the Demised Properties or failure to make any such repair, from any condition or defect in, on or about the Demised Properties including any Environmental Conditions or the presence of any mold or any other Hazardous Materials, or from any other condition or cause whatsoever; provided, however, that the foregoing release set forth in this Section 9.01 shall not be applicable to any claim against a Landlord Party to the extent, and only to the extent, that such claim is directly attributable to the gross negligence or willful misconduct of such Landlord Party (provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to Landlord solely by reason of its interest in the Demised Properties or the failure to act by Landlord or anyone acting under its direction or control or on its behalf, in respect of matters that are or were the obligation of Tenant under this Lease).

Section 9.02 In addition to any and all other obligations of Tenant under this Lease (including under any indemnity or similar provision set forth herein), to the extent permitted by applicable Law, Tenant hereby agrees to fully and forever indemnify, protect, defend (with counsel selected by Landlord) and hold all Landlord Parties free and harmless of, from and against any and all Losses (including, subject to the terms of this Section, diminution in the value of the Demised Properties, normal wear and tear excepted and including any Losses resulting from third party claims): (a) arising out of or in any way related to or resulting directly or indirectly from: (i) the use, occupancy, or activities of Tenant, its subtenants, agents, employees, contractors or invitees in or about any of the Demised Properties; (ii) any failure on the part of Tenant to comply with any applicable Law, including any Environmental Laws; (iii) any Default or Event of Default under this Lease or any breach or default by Tenant or any other party (other than Landlord) under any other Transaction Document (including as a result of any termination by Landlord, following an Event of Default, of any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting any of the Demised Properties pursuant to Section 15.08), and including any additional fees and costs, or any increased interest rate or other charges imposed by any Landlord's Lender by reason of such Default or Event of Default (whether or not such Default or Event of Default is a default under any agreements with any Landlord's Lender); (iv) any other loss, injury or damage described in Section 9.01 above; (v) in connection with mold at any Demised Property; (vi) work or labor performed, materials or supplies furnished to or at the request of Tenant or in connection with obligations incurred by or performance of any work done for the account of Tenant in, on or about the Demised Properties; and (b) whether heretofore now existing or hereafter arising out of or in any way related to or resulting directly or indirectly from the presence or Release at, on, under, to or from the Demised Properties of Hazardous Materials. Without limiting the foregoing, (x) Tenant shall pay on demand all actual and reasonable fees and costs of Landlord (including attorneys' fees and costs) in connection with any enforcement by Landlord of the terms of this Lease, and (y) all of the personal or any other property of Tenant kept or stored at, on or about the Demised Properties shall be kept or stored at the sole risk of Tenant. Notwithstanding the foregoing, the indemnity set forth in this Section 9.02 shall not be applicable to any claim against any Landlord Party to the extent, and only to the extent, such claim is directly attributable to the gross negligence or willful misconduct of such Landlord Party (provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to Landlord solely by reason of its interest in the Demised Properties or the failure to act by Landlord or anyone acting under its direction or control or on its behalf, in respect of matters that are or were the obligation of Tenant under this Lease).

Section 9.03 The provisions of this Article 9 shall survive the expiration or sooner termination of this Lease as to breaches or matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article 9 shall also apply to any breaches or matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant). Tenant hereby waives the provisions of any applicable Law restricting the release of claims, or extent of release of claims, that Tenant does not know or suspect to exist at the time of release, that, if known, would have materially affected Tenant's decision to agree to the release contained in this Article 9. In this regard, Tenant hereby agrees, represents, and warrants to Landlord that Tenant realizes and acknowledges that factual matters now unknown to Tenant may hereafter give rise to Losses that are presently unknown, unanticipated and unsuspected, and Tenant further agrees, represents and warrants that the release provided hereunder has been negotiated and agreed upon in light of that realization and that Tenant nevertheless hereby intends to release, discharge and acquit the parties set forth herein above from any such unknown Losses that are in any manner set forth in or related to this Lease, the Demised Properties and all dealings in connection therewith.

ARTICLE 10 INSURANCE

Section 10.01 As of the Commencement Date and throughout the Lease Term, Tenant shall, at its sole expense, obtain, pay for and maintain (or cause to be obtained, paid for and maintained), with financially sound and reputable insurers (as further described in Section 10.03), (a) comprehensive “all risk” insurance covering loss or damage to each Demised Property (including Improvements now existing or hereafter erected thereon) together with all equipment, inventory, contents, personal property, furniture and any fixtures located thereon, caused by fire, lightning, hail, windstorm, hurricane, tidal surge, explosion, vandalism, malicious mischief, leakage of sprinkler systems, and such other losses, hazards, casualties, liabilities and contingencies as are normally and usually covered by “all risk” or special property policies in effect where such Demised Property is located, endorsed to include all of the extended coverage perils and other broad form perils, including the standard “all risks” or special clauses, including building ordinance or law coverage sufficient to provide coverage for costs to comply with building and zoning codes and ordinances including demolition costs and increased cost of construction, (b) business income and interruption insurance to include loss of business at limits sufficient to cover 100% of the annual revenues at the Demised Properties minus any non-fixed expenses payable by Tenant to Landlord with a period of indemnity not less than twelve (12) months from time of loss (such amount being adjusted annually) and an extended period of indemnity of three hundred sixty-five (365) days, (c) flood insurance for all Demised Properties and separately for contents/equipment in amounts acceptable to Landlord and Landlord’s Lender (and Tenant further agrees that any locations in a special flood hazard area (as identified by FEMA) must maintain at a minimum insurance through the National Flood Insurance Program (unless such special hazard areas are covered under a blanket policy reasonably acceptable to Landlord) in addition to Tenant’s blanket property policy at any time sublimits under Tenant’s blanket policy for Demised Properties in special flood hazard areas are less than the total of the maximum amount available under the National Flood Insurance Program for all locations (including separate limits for each Demised Property (including Improvements now existing or hereafter erected thereon) together with all equipment, inventory, contents, personal property, furniture and any fixtures located thereon and any other locations in special flood hazard areas covered under blanket sublimits) with deductibles acceptable to Landlord and Landlord’s Lender in their sole discretion, and (d) terrorism insurance for all Demised Properties. The policy(ies) referred to in clauses (a) and (d) above shall be in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements and the Building Equipment, together with all equipment, inventory, contents, personal property, furniture and any fixtures located on such Demised Property (without any deduction for depreciation), and the policy(ies) referred to in clauses (a), (b), (c) and (d) above shall contain a replacement cost endorsement and an agreed amount or waiver of co-insurance provisions endorsement, provided, however, that with respect to the policy(ies) referred to in clause (c), so long as the applicable Demised Property is not located in whole or in part in a special flood hazard area (as identified by FEMA), in no event shall Tenant be required to maintain policy(ies) for flood insurance relating to such Demised Property and separately for contents/equipment in an amount exceeding \$1,000,000. The deductible under the policies referred to in clauses (a), (b), (c) and (d) above shall not exceed an amount customarily required by institutional lenders for similar properties in the general vicinity of the applicable Demised Property, but in no event in excess of \$200,000 or such greater amount as is approved by Landlord from time to time (and without limiting the parenthetical contained in clause (c) above). A separate named storm wind deductible of up to 1% of the total insurable value for any one Demised Property will be accepted for any locations considered by Landlord to be in a “1st tier” hurricane county. If any Demised Property is located in area prone to geological phenomena, including sinkholes, mine subsidence, earthquakes, the insurance policies referred to in clause (a) and (b), above shall cover such risks and in such amounts (not less than the PML for each Demised Property), in form and substance, as Landlord shall reasonably determine with deductibles not greater than the greater of (i) \$250,000 or (ii) five percent (5%) of the total

insurable value for any one Demised Property. Maximum allowed deductibles in connection with insurance provided for in this Article 10 shall be adjusted annually in proportion to increases in the CPI.

Section 10.02 As of the Commencement Date and throughout the Lease Term, Tenant shall maintain, with financially sound and reputable insurers (as further described in Section 10.03), public liability and other types of insurance with respect to its business and each Demised Property (including all Improvements now existing or hereafter erected thereon) against all losses, hazards, casualties, liabilities and contingencies as customarily carried or maintained by persons of established reputation engaged in similar businesses. Without limiting of the foregoing, Tenant shall maintain or cause to be maintained policies of insurance with respect to each Demised Property in the following amounts and covering the following risks:

(a) Broad form boiler and machinery or breakdown insurance in an amount equal to the full replacement cost of the Improvements at the Demised Property (without any deduction for depreciation) in which the boiler or similar vessel is located, and including replacement cost coverage against loss or damage from (1) leakage of sprinkler systems and (2) damage, breakdown or explosion of steam boilers, electrical machinery and equipment, air conditioning, refrigeration, pressure vessels or similar apparatus and mechanical objects now or hereafter installed at the applicable Demised Property, including loss of inventory, stock and other contents due to spoilage, and (3) business interruption.

(b) During any period of construction, reconstruction, renovation or alteration at any Demised Property, a complete value, "All Risks" Builders Risk form or "Course of Construction" insurance policy in non-reporting form and in an amount reasonably satisfactory to Landlord.

(c) Commercial General Liability insurance covering claims for personal injury, bodily injury, death or property damage occurring upon, in or about each Demised Property on an occurrence form and in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and shall provide coverage for premises and operations, products and completed operations and contractual liability with a deductible in an amount customarily required by institutional owners or institutional lenders (whichever is lower) for similar properties in the general vicinity of the applicable Demised Property, but in no event in excess of \$200,000, and an umbrella liability policy in the amount of \$50,000,000. Liquor Liability insurance, in amounts and subject to terms reasonably approved by Landlord, shall also be maintained by Tenant if alcohol is sold or served at any Demised Property.

(d) Worker's compensation with statutory limits and employer's liability insurance in an amount of \$1,000,000 per accident, per employee and in the aggregate.

(e) Such other insurance (including increased amounts of insurance) and endorsements, if any, with respect to the Demised Properties, including, without limitation, any equipment, inventory, contents, personal property, furniture or any fixtures and the operation thereof as Landlord may reasonably require from time to time and similar to that required for similarly situated properties.

Section 10.03 Each carrier providing any insurance, or portion thereof, required by this Article shall have the legal right to conduct its business in the jurisdiction in which the applicable Demised Property is located, and shall have a claims paying ability rating by S&P of not less than "A-" and an A.M. Best Company, Inc. rating of not less than A and financial size category of not less than IX. Tenant shall cause all insurance that it is required to maintain hereunder to contain a mortgagee clause

and loss payee clause in favor of Landlord's Lender in accordance with this Section to be payable to Landlord's Lender as a mortgagee and not as a co-insured, as its interest may appear.

Section 10.04 All insurance policies required to be maintained by Tenant hereunder and renewals thereof (a) shall be in a form reasonably acceptable to Landlord, (b) shall provide for a term of not less than one year, (c) if the same are insurance policies covering any property (i) shall include a standard non-contributory mortgagee endorsement or its equivalent in favor of and in form acceptable to Landlord's Lender, (ii) shall contain an agreed value clause updated annually (if the amount of coverage under such policy is based upon the replacement cost of the applicable Demised Property) and (iii) shall designate Landlord's Lender as "mortgagee and loss payee." In addition, all property insurance policies (except for flood and earthquake limits) must automatically reinstate after each loss, and the commercial general liability and umbrella policies shall contain an insured endorsement in favor of Landlord and Landlord's Lender, as their interests may appear.

Section 10.05 Any insurance provided for in this Article may be effected by a blanket policy or policies of insurance, or under so-called "all-risk" or "multi-peril" insurance policies, provided that the amount of the total insurance available with respect to the Demised Properties shall provide coverage and indemnity at least equivalent to separate policies in the amounts herein required, and provided further that in other respects, any such policy or policies shall comply with the provisions of this Article. Any increased coverage provided by individual or blanket policies shall be satisfactory, provided the aggregate liability limits covering the Demised Properties under such policies shall otherwise comply with the provisions of this Article.

Section 10.06 Every insurance policy carried or required to be carried by any party with respect to the Demised Properties, equipment, contents, inventory, personal property or fixtures shall include provisions waiving the insurer's subrogation rights against the other party prior to the occurrence of damage or loss. Subject to the above, each party hereby waives any rights of recovery against the other party for any direct damage or consequential loss covered by said policies (or by policies required to be carried hereunder by such party) whether or not such damage or loss shall have been caused by any acts or omissions of the other party, but such waiver shall operate only to the extent such waiving party is so protected by such insurance coverage (or would have been protected by maintaining all policies required to be carried hereunder by such party).

Section 10.07 The policies of insurance required to be maintained by Tenant under this Article 10 shall name Tenant as the insured and Landlord as additional insured and Landlord's Lenders as additional insureds as their interests may appear, with primary coverage in favor of Landlord and all additional insureds (and with provisions that any other insurance carried by any additional insured or Landlord shall be non-contributing and that naming Landlord and the additional parties listed above in this Section as insureds or additional insureds shall not negate any right Landlord or such parties would have had as claimants under the policy if not so designated). The business interruption insurance required pursuant to Section 10.01 shall name Landlord and Landlord's Lenders as loss payees. All insurance policies required under this Article 10 also shall provide that the beneficial interest of Landlord in such policies shall be fully transferable. In the event Tenant fails to procure or maintain any policy of insurance required under Article 10, or if the insurance company or coverages provided fail meet the requirements contained in this Article 10, Landlord may, at its option, purchase such insurance and charge Tenant all costs and expenses incurred in procuring and maintaining such insurance.

Section 10.08 Tenant shall provide to Landlord, beginning on the Commencement Date and continuing annually thereafter with certificates (or other evidence reasonably requested by Landlord)

from all applicable insurance carriers evidencing the payment of premiums or accompanied by other evidence of such payment (e.g., receipts, canceled checks) in form reasonably satisfactory to Landlord. Each insurance policy required to be carried by Tenant hereunder shall include a provision requiring the insurer to provide Landlord with not less than thirty (30) days' prior written notice of cancellation. Upon the occurrence of both of the following events, Tenant shall pay insurance premiums to Landlord no later than thirty (30) days prior to the date such premiums are due in lieu of payment directly to the applicable the insurance carriers: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) the occurrence and continuance of any Default under this Section 10.08 by Tenant, or any occurrence and the continuance of any Event of Default under any provision in this Lease. Any insurance premiums timely paid by Tenant to Landlord pursuant to this Section shall be applied towards payment of the insurance premium next coming due when such premiums are due and payable.

Section 10.09 Tenant may request from time to time changes to the insurance required pursuant to this Article 10 and Landlord shall review such requested changes and may approve or disapprove such changes in its reasonable discretion. Any such changes shall be documented as an amendment to this Lease. Tenant agrees to pay Landlord upon receipt of written notice from Landlord for all reasonable costs and expenses (including reasonable attorneys' fees and costs) incurred by Landlord in connection with any such requested change or amendment.

ARTICLE 11 DAMAGE OR DESTRUCTION

Section 11.01 If at any time during the Lease Term, any of the Demised Properties or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature, Tenant shall promptly apply for and diligently pursue all necessary permits, and, upon issuance of such permits, thereafter diligently proceed to repair, replace or rebuild such Demised Property as nearly as possible to its condition and character immediately prior to such damage with such variations and Alterations as may be permitted under (and subject to the provisions of) Article 6 (the "**Restoration Work**").

Section 11.02 All property and casualty insurance proceeds payable to Landlord or Tenant (except (a) insurance proceeds payable to Tenant on account of the Tenant Equipment or Tenant's inventory; and (b) insurance proceeds payable from comprehensive general public liability insurance, or any other liability insurance) at any time as a result of casualty to the Demised Properties shall be paid jointly to Landlord and Tenant for purposes of payment for the cost of the Restoration Work, except as may be otherwise expressly set forth herein. Landlord and Tenant shall cooperate in order to obtain the largest possible insurance award lawfully obtainable and shall execute any and all consents and other instruments and take all other actions necessary or desirable in order to effectuate same and to cause such proceeds to be paid as hereinbefore provided. The proceeds of any such insurance in the case of loss shall, to the extent necessary, be used first for the Restoration Work (including if completed by Landlord or a third party after any substitution of the applicable Demised Property pursuant to Article 31) with the balance, if any, payable to Tenant (provided, however, that if an Event of Default is continuing, the balance, if any, shall be payable to Landlord). If insurance proceeds as a result of a casualty to the relevant Demised Property are insufficient to complete the Restoration Work necessary by reason of such casualty, then Tenant shall be responsible for the payment of such amounts necessary to complete such work; provided, however, in the event of a casualty (i) that is not required to be insured against by Tenant under this Lease and (ii) the uninsured cost to complete the Restoration Work at the relevant Demised Property is in excess of thirty-five percent (35%) of the replacement cost of such Demised Property (an "**Uninsured Casualty**"), then Tenant may deliver a notice to Landlord within thirty (30) days after concluding that the uninsured cost to complete the Restoration Work at the relevant Demised Property is in excess of thirty-five percent (35%) of the replacement cost of such Demised Property, stating Tenant's

desire to remove the applicable Demised Property from the Lease and Tenant's estimated cost to complete such Restoration Work and estimated replacement cost of such Demised Property, and such Demised Property will be removed from this Lease thirty (30) days following Landlord's receipt of such notice, provided, however, that if Landlord disputes any part of Tenant's estimate, Landlord may deliver notice of such dispute to Tenant within thirty (30) days after receipt of Tenant's notice and such dispute shall be submitted by Landlord and Tenant to the arbitration process set forth in Schedule 4b attached hereto ("**Casualty Removal Arbitration**") (and if Landlord prevails in such Casualty Removal Arbitration, such Demised Property shall not be removed from this Lease). In connection with any such removal, any insurance proceeds in connection with such casualty, and if such insurance proceeds amount to less than thirty-five percent (35%) of the replacement cost of such Demised Property, such additional amounts necessary to equal the uninsured cost to complete the Restoration Work up to thirty-five percent (35%) of the replacement cost of such Demised Property shall be paid by Tenant to Landlord within thirty (30) days after Landlord's receipt of Tenant's removal notice, and the Base Rent payable hereunder shall be reduced by an amount equal to the monthly fair market rental for such Demised Property immediately prior to such casualty as reasonably agreed to by Landlord and Tenant, provided that should Landlord and Tenant fail to reasonably agree on such Base Rent reduction within five (5) Business Days after such release, then Landlord and Tenant shall submit the issue to the arbitration process set forth in Schedule 4a attached hereto ("**Base Rent Reduction Arbitration**"). In the event that a casualty occurs in the last eighteen (18) months of the Lease Term, Tenant may deliver a notice to Landlord within forty-five (45) days after concluding that the cost to complete the Restoration Work at the relevant Demised Property is in excess of twenty percent (20%) of the replacement cost of such Demised Property (a "**End of Term Casualty**"), stating Tenant's desire to remove the applicable Demised Property from this Lease and Tenant's estimated cost to complete such Restoration Work and estimated replacement cost of such Demised Property, and such Demised Property will be removed from this Lease thirty (30) days following Landlord's receipt of such notice, provided, however, that if Landlord disputes Tenant's estimate, Landlord may deliver notice of such dispute to Tenant within thirty (30) days after receipt of Tenant's notice and such dispute shall be settled by Casualty Removal Arbitration (and if Landlord prevails in such Casualty Removal Arbitration, such Demised Property shall not be removed from this Lease). All insurance proceeds in connection with such casualty and the Base Rent payable hereunder shall be reduced by an amount equal to the monthly fair market rental for such Demised Property immediately prior to such casualty as reasonably agreed to by Landlord and Tenant, provided that should Landlord and Tenant fail to reasonably agree within five (5) Business Days after such removal, then Landlord and Tenant shall submit the issue to Base Rent Reduction Arbitration. If the applicable Demised Property is not removed from this Lease in connection with an Uninsured Casualty or a End of Term Casualty, then Tenant shall complete the Restoration Work in accordance with Section 11.01, and, if insurance proceeds as a result of such casualty to the applicable Demised Property are insufficient to complete the Restoration Work, then Tenant shall be responsible for the payment of such amounts necessary to complete such Restoration Work.

Section 11.03 Subject to the terms hereof, this Lease shall not be affected in any manner by reason of the total or partial destruction to any Demised Property or any part thereof and Tenant, notwithstanding any applicable Law, present or future, waives all rights to quit or surrender any Demised Property or any portion thereof because of the total or partial destruction of any Demised Property (prior to the expiration of this Lease). Without limiting the foregoing, no Rent shall abate as a result of any casualty, and the proceeds of all business income and interruption insurance carried by Tenant shall be payable to Tenant.

ARTICLE 12 EMINENT DOMAIN

Section 12.01 Landlord and Tenant hereby agree that in no event shall any taking of any Demised Property for any public or quasi-public use under any statute or by right of eminent domain, or by purchase in lieu thereof, in any way relieve Tenant of any obligations under this Lease (as to the applicable Demised Property or otherwise) except as explicitly provided in this Article.

Section 12.02 If any portion of any Demised Property, or existing access to or from any Demised Property, is taken for any public or quasi-public use under any statute or by right of eminent domain, or by purchase in lieu thereof, and such taking (a) reduces the value of the Demised Property by fifty percent (50%) or more, or (b) prevents, and would prevent after reasonable repair and reconstruction efforts by Tenant, use of the Demised Property for its current permitted use under applicable zoning or other use regulations (including with respect to required parking and access), then such Demised Property shall be removed from this Lease (but not any other Demised Property) as of the date that title to the applicable Demised Property, or portion thereof, actually transfers to the applicable authority.

Section 12.03 Tenant agrees that Landlord has the right in its sole discretion, and at Tenant's sole cost and expense, to oppose any proposed taking regarding any Demised Property. The parties hereto agree to cooperate in applying for and in prosecuting any claim for any taking regarding any Demised Property and further agree that the aggregate net award shall be distributed as follows:

(a) Landlord shall be entitled to the entire award for the condemned Demised Property, except as expressly described in paragraph (b), below.

(b) Tenant shall be entitled to receive fifty percent (50%) of its leasehold value (the excess (if any) of the present value of the fair market rental for the condemned Demised Property (without regard to the Condemnation) for the remainder of the Lease Term over the present value as of the Condemnation Date of the Base Rent reasonably attributable to such Demised Property and payable for the remainder of the Lease Term). Tenant shall also be entitled to (i) the present value of any capital improvement to the extent paid for by Tenant during the Lease Term, multiplied by (ii) the percentage of the remaining useful life of such improvement falling within the Lease Term.

(c) Tenant shall be entitled to any award that may be made exclusively for the taking of Tenant's inventory and personal property, or costs related to the removal and relocation of Tenant's inventory and personal property.

Section 12.04 Except in the case of a removal of a Demised Property from this Lease as described in Section 12.02, in case of a taking of any portion of any Demised Property, (i) Tenant at its own expense shall proceed with diligence (subject to reasonable time periods for purposes of adjustment of any award and unavoidable delays) to repair or reconstruct (or cause to be repaired and reconstructed) the affected Improvements to a complete architectural unit, and all such repair or reconstruction work shall be performed in accordance with the standards and requirements for Alterations set forth in Article 6 and (ii) Landlord shall reasonably make available to Tenant any award due to Landlord in connection with any such taking, to the extent necessary, to be used for such repair or reconstruction work (except if to be completed by Landlord or a third party after any substitution of the applicable Demised Property pursuant to Article 31), provided, however, that if such award is insufficient to complete such repair or reconstruction work, Tenant shall nevertheless proceed to complete such repair or reconstruction work at its own expense as provided in (i).

Section 12.05 Regardless of whether there is a removal of a Demised Property from this Lease in connection with a taking as provided in Section 12.03, in the case of a taking of all or any portion of any Demised Property, the Base Rent payable hereunder shall be reduced by an amount equal to the monthly fair market rental for such Demised Property or applicable portion thereof immediately prior to such condemnation as reasonably agreed to by Landlord and Tenant, provided that should Landlord and Tenant fail to reasonably agree within ten (10) Business Days after such taking, then Landlord and Tenant shall submit the issue to Base Rent Reduction Arbitration.

Section 12.06 Notwithstanding any other provision of this Article, any compensation for a temporary taking shall be payable to Tenant without participation by Landlord, except to the proportionate extent such temporary taking extends beyond the end of the Lease Term, and there shall be no abatement of Rent as a result of any temporary taking affecting any of the Demised Properties.

ARTICLE 13 FINANCIAL AND REPORTING COVENANTS

Section 13.01 Confidentiality. Subject to the terms of this Article 13, Landlord shall maintain as confidential any and all information obtained in connection with this Article 13, and accordingly, Landlord agrees not to disclose all or any portion of such information to any third party, except that Landlord may disclose such information:

(a) to those principals, directors, partners, members, employees, representatives, consultants, counsel, accountants and other professional advisors of Landlord who have a legitimate need to review or know such information;

(b) to lenders (including Landlord's Lenders), prospective lenders, purchasers, prospective purchasers, or otherwise in connection with any sale or financing of any Demised Property or any direct or indirect interest therein;

(c) to any government or self-regulatory agency whose supervision or oversight of Landlord or any of its affiliates may be subject to the extent required by applicable Law, any Governmental Authority or a court of competent jurisdiction, in each case to the extent reasonably necessary to comply with any legal or regulatory requirements to which Landlord or its affiliates may be subject; and

(d) to a court of competent jurisdiction in connection with any enforcement action regarding this Lease or the transactions contemplated hereby.

Except any disclosure pursuant to clause (d) of the immediately preceding sentence, upon disclosing such information to any Person to the extent permitted hereunder, Landlord shall advise such Person of the confidential nature thereof, and shall take all reasonable precautions to prevent the unauthorized disclosure of such information by such Person.

Section 13.02 Books and Records. Tenant shall keep accurate books and records of account of all of the Demised Properties sufficient to permit the preparation of financial statements in accordance with GAAP. Tenant shall provide, or cause to be provided, to Landlord, in addition to any other financial statements required under this Lease, the following financial statements and information, all of which must be prepared in a form reasonably acceptable to Landlord:

(a) promptly and in any event within the earlier of (i) one hundred twenty (120) days after the end of each fiscal year of the Tenant (Tenant's fiscal year constitutes a twelve-month period ending on February 28 of each calendar year) and (ii) within five (5) Business Days of when delivered to any senior lender of Tenant, audited statements of the financial position of Tenant as of the end of each such fiscal year, including a balance sheet and statement of profits and losses, expenses and retained earnings, changes in financial position and cash flows for such fiscal year, which statements shall be duly certified by an officer of Tenant to fairly represent the financial condition of Tenant, as of the date thereof, prepared by Tenant in accordance with GAAP, and accompanied by a statement of a nationally recognized accounting firm reasonably acceptable to Landlord (with Landlord agreeing that any accounting firm approved by any senior lender of Tenant shall be deemed to be acceptable to Landlord) that such financial statements present fairly, in all material respects, the financial condition of Tenant as of the end of its fiscal year being reported on and that the results of the operations and cash flows for such year were prepared, and are being reported on, in conformity with GAAP;

(b) promptly and in any event within sixty (60) days after the end of each calendar quarter, (i) quarterly statements of the financial position of Tenant, including a balance sheet and statement of profits and losses, together with a statement showing the net operating cash flow for the previous twelve (12) month period (and containing supporting documentation necessary to confirm the amount of net operating cash flow), such quarterly statements of financial position to be certified by an officer of Tenant to fairly represent the financial condition of Tenant as of the date thereof and to have been prepared and reported in conformity with GAAP; (ii) a compliance certificate from Tenant, in form and substance reasonably acceptable to Landlord, certifying to such financial information of Tenant as reasonably requested by Landlord, and supporting the statements contained in any such compliance certificate; and (iii) quarterly profit and loss statements in respect of Tenant's operations and trailing twelve (12) month results, certified by an officer of Tenant to be true, correct, and complete in all material respects;

(c) promptly and in any event within fifteen (15) days after the end of each calendar month total retail sales figures in respect of each Demised Property for the applicable calendar month and trailing twelve (12) month results, certified by an officer of Tenant to be true, correct and complete in all material respects;

(d) any financial statements distributed to any senior lender of Tenant within five (5) Business Days after such distribution; and

(e) such other information with respect to the Demised Properties or Tenant that may be reasonably requested from time to time by Landlord, within a reasonable time after the applicable request.

Section 13.03 Litigation. Tenant shall deliver prompt written notice to Landlord of any litigation or governmental proceedings pending or threatened against Tenant that might materially adversely affect the condition of Tenant (financial or otherwise) or the business or operations at any Demised Property. In the event Landlord receives any written notice from any third party of any litigation or governmental proceedings pending or threatened against Tenant or any of the Demised Properties, Landlord shall use commercially reasonable efforts to promptly deliver written notice of the same to Tenant.

ARTICLE 14 INTENTIONALLY OMITTED

ARTICLE 15 EVENTS OF DEFAULT

Section 15.01 Events Of Default. Subject to the terms of this Article, the occurrence of any of the following shall constitute an event of default by Tenant under this Lease ("**Event of Default**"):

(a) **Nonpayment of Base Rent.** Failure to pay any installment of Base Rent on or before the date when due under this Lease. Notwithstanding the foregoing, the first failure to pay any installment of Base Rent on or before the date when due under this Lease in any twelve (12) month period during the Lease Term shall not constitute an Event of Default under this Lease until the third (3rd) Business Day following Landlord's delivery of written notice to Tenant regarding the same.

(b) **Nonpayment of Additional Rent.** Failure to pay any amount of Additional Rent on or before the date when due. Notwithstanding the foregoing, the first failure to pay any Additional Rent on or before the date when due under this Lease in any twelve (12) month period during the Lease Term shall not constitute an Event of Default under this Lease until the fifth (5th) Business Day following Landlord's delivery of written notice to Tenant regarding the same.

(c) **Bankruptcy and Insolvency.** If at any time during the Lease Term, (i) Tenant files a Petition, (ii) any creditor or other Person that is an Affiliate of Tenant files against Tenant any Petition, or any creditor or other Person (whether or not an Affiliate of Tenant) files against Tenant any Petition where Tenant or an Affiliate of Tenant, cooperates or colludes with such creditor or other Person in connection with such Petition or the filing thereof, (iii) any creditor or other Person that is not an Affiliate of Tenant files a Petition against Tenant, where none of Tenant or an Affiliate of Tenant cooperates or colludes with such creditor or other Person in connection with such Petition or the filing thereof, and such Petition is not vacated or withdrawn within ninety (90) days after the filing thereof, (iv) a trustee or receiver is appointed to take possession of any of the Demised Properties, or of all or substantially all of the business or assets of Tenant, and such appointment is not vacated or withdrawn and possession restored to Tenant within ninety (90) days thereafter, (v) a general assignment or arrangement is made by Tenant for the benefit of creditors, (vi) any sheriff, marshal, constable or other duly-constituted public official takes possession of any Demised Property, or of all or substantially all of the business or assets of Tenant by authority of any attachment, execution, or other judicial seizure proceedings, and if such attachment or other seizure remains undismissed or undischarged for a period of ninety (90) days after the levy thereof, (vii) Tenant admits in writing its inability to pay its debts as they become due; or (viii) Tenant files an answer admitting or failing timely to contest a material allegation of any Petition filed against Tenant.

(d) **Misrepresentation.** The discovery by Landlord that any representation, warranty or financial statement given to Landlord by Tenant, or any Affiliate of Tenant, was fraudulently false or misleading when given, including as set forth in any Transaction Document.

(e) **Continuous Operation; Third-Party Option Properties; Insurance; Reporting; Transfers; Other Covenants.** (i) Any default by Tenant under Section 4.01, Section 4.03, Article 10, Article 13 or Article 40, provided such default shall not constitute an Event of Default under this Lease unless Tenant fails to cure such default on or before the thirtieth (30th) day following Landlord's delivery of written notice to Tenant regarding such default and (ii) any default by Tenant under Article 22 or Article 39, unless the same is cured within thirty (30) days thereafter; provided, however, that with respect to (x) any default by Tenant under Section 4.01 during the first two (2) years of the Lease Term,

such default shall constitute an Event of Default unless cured within five (5) days thereafter, (y) any default by Tenant under Section 4.03, any cure must be evidenced by a waiver of the applicable purchase right, termination right, recapture right or option regarding any Third-Party Option Property by the applicable holder(s) of such right in form and substance reasonably satisfactory to Landlord and (z) any material default by Tenant under Article 10 occurring during the Lease Term (including a default that results in, or with the passage of time will result in, Tenant failing to carry any material insurance required under Article 10), such material default shall not constitute an Event of Default under this Lease unless Tenant fails to cure such material default on or before the second (2nd) Business Day following Landlord's delivery of written notice to Tenant regarding such material default (for the avoidance of doubt the cure periods specified in (x) and (z) are in lieu of, and not in addition to, the thirty (30) day cure periods specified in clause (i) above).

(f) Delivery of Notices and Other Documents. The failure by Tenant to deliver any of the notices or other documents required to be delivered to Landlord under this Lease within the time periods required herein (other than any such notices or other documents specifically addressed in another clause of this Section 15.01, for which Tenant will have the grace periods (if any) and notice rights (if any) set forth in such other clause), within the time period stated in this Lease for the delivery by Tenant of any notice or other document to Landlord (or if no time period is so stated then within fifteen (15) days after request), then the failure of Tenant to deliver such notice or document within ten (10) Business Days after written notice to Tenant of such failure.

(g) Liens. Any claim of lien is recorded against any Demised Property and such claim of lien continues for forty-five (45) days after Tenant receives notice thereof without discharge (by bonding or other means available pursuant to applicable Law), or satisfaction being made by or on behalf of Tenant.

(h) Material Judgments. Any final judgment (after any applicable appeals) against Tenant is entered for the payment of uninsured amounts in excess of \$5,000,000 or insured amounts in excess of \$10,000,000, and such judgment remains unsatisfied within sixty (60) days after the rendering of such judgment, unless Tenant enters into an agreement with all applicable claimants in connection with such judgment regarding payment of same, which agreement is reasonably acceptable in form and substance to Landlord, and Tenant does not breach or default under such agreement beyond applicable notice and cure periods during the term thereof. Any such final judgment amount shall be considered insured only if Tenant delivers to Landlord within fifteen (15) days after such final judgment (after any applicable appeals) written evidence both of the applicable Tenant insurance and coverage thereunder regarding such judgment. If Landlord receives actual (not merely constructive) written notice of any judgment, then any default by Tenant under this subsection (h) in connection with such judgment during the Lease Term shall not constitute an Event of Default under this Lease unless Tenant fails to cure such default on or before the tenth (10th) Business Day following Landlord's delivery of written notice to Tenant regarding such default.

(i) Wrongful Denial of Lease. Tenant wrongfully denies that it has any or further liability or obligation under this Lease, or wrongfully purports to revoke, terminate or rescind same (provided that the foregoing shall not limit Tenant's right to assert a good faith defense to any claim by Landlord that an Event of Default has occurred hereunder or that Tenant is liable to Landlord hereunder pursuant to one or more specific provisions hereunder).

(j) Cross Default With Other Leases. Subject to Section 22.08, there is any Other Lease Event of Default by Tenant. However, a default or Event of Default under Section 4.03 shall not

constitute an Event of Default pursuant to Section 15.01(j) of any Other Lease and a default or Event of Default under Section 4.03 of any Other Lease shall not constitute an Event of Default under this Section 15.01(j).

(k) Environmental. Any default under Article 29 or any Holdback Agreement if Tenant fails to cure such default as soon as reasonably practicable, and in any event within thirty (30) days after notice or knowledge of such default; provided, however, that if the default involves an imminent or substantial endangerment, or other worker or public health or safety hazard, the cure shall be effected as soon as possible (and failure to do so shall constitute an Event of Default); provided, further, that if the condition or circumstance is not reasonably susceptible to a cure within thirty (30) days, then Tenant shall have commenced such cure within thirty (30) days and thereafter diligently pursue the cure to completion (and failure to do so shall constitute an Event of Default).

(l) Other Obligations. The failure by Tenant to timely perform any obligation, agreement or covenant under this Lease, other than those matters specified in Sections 15.01(a)-(k) above, and such failure continuing for a period of thirty (30) days after written notice of such failure is delivered to Tenant by Landlord, or such longer period, up to but not exceeding an additional one hundred fifty (150) days (for the avoidance of doubt, in any event, subject to Article 16 regarding force majeure), as is reasonably necessary to remedy such default.

As used in this Lease, “**Default**” means any breach or default under this Lease, whether or not the same is an Event of Default, and also any breach or default under this Lease, that after notice or lapse of time or both, would constitute an Event of Default if that breach or default were not cured within any applicable grace or cure period.

Section 15.02 Remedies Upon Event of Default. If an Event of Default by Tenant occurs, then, in addition to any other remedies available to Landlord at law or in equity or elsewhere hereunder, Landlord shall have the following remedies:

(a) Termination. Landlord shall have the right, with or without notice or demand, immediately upon expiration of any applicable grace period specified herein, to terminate this Lease (or Tenant’s possession of any of the Demised Properties), and at any time thereafter recover possession of all or any portion of the Demised Properties or any part thereof and expel and remove therefrom Tenant and any other Person occupying the same by any lawful means, and repossess and enjoy all or any portion of the Demised Properties without prejudice to any of the remedies that Landlord may have under this Lease. If Landlord elects to terminate this Lease (or to terminate Tenant’s right of possession), Landlord shall also have the right to reenter the Demised Properties and take possession of and remove all personal property of Tenant, if any, in such Demised Properties. If Landlord elects to terminate this Lease and/or Tenant’s right to possession, or if Tenant’s right to possession is otherwise terminated by operation of law, Landlord may recover as damages from Tenant the following: (i) all Rent then due under this Lease through the date of termination; (ii) the Rent due for the remainder of the Lease Term in excess of the fair market rental value of the Demised Properties for the remainder of the Lease Term, including any and all Additional Rent (each discounted by the discount rate of the Federal Reserve Bank of San Francisco plus one percent (1%)); (iii) the cost of reletting the Demised Properties, including the anticipated period of vacancy until such Demised Properties can be re-let at their fair market rental values; and (iv) any other costs and expenses that Landlord may reasonably incur in connection with the Event of Default. Efforts by Landlord to mitigate the damages caused by the Event of Default (or Tenant’s Default under this Lease) shall not waive Landlord’s right to recover damages under the foregoing provisions. Landlord

agrees to use commercially reasonable efforts to mitigate damages, if, and to the extent, required by applicable Law.

(b) Continuation after Event of Default. If Landlord does not elect to terminate this Lease, then this Lease shall continue in effect, and Landlord may enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, and Landlord, without terminating this Lease, may exercise all of the rights and remedies of a landlord at law or in equity, subject to Article 26 hereof. Landlord shall not be deemed to have terminated this Lease except by an express statement in writing. Acts of maintenance or preservation, efforts to relet the Demised Properties, or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate Tenant's right to possession unless such election is expressly stated in writing by Landlord. Notwithstanding any such reletting without such termination, Landlord may at any time thereafter elect to terminate Tenant's right to possession and this Lease. If Landlord elects to relet the Demised Properties for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any and all costs of such reletting (including attorneys' fees, brokers' fees, alterations and repairs to any of the Demised Properties, and tenant improvement costs); second, to the payment of any and all indebtedness other than Rent due hereunder from Tenant to Landlord; third, to the payment of any and all Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If the rent received from the reletting is less than the sum of the costs of reletting, other indebtedness due by Tenant, and the Rent due by Tenant, then Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly.

(c) State-Specific Remedy. Landlord may pursue any other remedy now or hereafter available to Landlord under the Laws of the states in which the Demised Properties are located in addition to and not as an alternative remedy to those provided hereunder.

(d) Damages. Without limiting Tenant's indemnifications of Landlord and the other Landlord Parties under this Lease (including under Article 9 and Article 29 of this Lease) in connection with claims and other actions by third parties against Landlord or other Landlord Parties (which indemnifications include consequential, indirect and punitive damages, if any, payable to third parties making claims being indemnified against), Landlord hereby waives any right to any consequential, indirect or punitive damages against Tenant. Tenant hereby waives any right to any consequential, indirect or punitive damages against Landlord.

Section 15.03 No Cure Rights Following Events of Default. Upon the occurrence of an Event of Default, Landlord shall have all rights and remedies hereunder and under applicable Law. Except only as may be required by applicable Law that cannot be waived lawfully (a) Landlord shall have no obligation to give any notice after an Event of Default as a condition to Landlord's pursuit of any right or remedy; and (b) Landlord shall have no obligation to accept the attempted or purported cure of, or to waive, any Event of Default, regardless of tender of delinquent payments or other performance by Tenant, or any other event or condition whatsoever; and Tenant shall not have any right to cure any Event of Default, and no right to cure shall be implied. Without limiting the foregoing, after the occurrence of any Event of Default (irrespective of whether or not the same consists of an ongoing condition, a one-time occurrence, or otherwise), the same shall be deemed to continue at all times thereafter; unless Landlord executes and delivers a written agreement in which Landlord expressly states that such Event of Default has ceased to continue (and Landlord shall not be obligated under any circumstances whatsoever to execute and deliver any such agreement). Without limitation, this Section shall govern in any case where reference is made in this Lease or otherwise to (x) any "cure" (whether by use of such word or otherwise)

of any Event of Default, (y) “during an Event of Default” or “the continuance of an Event of Default” (in each case, whether by use of such words or otherwise), or (z) any condition or event that continues beyond the time when the same becomes an Event of Default.

Section 15.04 Indemnification. Nothing in this Article shall be deemed to affect or limit Tenant’s obligation to indemnify, defend, protect and hold harmless Landlord and the other Landlord Parties under this Lease (including under Article 9 and Article 29), and such obligation shall survive the termination or expiration of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, such obligations shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

Section 15.05 Performance by Landlord. Notwithstanding any other provision herein, in addition to any other rights of Landlord under this Lease, if Tenant has failed to satisfy any obligation of Tenant set forth herein, whether or not the same constitutes an Event of Default, and in Landlord’s reasonable determination such failure by Tenant constitutes an imminent threat of injury or harm to persons, or a material damage or loss of value to property, then Landlord may, with or without notice (provided, however, that Landlord shall endeavor to give such notice as is practical under the circumstances, if any, which notice may be oral and need not be in writing), and without regard to whether or not any applicable cure period expressly provided herein has expired, elect to perform such obligation for the account and at the expense of Tenant. If Landlord pays any sums of money or incurs any expense in connection with performing any such obligation (including attorneys’ fees, consultant fees, testing and investigation fees, expert fees and court costs), such sums so paid or expenses so incurred by Landlord, plus an administrative charge of five percent (5%) of such sums or expenses, shall be due to Landlord from Tenant within ten (10) days after written demand therefor from Landlord, in addition to any other amounts to be paid by Tenant to Landlord under this Lease, which written demand shall include reasonably detailed evidence of such costs and expenses.

Section 15.06 Late Fee. In addition to any interest charged to Tenant under Section 15.07, if any payment of Base Rent or Additional Rent is not received by Landlord from Tenant when such payment is due to Landlord hereunder, such payment shall be deemed delinquent and cause Tenant to incur a late fee of five percent (5%) of each such delinquent payment (the “**Late Fee**”), due and payable immediately with the delinquent Base Rent or delinquent Additional Rent, as the case may be; provided, however, that the first such delinquent payment in any twelve (12) month period shall not be subject to a Late Fee.

Section 15.07 Interest. Tenant hereby acknowledges that late payment by Tenant of Base Rent or Additional Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, in addition to any Late Fee due from Tenant hereunder, any sum due by Tenant under this Lease that is not paid when due shall bear interest at the lesser of five percent (5%) per annum of such sums, or the maximum rate allowed under applicable Law, from the date such sum becomes due and payable by Tenant hereunder until paid, unless otherwise expressly provided in this Lease, provided, however, that the first such late payment in any twelve (12) month period shall not be subject to such interest until the fifth (5th) Business Day following Landlord’s delivery of written notice to Tenant regarding the same.

Section 15.08 Tenant’s Subleases. If Landlord elects to terminate this Lease on account of any Event of Default, then Landlord may terminate any sublease and any license, concession, or other

consensual arrangement for possession entered into by Tenant and affecting any of the Demised Properties (subject to the terms of any applicable nondisturbance agreement executed by Landlord and subject to the terms of any sublease in existence as of the Commencement Date), or choose to succeed to Tenant's interest in any such arrangement. Absent a nondisturbance agreement between Landlord and any such subtenant, no payment by a subtenant with respect to a sublease shall entitle such subtenant to possession of any Demised Property after termination of this Lease and Landlord's election to terminate the sublease. If Landlord elects to succeed to Tenant's interest in such arrangement, then Tenant shall, as of the date of notice given by Landlord to Tenant of such election, have no further right to, or interest in, any rent or other consideration due under that arrangement.

Section 15.09 Form of Payment After Default. Without limiting any other obligation of Tenant under this Lease, if Tenant fails, on two or more occasions, to pay any amount due to Landlord under this Lease within the applicable notice and cure periods set forth in this Lease, or if Tenant attempts to pay any such amount by drawing a check on an account with insufficient funds, then Landlord shall have the right to require that any and all subsequent amounts paid by Tenant to Landlord under this Lease (to cure a default or otherwise) be paid in the form of cashier's or certified check drawn on an institution acceptable to Landlord, by wire transfer or any other form approved by Landlord in its sole and absolute discretion, notwithstanding that Landlord may have previously accepted payments from Tenant in a different form.

Section 15.10 Acceptance of Rent Without Waiving Rights. No endorsement or statement by Tenant on any check or any letter accompanying any payment by Tenant to Landlord will be deemed an accord and satisfaction of any amount in dispute between Tenant and Landlord or otherwise. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord, may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement. Landlord may accept any and all of Tenant's payments without waiving any right or remedy under this Lease, including the right to commence and pursue an action to enforce rights and remedies under a previously served notice of default, without giving Tenant any further notice or demand.

Section 15.11 Post-Event of Default Sales. If Landlord elects (in its sole discretion) to sell any of the Demised Properties pursuant to an arms-length, third party sale following any Events of Default in order to mitigate damages resulting from such Events of Default, the Base Rent payable under this Lease (but not any Landlord Assignment Lease Agreements, if applicable, the Base Rent for each of which shall be as set forth in each such Landlord Assignment Lease Agreement) from and after the date of such sale shall be reduced by the lesser of the following: (a) the product of (i) eight and one-half percent (8.5%), multiplied by (ii) the proceeds received by Landlord in connection with such sale, less any and all costs incurred by Landlord in connection with such sale (including attorneys' fees and brokers' fees), or (b) the product of (i) the Base Rent immediately preceding such sale, divided by the total number of Demised Properties immediately preceding such sale, multiplied by (ii) the number of Demised Properties sold in such sale. In no event shall the reduction described in the immediately preceding sentence reduce any obligation of Tenant that came due prior to the date of such sale. For the avoidance of doubt, if all Demised Properties are sold, then this Lease (but not any Landlord Assignment Lease Agreements, if applicable) shall be deemed terminated.

Section 15.12 Licenses and Permits. In connection with any repossession of any Demised Property by Landlord or its designee, Tenant and its Affiliates shall reasonably cooperate with Landlord in transferring to Landlord or its designee any entitlements, certificates, emissions credits, licenses or permits then held or maintained by Tenant or its Affiliates and required by applicable Law in order to

operate such Demised Property as a grocery store or other applicable Permitted Use, including any such licenses or permits required in order to serve alcoholic beverages at such Demised Property.

Section 15.13 Remedies Cumulative. All rights, privileges, elections, and remedies of Landlord are cumulative and not alternative with all other rights and remedies hereunder, at law or in equity to the fullest extent permitted by applicable Law. The exercise of one or more rights or remedies by Landlord shall not impair Landlord's rights to exercise any other right or remedy to the fullest extent permitted by applicable Law.

Section 15.14 Affirmance of Lease. In the event that, following of the filing of any Petition regarding Tenant, under applicable Law, the trustee in bankruptcy or Tenant has the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant shall, within such time period as may be permitted by the bankruptcy court having jurisdiction, so affirm this Lease, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease, and provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations under this Lease.

Section 15.15 Survival. The remedies available to Landlord pursuant to this Article shall survive expiration or termination of this Lease.

ARTICLE 16 FORCE MAJEURE

If either party is prevented or delayed from timely performance of any obligation or satisfying any condition under this Lease by any event or circumstance beyond the reasonable control of such party, exclusive of financial inability of a party, but including any of the following if beyond the reasonable control of such party: casualty or condemnation, strike, lockout, labor dispute, civil unrest, inability to obtain labor, materials or reasonable substitutes thereof, acts of God, present or future governmental restrictions, regulations or control, insurrection, and sabotage, then the time to perform such obligation or satisfy such condition shall be extended on a day for day basis for each day of delay caused by such event or circumstance, but only for a reasonable period of time not to exceed, in any event, one hundred twenty (120) days. The provisions of this Article shall in no event operate to delay the Commencement Date or to excuse Tenant from the payment of all Rent as and when due under this Lease. For the avoidance of doubt, the inclusion of casualty and condemnation in this Article 16 does not supersede or limit the requirements of Article 10, Article 11 or Article 12 with respect thereto or lengthen any time periods with respect to Tenant's obligations thereunder (unless a new casualty or condemnation occurs which new casualty or condemnation, however, shall be subject to the requirements of Article 10, Article 11 or Article 12, as applicable).

ARTICLE 17 NOTICES

(a) Any notice, demand or other communication to be given under the provisions of this Lease by either party hereto to the other party hereto shall be effective only if in writing and (i) personally served, (ii) mailed by United States registered or certified mail, return receipt requested, postage prepaid, (iii) sent by a nationally recognized courier service (such as Federal Express) for next-day delivery, to be confirmed in writing by such courier, or (iv) sent by facsimile (with answer back acknowledged), addressed as follows:

To Tenant: c/o The Yucaipa Companies, LLC
9130 West Sunset Boulevard
Los Angeles, California 90069
Attention: Legal Dept.
Facsimile: 310-789-1791

with a copy to: Pircher, Nichols & Meeks
1925 Century Park East
Suite 1700
Los Angeles, California 90067-2512
Attention: Real Estate Notices (SAH #5602.3)
Facsimile: 310-201-8922

To Landlord: c/o Drawbridge Special Opportunities Fund LP
1345 Avenue of the Americas, 46th Floor
New York, New York 10020
Attention: Constantine M. Dakolias, CCO
and Glenn P. Cummins, CFO
Facsimile: (212) 798-6131

with a copy to: Fortress Investment Group LLC
10250 Constellation Boulevard, Suite 1600
Los Angeles, CA 90067
Attention: Joshua Pack
Facsimile: (310) 228-3031

and a copy to: Fortress Investment Group LLC
5221 N. O'Connor Boulevard, Suite 700
Irving, Texas 75039
Attention: Andy Osborne
Facsimile: (214) 260-0938

and a copy to: Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013-1010
Attention: Marc I. Hayutin, Esq.
Facsimile: (213) 896-6600

and a copy to: Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013-1010
Attention: Edward C. Prokop, Esq.
Facsimile: (213) 896-6600

(b) Subject to the terms of this subsection (b), all notices, demands and other communications sent in the foregoing manner shall be deemed delivered when actually received or refused by the party to whom sent, unless (i) mailed, in which event the same shall be deemed delivered on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the

expiration of the third (3rd) Business Day after the date of mailing, whichever first occurs, or (ii) sent by facsimile, in which event the same shall be deemed delivered only if a duplicate notice sent pursuant to a method described in subsection (a)(i), (a)(ii) or (a)(iii) of this Article 17 is delivered within two (2) Business Days after such facsimile is received by the recipient. Notwithstanding the foregoing, if any notice, demand or other communication is not received during business hours on a Business Day, such notice, demand or other communication shall be deemed to have been delivered at the opening of business on the next Business Day.

(c) Either Landlord or Tenant may from time to time change its address for receiving notices under this Lease by providing written notice to the other party in accordance with this Article 17.

ARTICLE 18 ACCESS

Landlord and its designees shall have the right upon not less than twenty-four (24) hours' prior written notice to Tenant (except in the event of an emergency that poses an immediate and material danger to persons or property within any of the Demised Properties, where no prior notice shall be required) to enter upon any of the Demised Properties at reasonable hours to inspect such Demised Properties or, during the period commencing one year prior to the end of the Lease Term, for the purpose of exhibiting same to prospective tenants and posting "for lease" or similar signage at the Demised Properties, all in Landlord's discretion. Any such entry and/or inspection by Landlord shall not unreasonably interfere with Tenant's ability to conduct its business operations at the Demised Properties. Tenant may elect to have a representative of Tenant accompany Landlord during all such entries (but in no event shall the availability of a representative to accompany Landlord or Tenant's election or failure to inform Landlord of its election to have a representative accompany Landlord be a condition to Landlord's rights under this Article 18).

ARTICLE 19 SIGNS

Tenant may, at Tenant's sole cost and expense, install or erect, at or on any Demised Property, signs of any height or dimensions and bearing such inscriptions as Tenant shall reasonably determine; provided, however, that no sign shall be installed or erected by Tenant at or on any Demised Property until all governmental approvals and permits required therefor have been obtained, all fees pertaining thereto have been paid by Tenant, and Tenant has delivered written evidence of such approvals, permits and payment to Landlord. Landlord shall use commercially reasonable efforts to assist Tenant, upon Tenant's request, in obtaining all necessary governmental permits and approvals for such signs. Upon the termination of this Lease following an Event of Default or upon a rejection of this Lease in any bankruptcy or similar proceeding, Landlord shall have the right, at its sole option, to retain and use the signage structures (but not the signs) in the future operation of the Demised Properties without payment of any compensation to Tenant, or to require Tenant to remove such signage structures at Tenant's sole cost and expense (and, if such removal is not accomplished by Tenant promptly after notice from Landlord, Landlord may undertake such removal at Tenant's sole cost and expense). This Article shall survive termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 20 IMPROVEMENTS, BUILDING EQUIPMENT AND TENANT EQUIPMENT

Section 20.01 Any Building Equipment and other Improvements at the Demised Properties on the Commencement Date shall be the property of Landlord. In the event that Tenant installs or erects any fixtures or other Improvements to the Demised Properties after the Commencement Date, such fixtures or other Improvements shall be the property of Landlord and remain upon and be surrendered with the Demised Properties; provided, however, that Tenant shall be required to remove any underground storage tanks or otherwise close such tanks in accordance with applicable Law, unless Landlord expressly consents in writing to the continued presence of any such underground storage tanks. Notwithstanding the foregoing provisions, Tenant shall be liable for all property taxes, assessments, and similar charges assessed against or allocable to any property at the Demised Properties (irrespective of whether such property is Building Equipment owned by Landlord or Tenant Equipment or other personal property owned by Tenant) and that are attributable to any period of time during the Lease Term.

Section 20.02 During the Lease Term, Tenant shall be entitled to use the Building Equipment in Tenant's operations at the Demised Properties. Tenant shall keep the Building Equipment in good working order and repair, shall not remove the Building Equipment from the Demised Properties (subject to the terms of this Section) and shall not permit any lien or other encumbrance to attach to any Building Equipment except as may be caused by Landlord, and except any such liens that are being contested by Tenant in good faith by appropriate proceedings and that have been bonded over by Tenant to the reasonable satisfaction of Landlord or for which Tenant provides alternative security to the reasonable satisfaction of Landlord. Tenant shall keep (or cause to be kept) the Building Equipment insured and shall be responsible for any casualty or other loss to Building Equipment or occasioned by Building Equipment. Tenant shall at all times have a system in place to identify the Building Equipment from the Tenant Equipment or any of Tenant's personal property, and any items of equipment not so identified shall conclusively be presumed to be Building Equipment and shall be the property of Landlord. Tenant may, from time to time, retire or replace Building Equipment with new items of equipment of equal or greater value purchased by Tenant, in which event such replaced equipment shall constitute Building Equipment; provided, however that Tenant shall provide Landlord prompt written notice after any such replacement together with reasonable evidence as to the value and quality of the new Building Equipment. Promptly after Landlord's receipt of such written notice in connection with any such replacement (or written notice of any Capital Alterations) made during the final twelve (12) months of the Lease Term (or the final twelve (12) months of the applicable Option Period if an Option shall have been exercised), the useful life of which extends beyond the Lease Term, Landlord shall pay to Tenant an amount equal to (i) the quotient of (x) the portion of the useful life of such replacement or Capital Alteration not falling within the Lease Term divided by (y) the total useful life of such replacement or Capital Alteration, multiplied by (ii) the value of such replacement or Capital Alteration, provided, that, should the Lease Term thereafter be extended, the amount shall be recalculated so that the applicable Option Period is included within the Lease Term and any amounts due Landlord pursuant to such recalculation shall be paid by Tenant to Landlord promptly after such recalculation. All Building Equipment shall be the property of Landlord, and Tenant shall execute such instruments and documents as Landlord may require to evidence such ownership by Landlord.

Section 20.03 Tenant shall at all times maintain sufficient Tenant Equipment at each Demised Property to be able to fully operate a grocery store or other applicable Permitted Use at each Demised Property (whether or not Tenant has ceased operations at such Demised Property as described in Article 4. In the event of any replacement of any Tenant Equipment with new items of equipment, such new items of equipment shall thereafter constitute Tenant Equipment. Tenant shall keep the Tenant

Equipment fully insured and shall be responsible for any casualty or other loss to any Tenant Equipment or occasioned by any Tenant Equipment.

ARTICLE 21 END OF TERM; HOLDING OVER

Section 21.01 Upon the expiration or earlier termination of this Lease, Tenant shall peaceably and quietly quit and surrender the Demised Properties, and all Alterations that are then part of the Demised Properties, broom clean and in good order and condition. Tenant shall within thirty (30) days prior to the expiration of this Lease (or within thirty (30) days after written notice from Landlord upon any earlier termination of this Lease) transfer to Landlord all plans, drawings, other Alteration Information, and technical descriptions of the Demised Properties in Tenant's possession or control, and shall assign to Landlord, without warranty or representation, all assignable permits, licenses, authorizations and warranties necessary for the operation of the Demised Properties (in each case to the extent not previously transferred or assigned to Landlord). Upon the expiration or earlier termination of this Lease, Tenant shall have the obligation to remove all Tenant Equipment, trade fixtures and personal property from the Demised Properties, except that, with the prior written consent of Landlord (which consent Landlord may withhold in its sole discretion), Tenant may elect to abandon any such Tenant Equipment, trade fixtures and personal property. Any Tenant Equipment, trade fixtures or personal property that is not removed upon the expiration or earlier termination of this Lease within the time periods set forth above in this Section 21.01 shall be deemed abandoned and may be removed, stored, disposed of or used by Landlord without payment of any compensation to Tenant (and any costs incurred by Landlord in connection with any such removal, storage or disposal shall be paid by Tenant to Landlord immediately upon demand). Tenant agrees to deliver, within three (3) Business Days after the date of this Lease, written notice of the covenant in the immediately preceding sentence to any lender with a security interest in any of the Tenant Equipment and any equipment lessor that owns any of the Tenant Equipment, which notice shall specifically state that any Tenant Equipment, trade fixtures or personal property remaining on any of the Demised Properties at the time of termination or expiration of this Lease shall be deemed abandoned and the property of Landlord, subject to any direct agreements between Landlord and any lender or owner with an interest in such Tenant Equipment, trade fixtures and personal property. Tenant shall deliver a copy of such notice to Landlord contemporaneously with its delivery to such lender or equipment lessor.

Section 21.02 If Tenant holds over in possession after the expiration of the Lease Term, then such holding over shall not be deemed to extend the Lease Term or renew this Lease, but rather the tenancy thereafter shall continue as a tenancy at sufferance pursuant to the terms and conditions contained in this Lease, at one hundred fifty percent (150%) of the Base Rent otherwise then applicable (in addition to all Additional Rent); and Tenant shall be responsible for the consequences of any unauthorized holdover and shall indemnify, defend, protect (with counsel selected by Landlord) and hold Landlord Parties wholly free and harmless from any and all Losses arising therefrom. If Tenant is obligated under Article 29 to undertake Remedial Activities, Tenant shall be permitted to access the Demised Properties to conduct the Remedial Activities and such access shall not be deemed holding over in possession unless the Remedial Activities materially interfere with surface uses, or materially compromise the quiet enjoyment of the Demised Properties, in which case Tenant shall be deemed to be holding over until such time as surface uses may resume without undue impairment.

Section 21.03 This Article 21 shall survive the expiration or termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article 21 shall also survive as to

matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 22 TENANT ASSIGNMENT AND SUBLETTING

Section 22.01

(a) Except as otherwise explicitly provided in this Article 22 and Article 23, neither Tenant, nor Tenant's successors or assigns, shall assign or transfer, in whole or in part, by operation of law or otherwise, this Lease, or sublet the Demised Properties, in whole or in part, or permit the Demised Properties or any portion of any of them to be used or occupied by third parties, or enter into a management contract or other arrangement whereby the Demised Properties shall be managed or operated by anyone other than the owner of the Tenant's leasehold estate (other than customary property-level agreements for landscaping, maintenance and other similar services), without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall request Landlord's consent to a proposed assignment or sublease in writing, and Landlord will endeavor to respond to such request within ten (10) Business Days following receipt thereof. In the event that Landlord fails to so respond to Tenant's request within such ten (10) Business Day period, then Tenant may deliver a second written request for Landlord's consent to such proposed assignment or sublease containing a sentence in the header of the first page of the request set in at least 14-point bold font, all capital letters, stating "**LANDLORD'S FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS AFTER LANDLORD'S RECEIPT HEREOF SHALL CONSTITUTE LANDLORD'S CONSENT TO THE ASSIGNMENT OR SUBLEASE PROPOSED HEREIN,**" and Landlord shall endeavor to respond to such second request within ten (10) Business Days following Landlord's receipt of such request. In the event that Landlord fails to so respond to Tenant's second request within such ten (10) Business Day period, then Landlord shall be deemed to have consented to the proposed assignment or sublease set forth in Tenant's written request. Any response by Landlord that withholds consent to any proposed assignment or sublease and does not contain a reasonably detailed explanation of the reasonable grounds for Landlord's withholding of its consent shall be deemed a failure to respond. No assignment or transfer of any direct or indirect ownership interest in Tenant, in whole or in part, by operation of law or otherwise, privately or publicly, regardless of the number of tiers of ownership, and regardless of whether there is a change of control, shall be deemed an assignment hereunder or otherwise require Landlord's consent. No assignment to any entity with which Tenant may merge, consolidate or to an entity that purchases (i) all the assets of Tenant (including Tenant's leasehold interest in all Portfolio Properties and Tenant's interest in all the Additional Tenant Properties), or (ii) at least ninety percent (90%) of the value of all of the assets of Tenant (including Tenant's non-real property assets as well as Tenant's leasehold interest in all Portfolio Properties then owned by Tenant) shall require Landlord's consent. The sale or assignment of assets other than Tenant's leasehold interest in the Portfolio Property shall not be deemed an assignment or otherwise require Landlord's consent. No encumbrance, pledge or hypothecation, in whole or in part, by operation of law or otherwise, of this Lease or any interest in the leasehold estate created by this Lease, or of any direct or indirect ownership interest in Tenant, regardless of the number of tiers of ownership, shall be deemed an assignment or otherwise require Landlord's consent, nor shall the foreclosure or transfer in lieu of foreclosure thereof. Any such encumbrance, pledge or hypothecation of this Lease or any interest in the leasehold estate created by this Lease shall be subject to the provisions of Section 23.03.

(b) After any assignment or sublease permitted by Landlord hereunder (including any assignment or sublease described in Sections 22.02, 22.03, 22.04 and 22.05), and except as expressly provided herein, (i) Tenant (unless it is no longer in existence in connection with a merger, consolidation

or sale of all of its assets) shall remain liable for all its obligations under this Lease, and Tenant shall, promptly after request, execute and deliver to Landlord a guaranty in form and substance reasonably acceptable to both Landlord and Tenant, whereby Tenant explicitly guarantees all of the assignee's obligations under this Lease, and (ii) Landlord may condition its consent to any sublease regarding the Demised Properties upon the sublease containing the following provisions (or the subtenant separately agreeing), in form and substance reasonably acceptable to Landlord and Landlord's Lender (collectively, the "**Subordination and Attornment Provisions**"): (A) that the sublease is subordinate in all respects to this Lease provided that Landlord and Landlord's Lender agree to accept the attornment described in the immediately succeeding clause (B) and agree not to disturb the rights of the subtenant pursuant to a commercially reasonable non-disturbance agreement; (B) that in the event of the cancellation or termination of this Lease for any reason whatsoever or of the surrender of this Lease by operation of law prior to the expiration date of the sublease, the subtenant shall make full and complete attornment to Landlord under the terms of the sublease for the balance of the term of the sublease; (C) that subtenant waives the provisions of any Law then or thereafter in effect that may give subtenant any right of election to terminate the sublease or to surrender possession of the Demised Properties in the event any proceeding is brought by Landlord to terminate this Lease; and (D) that all of the foregoing provisions in (A) through (C) are for the benefit of both Tenant and Landlord and Landlord is a third party beneficiary thereof. Notwithstanding the foregoing, upon the reasonable request of Landlord or Landlord's Lender, Landlord, Tenant and the subtenant shall execute and deliver to each other a separate subordination and attornment agreement regarding the sublease, in form and substance reasonably acceptable to Landlord and Landlord's Lender. Tenant shall submit current financial statements of any proposed assignee or sublessee together with Tenant's request for Landlord's approval of any proposed assignment or sublease. Tenant shall reimburse Landlord for all reasonable costs and expenses actually paid by Landlord in connection with any requested consent to an assignment or sublease; including reasonable legal fees and costs in reviewing sublease or assignment documents and in preparing or reviewing consents. Without in any way limiting Landlord's right to reasonably withhold consent to any proposed assignment or sublease by Tenant, Tenant shall deliver to Landlord written notice of any assignment or sublease of this Lease promptly after the effective date of any such assignment or sublease.

(c) If this Lease is assigned or transferred, or if all or any part of the Demised Properties is sublet or occupied by any party other than Tenant, Landlord may collect rent from the assignee, transferee, or, after the occurrence of an Event of Default, subtenant or similar occupant, and apply the net amount collected to the Rent reserved in this Lease, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any covenant or condition of this Lease, or the acceptance of the assignee, transferee, subtenant or occupant as tenant, or a release of Tenant from the performance or further performance by Tenant of its obligations under this Lease. Without limiting the generality of the foregoing, Tenant expressly acknowledges and agrees that, in the event of any assignment of this Lease, Tenant shall (if it remains liable pursuant to the provisions of this Article 22) remain jointly and severally liable with the assignee for all of the obligations under this Lease, and in all other cases of any transfer of Tenant's interest under this Lease, Tenant shall remain primarily liable for such obligations. Subject to the foregoing, the consent by Landlord to an assignment, transfer, management contract or subletting shall not in any way be construed to relieve Tenant from obtaining the express written consent of Landlord in each instance to any subsequent similar action that Tenant may desire to take.

Section 22.02 Notwithstanding anything contained in Section 22.01, Tenant may sublease up to two (2) of the Portfolio Properties in the aggregate, at any time, in the ordinary course of business hereunder without Landlord's prior written consent, provided all of the following conditions are satisfied: (a) the subtenant is commercially and financially sound; (b) the permitted use under the sublease is limited to the operation of a Permitted Use (and with any change in use to a use which is not a Permitted

Use subject to the prior written consent of each of Landlord and Tenant, which approval each may withhold in its reasonable discretion), in compliance with all applicable Laws and the covenants set forth in Section 4.02, (c) the sublease contains a covenant whereby the subtenant agrees, subject to all applicable Laws, to continuously operate at the applicable Demised Property during all hours that are customary for similarly situated sites; provided, however, that if there are not similarly situated sites, then the sublease shall contain a covenant whereby the subtenant agrees, subject to all applicable Laws, to continuously operate at the applicable Demised Property during all hours that are customary for similar Permitted Uses in the same geographic location as the applicable Demised Property (for the avoidance of doubt, this continuous operation requirement is applicable to the two (2) permitted subleases of Portfolio Properties under this Section 22.02 and not applicable to the permitted subleases of less than twenty percent (20%) of the useable square feet of the applicable Demised Property contained in Section 22.03), (d) the sublease contains the Subordination and Attornment Provisions (provided, however, that such provisions shall subordinate the applicable sublease in all respects to the Lease without any condition that Landlord or Landlord's Lender agree to accept the subtenant's attornment or agree not to disturb the rights of the subtenant pursuant to a commercially reasonable subordination, non-disturbance and attornment agreement, or otherwise, unless Landlord consents in writing to the applicable sublease), if required by Landlord in its sole and absolute discretion; (e) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term, and (f) the subtenant has not refused to deliver to Landlord and any Landlord's Lender, promptly after request, a subordination, non-disturbance and attornment agreement in form and substance described in Section 22.01(b).

Section 22.03 Notwithstanding anything contained in Section 22.01, Tenant may sublease space within any Demised Property hereunder subject to Landlord's consent not to be unreasonably withheld (provided, however, that Landlord's consent shall not be required for such subleases of less than twenty percent (20%) of the useable square feet of the applicable Demised Property, but Landlord's consent (not to be unreasonably withheld) shall be required for any such sublease if twenty percent (20%) or more in the aggregate of the useable square feet of the portion of the applicable Demised Property is already subject to such subleases or would be subject to such subleases with the inclusion of any additional such sublease, it being agreed that any usable space at any Demised Property not being occupied by Tenant on the Commencement Date (as set forth on Schedule 22.05) shall not be included in any of the foregoing calculations, regardless of whether any such space is later sublet, provided all of the following conditions are satisfied: (a) the subtenant is commercially and financially sound; (b) the permitted use under the sublease is limited to the operation of customary in-store, grocery store (which may include, but which shall not be limited to, the operation of a pharmacy, bank or coffee kiosk) or other customary in-store Permitted Uses (and with any change in use to a use which is not a Permitted Use subject to the prior written consent of each of Landlord and Tenant, which approval each may withhold in its reasonable discretion) and the covenants set forth in Section 4.02 are included in the sublease as obligations of the subtenant (although the covenants set forth in Section 4.01 may be expressly excluded from the sublease), (c) the applicable sublease contains the Subordination and Attornment Provisions and prohibits the subtenant from effecting or permitting any Alterations other than a Subtenant Minor Project without the prior written consent of Tenant and Landlord; (d) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term, and (e) the subtenant has not refused to deliver to Landlord and any Landlord's Lender, promptly after request, a subordination, non-disturbance and attornment agreement in form and substance described in Section 22.01(b).

Section 22.04 Notwithstanding anything to the contrary contained in Section 22.01, Tenant may assign the Lease in its entirety without Landlord's prior written consent, but with prior written notice to Landlord, and provided an Event of Default does not exist as of the delivery of Tenant's notice to Landlord and as of the effective date of the applicable assignment, if such assignment or sublease is to the following (a "**Permitted Assignee**"): an entity that along with any guarantor of such entity's obligations

under the Lease (pursuant to a guaranty in form and substance acceptable to Landlord) has a net worth at the time of such assignment equal to or greater than the greater of (x) the net worth of Tenant immediately before the assignment (but in no event shall such assignee and guarantor be required to have a combined net worth greater than \$150,000,000) and (y) \$10,000,000. In addition, Tenant may assign its rights to the entire Lease without consent to any entity, including any Tenant Affiliate, so long as Tenant remains liable pursuant to a guaranty in form and substance acceptable to Landlord. In the event of any assignment to a Permitted Assignee, Tenant shall be released from any liability accruing under this Lease after the date of such assignment. Any Permitted Assignee or other assignee permitted under this Section 22.04 shall be subject to all of the provisions of this Lease, including the operation requirements set forth in Article 4. For the avoidance of doubt, in no event shall Tenant be permitted to assign less than all of its interest in this Lease.

Section 22.05 Notwithstanding anything contained in Section 22.01, Tenant shall use commercially reasonable efforts to sublease the unoccupied portions of the Demised Properties described in Schedule 22.05 pursuant to subleases in form and substance reasonably acceptable to Landlord, and agrees that all of the following conditions shall be satisfied with regard to any such subleases: (a) the subtenant is commercially and financially sound; (b) the sublease contains the Subordination and Attornment Provisions and prohibits the subtenant from effecting or permitting any Alterations other than Subtenant Minor Projects without the prior written consent of Tenant and Landlord; (c) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term, and (d) the subtenant has not refused to deliver to Landlord and any Landlord's Lender, promptly after request, a subordination, non-disturbance and attornment agreement in form and substance described in Section 22.01(b). Landlord and Tenant shall reasonably cooperate in locating appropriate subtenants in connection with each such unoccupied portion of the Demised Properties.

Section 22.06 Upon any sublease or assignment permitted as provided in this Article 22 Tenant shall deliver to Landlord copies of such sublease or assignment agreement in form and substance reasonably satisfactory to Landlord (including assumption language reasonably satisfactory to Landlord in any assignment agreement) promptly after the execution thereof by Tenant. Tenant shall provide Landlord with at least ten (10) Business Days written notice of its intent to assign or sublet this Lease with Landlord's consent or as otherwise permitted hereunder and shall deliver such assignment or sublease containing, if an assignment, an agreement, in recordable form, executed by the assignor and the assignee, in which the assignee assumes the performance of the obligations of the assignor under this Lease throughout the Lease Term within ten (10) Business Days of such assignment. Tenant shall be entitled to redact any confidential business terms (other than the terms Landlord is otherwise entitled to see under this Lease) not applicable to Landlord. In no event shall Tenant be entitled to amend, extend or otherwise modify any sublease or assignment agreement (except with respect to such redacted material) without the prior written consent of Landlord, which consent Landlord may withhold in its reasonable discretion. Landlord agrees to enter into a commercially reasonable subordination, non-disturbance and attornment agreement with any subtenant under any sublease approved by Landlord in writing hereunder and any sublease for less than twenty percent (20%) of the useable square feet at a Demised Property, as described in Section 22.03, but shall not have any obligation to deliver a subordination, non-disturbance and attornment agreement to any other subtenant.

Section 22.07 Subject to the terms of this Lease, this Lease shall be binding upon, enforceable by, and inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns. Without limiting Landlord's rights to reimbursement for fees and costs payable to third parties contained in this Lease, including in connection with its review of any Tenant request for Landlord's consent in connection with an assignment or sublet pursuant to this Article 22.

Landlord agrees not to charge Tenant any additional amount as a condition to its consent to any assignment or sublease hereunder.

Section 22.08 Following an assignment of this Lease regarding which Tenant remains liable pursuant to a guaranty in form and substance acceptable to Landlord, as permitted under Section 22.04 without Landlord's prior consent, an Event of Default under this Lease (as assigned) shall not constitute an Event of Default pursuant to Section 15.01(j) of any Other Lease that has been previously assigned (or may in the future be assigned) by Tenant pursuant to Article 22 (whether such assignment requires Landlord's consent or not) and an Event of Default pursuant to Section 15.01(j) of any Other Lease (whether or not assigned at any time) shall not constitute an Event of Default under Section 15.01(j) of this Lease (as assigned). Following an assignment of this Lease to a Permitted Assignee, an Event of Default under this Lease (as assigned) shall not constitute an Event of Default pursuant to Section 15.01(j) of any Other Lease (whether or not assigned at any time) and an Event of Default under any Other Lease (whether or not assigned at any time) shall not constitute an Event of Default under Section 15.01(j) of this Lease (as assigned). In connection with an assignment of this Lease by Tenant requiring Landlord's consent pursuant to Article 22, Tenant may request of Landlord that an Event of Default pursuant to Section 15.01(j) of any Other Lease previously assigned (or may in the future be assigned) by Tenant shall not constitute an Event of Default under Section 15.01(j) of this Lease (as assigned), or a similar request regarding Section 15.01(j), and Landlord shall approve or disapprove such request in its reasonable discretion..

ARTICLE 23 FINANCINGS

Section 23.01 This Lease shall be subject and subordinate to all present and future ground or underlying leases of any of the Demised Properties and to the lien of any mortgages or trust deeds, now or hereafter in force against any of the Demised Properties, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages or trust deeds, or the lessors under such ground or underlying leases, require in writing that this Lease be superior thereto; and Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any mortgage or deed of trust to which this Lease is subordinate, or in the event of any termination of any ground or underlying lease to which this Lease is subordinate, to attorn to the purchaser upon any such foreclosure sale, if so requested to do so by such purchaser, and to the ground or underlying lease lessor, if so requested to do so by such ground or underlying lease lessor, and to recognize such purchaser, or ground or underlying lessor, as the case may be, as the lessor under this Lease; provided, however, that the foregoing subordination to present and future ground or underlying leases of the Demised Properties and to the lien of any future mortgages or trust deeds in force against the Demised Properties shall be conditioned upon Landlord providing Tenant with a subordination, non-disturbance and attornment agreement in favor of Tenant in the form attached hereto as Exhibit B, or other commercially reasonable, mutually reasonably acceptable form requested by Landlord that provides, without limitation, that this Lease and the rights of Tenant hereunder shall control over any contrary provisions in such mortgage, deed of trust or ground lease and shall survive any foreclosure proceeding brought under such mortgage or deed of trust, or termination of such ground or underlying lease (as applicable), provided an Event of Default is not continuing under this Lease (either, an "SNDA"). Without limiting the foregoing, (a) as of the Commencement Date, each of Landlord, Landlord's Lender, and Tenant shall execute and deliver to each other a subordination, non-disturbance and attornment agreement in the form attached hereto as Exhibit B, or a substantially similar form proposed by Landlord, and (b) Tenant shall, and shall use commercially reasonable efforts to cause any subtenant, other than an existing subtenant, from time to time, within seven (7) days after any request by Landlord, to execute and deliver such other instruments

or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease (at Landlord's election) to any such mortgages, trust deeds, ground or underlying leases (including, at Landlord's election, one or more additional SNDAs requested by Landlord's Lender). For the avoidance of doubt, the rights afforded Landlord pursuant to Section 34.02 shall be available to any Landlord's Lender becoming Landlord under this Lease (itself or through a wholly-owned subsidiary) through foreclosure, deed-in-lieu or other similar process.

Section 23.02 Tenant shall cooperate with Landlord and execute, subject to Tenant's reasonable approval which shall not be unreasonably withheld, any and all instruments reasonably requested by Landlord (including, if necessary, the execution of a reasonable amendment to this Lease), in the establishment and maintenance of cash management procedures reasonably requested by any Landlord's Lender with respect to payment of Base Rent and other amounts payable by Tenant directly to Landlord as and when the same are due and payable hereunder; provided, however, that Tenant shall not be obligated to agree to any requested action or execute any requested instrument if the same would have a material adverse effect upon Tenant, unless Tenant is reasonably compensated therefor by Landlord. In addition, Tenant agrees to cooperate in good faith with Landlord, any Landlord's Lender and any Landlord's Mortgagee, in connection with any sale or transfer of the any of the Demised Properties by Landlord or any transfer, participation, syndication and/or securitization of any loan secured by any of the Demised Properties, or any or all servicing rights with respect thereto, including (a) by providing such documents, financial and other data, and other information and materials (the "**Disclosures**") that would typically be required with respect to a similarly situated tenant (and typically acceptable to a significant tenant) by a purchaser of the any of the Demised Properties and/or a purchaser, transferee, assignee, servicer, participant, co-lender, investor or Rating Agency involved with respect to any transfer, participation, syndication and/or securitization of any loan secured by any of the Demised Properties, as applicable (collectively, the "**Transfer Parties**" and each, a "**Transfer Party**"); and (b) by amending the terms of this Lease, subject to Tenant's reasonable approval which shall not be unreasonably withheld, to the extent reasonably necessary so as to satisfy the requirements of the Transfer Parties involved in any such transfer, participation, syndication or securitization; provided, however, that Tenant shall not be obligated to agree to any requested action, or execute any requested amendment, if the same would have a material adverse effect upon Tenant, unless Tenant is reasonably compensated therefor by Landlord

Section 23.03 Notwithstanding Section 22.01 above, but subject to the terms of this Article, Landlord agrees that Tenant shall have the right to encumber, pledge or hypothecate Tenant's interest in the leasehold estate created by this Lease. All proceeds from any Leasehold Mortgage shall remain the property of Tenant. Landlord shall not be obligated to subordinate any or all of Landlord's right, title or interest in and to the Demised Properties and this Lease to the lien of any Leasehold Mortgage. A Leasehold Mortgage shall encumber only Tenant's leasehold interest in the Demised Properties, and shall not encumber Landlord's right, title or interest in the Demised Properties. Landlord shall have no liability whatsoever for the payment of any obligation secured by any Leasehold Mortgage or related obligations. A Leasehold Mortgage shall be, and hereafter shall continue at all times to be, subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and junior, subject and subordinate, in each and every respect, to all rights and interests of any Landlord's Mortgagee now or hereafter affecting any of the Demised Properties. Should there be any conflict between the provisions of this Lease and the provisions of any Leasehold Mortgage, the provisions of this Lease shall control. No Leasehold Mortgage shall be for a term longer than the Original Lease Term. Either prior to or concurrently with the recordation of any Leasehold Mortgage, Tenant shall cause a fully conformed copy thereof and of the financing agreement secured thereby to be delivered to Landlord and Landlord's Mortgagee, together with a written notice containing the name and post office address of Tenant's Lender. Upon written request from Tenant, Landlord agrees to deliver an estoppel certificate in favor of Tenant's Lender

regarding this Lease, in form and substance reasonably acceptable to Landlord and Tenant's Lender. Tenant agrees that a condition precedent to its granting a Leasehold Mortgage to any Tenant's Lender shall be the execution and delivery by such Tenant's Lender to Landlord and Landlord's Lender of a subordination, non-disturbance and attornment agreement, in form and substance reasonably acceptable to Landlord and Landlord's Lender, that shall provide, without limitation, that upon a default under the Leasehold Mortgages, Tenant's Lender may foreclose only on this Lease as an entirety, applicable to all, but not less than all (even if otherwise possible under applicable Law) of the Demised Properties. Tenant hereby acknowledges and agrees (a) that it is Landlord's intent to pledge the Demised Properties to Landlord's Lender on or about the Commencement Date, (b) that any instruments effecting or evidencing such pledge shall at all times be prior in interest to any Leasehold Mortgage and (c) if requested by Landlord's Lender, Tenant shall cause Tenant's Lender to enter into an agreement in form and substance reasonably acceptable to Landlord's Lender confirming that Tenant's Lender has no interest in the Demised Properties other than in Tenant's interest under this Lease and that any Leasehold Mortgage is subject and subordinate to any such instruments effecting or evidencing such pledge. In addition, in the event that any Landlord's Lender requires that the Leasehold Mortgage be terminated of record and re-recorded in order to ensure priority of any such instrument effecting or evidencing such pledge, Tenant shall cause the same to occur promptly after written request, and at Landlord's expense. Tenant hereby agrees not to grant any Leasehold Mortgages against the Demised Properties unless and until instruments securing or evidencing Landlord's pledge of the Demised Properties to Landlord's Lender are recorded against such Demised Properties. If Landlord delivers to Tenant a Default notice under this Lease, Landlord shall notify any Tenant's Lender (without any liability for failure to provide such notification) that has delivered to Landlord a prior written request for such notice, and Landlord shall recognize and accept the performance of any obligation of Tenant hereunder by Tenant's Lender (provided said performance occurs within the same cure periods as provided to Tenant under this Lease); provided, however that nothing contained herein shall obligate Tenant's Lender to take any such actions. Any act by Tenant or Tenant's Lender in violation of this Section 23.03 shall be null and void and of no force or effect. Tenant shall, without charge, at any time and from time to time, within ten (10) days after any request by Landlord, obtain from Tenant's Lender and deliver to Landlord or any other Person specified by Landlord, duly executed and acknowledged, an estoppel certificate certifying (x) copies of the documents creating, evidencing and securing the debt secured by any Leasehold Mortgage, (y) whether, to the knowledge of Tenant's Lender, any default exists under such Leasehold Mortgage and (z) such other matters relating to such Leasehold Mortgage as Landlord may reasonably request (and any Leasehold Mortgage shall contain an express obligation by Tenant's Lender to deliver such an estoppel certificate upon request from time to time). Landlord also hereby agrees, upon request by Tenant or Tenant's Lender, to enter into a commercially reasonable agreement with Tenant's Lender that may provide, without limitation (a) without limiting any express rights of Landlord under this Lease, Landlord's waiver of any Landlord's lien against any property of Tenant, (b) that Landlord shall not amend the Lease without the prior written consent of Tenant's Lender, (c) that Tenant's Lender shall have the right, but not the obligation, to pay and perform all obligations of Tenant under this Lease subject to any additional cure periods reasonably agreed to by Landlord and Tenant's Lender, (d) that upon any termination of the Lease, Tenant's Lender shall have the right to a new lease with Landlord, for the remainder of the Lease Term, and otherwise with the same covenants, conditions and agreements as are contained in the Lease subject to such reasonable conditions as Landlord may impose, and (e) that Tenant's Lender shall have rights upon written notice to Landlord to enter upon the Demised Properties to remove Tenant's personal property following any default under the Leasehold Mortgage, provided, however that Tenant's Lender shall maintain adequate insurance (and deliver written evidence of the same to Landlord) and satisfy Tenant's obligation to pay Base Rent during such period of possession, not to exceed thirty (30) days, which thirty (30)-day period will be tolled in the event of an applicable bankruptcy proceeding. For the avoidance of doubt, the rights afforded Tenant pursuant to Section 34.01

shall be available to Tenant's Lender becoming Tenant under this Lease (itself or through a wholly-owned subsidiary) through foreclosure, deed-in-lieu or other similar process. This Section shall survive termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this section shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 24 ESTOPPEL CERTIFICATES

Tenant shall, without charge, at any time and from time to time, within ten (10) days after any request by Landlord, deliver to Landlord or any other Person specified by Landlord, duly executed and acknowledged, a completed Estoppel Certificate in substantially the form as set forth on Exhibit C attached hereto, or other commercially reasonable estoppel certificate confirming such information regarding this Lease and Tenant as Landlord may request (either, an "Estoppel Certificate"). Landlord shall, without charge, at any time and from time to time, within ten (10) days after any request by Tenant, deliver to Tenant or any other Person specified by Tenant, duly executed and acknowledged, a commercially reasonable estoppel certificate confirming such information regarding this Lease and Landlord as Tenant may reasonably request.

ARTICLE 25 RECORDING

Neither Landlord nor Tenant shall record this Lease; however, upon the request of either party hereto, the other party shall join in the execution and recordation of a memorandum of lease (or similar instrument) in a form substantially similar to the form attached hereto as Exhibit D prior to the recordation of any mortgage or deed of trust encumbering the applicable Demised Property. If the recordation of such memorandum of lease (or similar instrument) is requested by Tenant, Tenant shall pay all costs charged by the applicable local recorder in connection therewith.

ARTICLE 26 APPLICABLE LAW; WAIVER OF JURY TRIAL

This Lease shall be construed in accordance with, and this Lease and all matters arising out of or relating to this Lease (whether in contract, tort or otherwise) shall be governed by, the law of the State of New York without regard to conflicts of law principles; provided, however, that any forcible entry and detainer action or similar proceeding shall be governed by the laws of the state in which the applicable Demised Property is located. If any provision of this Lease or the application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by applicable Law.

TENANT AND LANDLORD, EACH HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK, AND EACH IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LEASE SHALL BE LITIGATED IN SUCH COURTS (EXCEPT FOR FORCIBLE ENTRY AND DETAINER ACTIONS, OR SIMILAR PROCEEDINGS, WHICH SHALL BE LITIGATED IN COURTS LOCATED WITHIN THE COUNTY AND STATE IN WHICH THE APPLICABLE DEMISED PROPERTY IS LOCATED). TENANT AND LANDLORD EACH ACCEPTS, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS (EXCEPT AS PROVIDED ABOVE IN THIS PARAGRAPH) AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND

IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS LEASE.

EACH OF TENANT AND LANDLORD, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS LEASE.

TENANT AND LANDLORD EACH ACKNOWLEDGES THAT THE PROVISIONS OF THIS ARTICLE ARE A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS LEASE.

ARTICLE 27 LIABILITY OF PARTIES

Section 27.01 The obligations of Landlord under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord. Tenant shall look solely to the Demised Properties for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord. Whenever Landlord transfers its interest in any Demised Property, Landlord shall be automatically released from further performance under this Lease with respect to such Demised Property and from all further liabilities and expenses hereunder related to such Demised Property whether occurring prior to or after any such assignment provided the applicable assignee assumes all obligations under this Lease whether occurring prior to or after any such assignment.

Section 27.02 The obligations of Tenant under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant. Landlord shall not seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant.

ARTICLE 28 ATTORNEYS' FEES; EXPENSES

Without limiting any other obligation of Tenant to timely indemnify or reimburse Landlord hereunder (including under Article 9 and Article 29):

(a) If any party to this Lease shall bring any action or proceeding for any relief against the other, declaratory or otherwise, arising out of this Lease, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs incurred in bringing or defending such action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs, separate from the judgment, incurred in enforcing such judgment. The prevailing party shall be determined by the trier of fact based upon an assessment of which party's major arguments or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues. For the purposes of this clause, attorneys' fees shall include fees incurred in the following: (i) post-judgment motions; (ii) contempt proceedings; (iii) garnishment, levy,

and debtor and third party examinations; (iv) discovery; and (v) bankruptcy litigation. This clause is intended to be expressly severable from the other provisions of this Agreement, is intended to survive any judgment and is not to be deemed merged into the judgment.

(b) Tenant agrees to pay or, if Tenant fails to pay, to reimburse, Landlord upon receipt of written notice from Landlord for all reasonable costs and expenses (including reasonable attorneys' fees and costs) incurred by Landlord in connection with (i) any request by Tenant to Landlord (including any amendment to this Lease requested by Tenant), including Landlord's actions in response thereto, provided, however, the foregoing shall not include costs and expenses incurred by Landlord in connection with any request by Tenant to Landlord under Article 29, Schedule 29.08 or any Holdback Agreement, Article 4 (unless Landlord reasonably determines that it needs to engage an attorney in connection therewith), or Section 34.02 (except to the extent any of the foregoing requests is in connection with an amendment to this Lease) (for the avoidance of doubt, the cost of arbitration under Section 31.01 shall be apportioned as provided in clause (6) of Section 31.01 and expenses paid or incurred by Landlord pursuant to Section 31.01 shall be paid as set forth in the final paragraph of Section 31.01); (ii) securing Tenant's compliance with any requests made pursuant to the provisions of this Lease or other Transaction Documents; and (iii) enforcing any obligations of or collecting any payments due from Tenant under this Lease, the other Transaction Documents or with respect to any Demised Property.

ARTICLE 29 ENVIRONMENTAL

Section 29.01 Tenant acknowledges that Landlord makes no warranties or representations of any kind, or in any manner or in any form whatsoever, as to the status of Environmental Conditions or Hazardous Materials at the Demised Properties. Tenant shall conduct at its own expense any and all investigations regarding Environmental Conditions of the Demised Properties and will satisfy itself as to the absence or existence of Hazardous Materials contamination of the Demised Properties and the suitability of the Demised Properties for Tenant's operations. Tenant's entry into this Lease shall be made at its sole risk. Pursuant to California Health & Safety Code § 25359.7, Landlord has provided written notice to Tenant prior to the date hereof that a release of "Hazardous Substances," as that term is defined pursuant to the California Health & Safety Code § 25339.7, has come to be located on or beneath the real property located at the following addresses:

- (1) 324-336 N. Milpas and 918 E Gutierrez Street, Santa Barbara, CA
- (2) 3231 E. University Ave., San Diego, CA

Tenant acknowledges the receipt and adequacy of this notification.

Section 29.02 Tenant shall comply with all Environmental Laws and cause and ensure the Demised Properties and all operations thereon comply with all applicable Environmental Laws. Tenant shall not suffer or permit any loss, on, at, under or affecting the Demised Properties of any source if the same pose a health or safety risk to invitees or employees. From and after the Commencement Date, Tenant shall not be entitled to the Use of any Hazardous Materials at the Demised Properties other than De Minimis Amounts, which shall be performed in full compliance with all Environmental Laws and any other applicable Laws. Tenant shall be prohibited from conducting or allowing the Release of Hazardous Materials onto, on, about, under or from the Demised Properties, the exception being sewer or other permitted discharges or Releases or other De Minimis Amounts, in full compliance with all Environmental Laws and any other applicable Laws. From and after the date of this Lease, Tenant covenants to, and shall, undertake all Remedial Activities necessary to comply with Environmental Laws and, additionally, to address any Use or Release of Hazardous Materials after the date of this Lease, by

Tenant or its agents, employees, representatives, invitees, licensees, subtenants, customers or contractors ("**Other Parties**"), or a Release by any third party, adversely affecting the Demised Property at Tenant's sole cost and expense. A Use or Release of Hazardous Materials shall be deemed to adversely affect the Demised Property if such conditions or circumstances require Remedial Activities under Environmental Laws or Environmental Guidance Standards. Tenant shall give immediate written notice to Landlord of any Remedial Activities, including the abatement of any mold or fungi that constitute Hazardous Materials, even if no applicable Law compels such abatement. If any Remedial Activities are required to be performed at any location other than the Demised Properties, Tenant shall use its commercially reasonable efforts to obtain any required access agreements from third parties.

Section 29.03 In addition to any other obligation herein, during the Lease Term Tenant shall be liable for or responsible for: (a) the violation of any Environmental Law by Tenant or due to any fact, condition, circumstance, operation or activity at the Demised Property, including any Existing Environmental Conditions, or any new Environmental Conditions caused or permitted by Tenant during the Lease Term, including Releases by Tenant or by third parties; and (b) Hazardous Materials or Environmental Conditions at, on, under, about or from the Demised Properties during the Lease Term (and in the event of any holding over by Tenant, during any period that Tenant occupies the relevant Demised Property) whether or not the same constitute a violation of any Environmental Law, provided the same require Remedial Activities under any Environmental Guidance Standards. If Tenant voluntarily conducts, or is required under this Lease to conduct, any Repairs, Alterations or Restoration Work, Tenant shall be responsible for handling all disturbed Hazardous Materials (including lead-based paint or asbestos) in accordance with Environmental Laws and Environmental Guidance Standards. Tenant shall not be obligated under this Lease to undertake Remedial Activities unless during the Lease Term any Environmental Conditions (including Existing Environmental Conditions) constitute or create a violation of Environmental Laws, or create or constitute a public or worker health or safety risk, or a threat to the indoor or outdoor environment, under Environmental Guidance Standards. All Remedial Activities undertaken shall be to achieve unrestricted use standards; provided, however, Tenant may petition for closure under a commercial use standard with the applicable Governmental Authority, but if such Governmental Authority requires achievement of an unrestricted use standard then Tenant shall achieve that standard. If case closure under a commercial use standard is pursued, Landlord shall be entitled to review prior to final approval any activity and use limitations and/or any proposed deed restrictions. Landlord may refuse to consent to any activity and use limitations or deed notices which impose operations and maintenance obligations unacceptable to Landlord on current or future surface users of the Demised Properties, or which raise repair, operating or maintenance costs. Landlord agrees that a prohibition on use of ground water underlying a Demised Property is an acceptable onsite activity and use restriction. The definition of the term "commercial use standards," or "unrestricted use standards" (also known as "residential use standards") shall be the most stringent of the applicable definitions used in Environmental Guidance Standards in use in the State of the Demised Property, including Maximum Contaminant Levels for ground water, if the Remedial Activities are self-directed. If a Governmental Authority is exercising jurisdiction over the Remedial Activities, the Environmental Guidance Standards actually selected by the Governmental Authority shall be the applicable standards for that project. The foregoing sentence does not determine whether commercial use standards or unrestricted use standards apply at a Demised Property, but only how the standards, once selected and determined to be applicable, are to be defined.

Section 29.04 Tenant shall promptly inform Landlord in writing of (a) any and all enforcement actions, initiation of Remedial Activities where no Remedial Activities are currently being conducted upon receipt of such notification, or other Governmental Authority or regulatory actions (excluding routine actions such as permit renewals) instituted, completed (including "case closure" or "no

further action” determinations) or threatened by any Person pursuant to any Environmental Laws affecting the Demised Properties; (b) all claims made or threatened by any Person against Tenant or the Demised Properties relating in any way whatsoever to Hazardous Materials or Environmental Conditions (the matters set forth in clauses (a) and (b) are hereinafter referred to as “**Environmental Claims**”); (c) Tenant’s knowledge of any material Release of Hazardous Materials at, on, in, under to or from the Demised Properties or on, in or under any adjoining property, including any previously undetected Existing Environmental Conditions. Tenant shall also supply to Landlord within ten (10) Business Days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, asserted violations or other material communications relating to the matters described in this Section.

Section 29.05 (1) In addition to any other obligations herein, Tenant shall be solely responsible for and shall indemnify, protect, save, defend, and hold harmless all Landlord Parties from and against any and all Losses directly or indirectly arising out of or associated in any manner whatsoever with any actual or alleged violation of Environmental Law, and/or with Tenant’s Use, or the presence of Hazardous Materials, or the Release by any Person of Hazardous Materials at, on, under, about or from the Demised Properties during the Lease Term (and in the event of any holding over by Tenant, during any period that Tenant occupies the relevant Demised Property) or any Environmental Conditions, including Existing Environmental Conditions. The indemnities and releases contained in this Article 29 include: (a) the costs associated with Remedial Activities, including all necessary plans and reports, incurred by the U.S. Environmental Protection Agency, or any other federal, state or local governmental agency or entity or by any other Person, incurred pursuant to the CERCLA, RCRA, or any other applicable Environmental Laws; (b) any oversight charges, fines, damages or penalties arising from the presence or Release of Hazardous Materials, and any related Remedial Activities, incurred pursuant to the provisions of CERCLA, RCRA, or any other applicable Environmental Laws; (c) any liability to third parties arising out of the presence or Release of Hazardous Materials for personal injury, bodily injury, or property damage arising under any statutory or common law theory, including damages assessed for the maintenance of a public or private nuisance, the costs of Remedial Activities, or for the carrying on of an abnormally dangerous activity; (d) all damages arising out of any claim based on the presence or Release of Hazardous Materials or damage or threatened damage to Environmental Conditions; (e) any and all reasonable costs, fees and expenses of attorneys, consultants and experts incurred or sustained in making any investigation on account of any claim, in prosecuting or defending any action brought in connection therewith, in obtaining or seeking to obtain a release therefrom, or in enforcing any of the agreements herein contained; (f) Rent during any period of Remedial Activities if such Remedial Activities substantially interfere with the surface use of the Demised Properties and then only to the portion of the surface use substantially interfered with and such Rent shall be based on the Base Rent then in effect, or if this Lease has terminated, the Base Rent that was in effect on the Termination Date; and (g) any action or omission or use of the Demised Properties by any subtenant. (A subtenant shall not be deemed an offsite third party hereunder with respect to the Demised Property.) The foregoing indemnity shall apply to Tenant’s Use of Hazardous Materials irrespective of whether any of Tenant’s activities were or will be undertaken in accordance with Environmental Laws or other applicable Laws. This indemnity is intended to be operable under 42 U.S.C. 9607(e)(1). Tenant specifically agrees that it shall not seek contribution from any Landlord Party in any matter relating to any Hazardous Material liability. All costs and expenses paid or incurred by Landlord for which Tenant is obligated to indemnify Landlord under this Section shall be paid promptly by Tenant to Landlord.

(2) This Section shall survive termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this section shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy

by Tenant), and Tenant's obligations shall not terminate with respect to any Environmental Conditions caused or permitted by Tenant, or by any other Person, which first arose during the Lease Term.

(3) Notwithstanding the foregoing, Tenant's obligations under this Section 29.05 shall terminate two (2) years after the end of the Lease Term exclusively as to Losses arising from or related to Existing Environmental Conditions and Environmental Conditions created by an offsite third party, unless Tenant has commenced Remedial Activities, or is obligated hereunder to have done so, in which case Tenant shall diligently pursue those specific Remedial Activities to achieve "case closure" or a "no further action" determination or, if applicable to the Demised Property, Tenant exhausted the monetary cap set forth in Section 29.07. At Tenant's option, in lieu of termination two (2) years from the end of the Lease Term, the termination date shall be at the termination of the Lease Term (excepting ongoing Remedial Activities being diligently pursued, as described above) if Tenant has prepared and submitted a Phase I in accordance with then-current ASTM standards, within six (6) months prior to the end of the Lease Term (but no later than three (3) months prior to the end of the Lease Term), and if necessary also completes Phase II work, using only experienced and reputable consultants, and submitted a completion report for the Phase II work prior to one (1) month before the Lease Term termination. Landlord shall have the right to disapprove the first recommended consultant in its sole discretion, in which case Tenant shall suggest a second consultant. If Landlord disapproves the second consultant it shall set forth good cause for doing so, in which case Tenant shall recommend a third consultant, subject again to Landlord's disapproval only for good cause shown. Landlord shall have fifteen (15) Business Days to review and approve or comment on the submittals, Landlord's approval not to be unreasonably withheld. If Landlord's approval is not tendered, the parties shall meet and confer to develop a resolution of the identified issues within thirty (30) calendar days. All indemnity obligations under this Article 29 shall continue until Landlord shall approve the Phase I and/or Phase II reports, such approval not to be unreasonably withheld. Upon Landlord's approval, the subject indemnity obligations shall terminate as to Losses arising from or related to Existing Environmental Conditions and Environmental Conditions created by an offsite third party, but not as to other Losses covered under this Section 29.05. For the sake of clarity, the parties acknowledge that the subset of Tenant's indemnification obligations under this Section 29.05 concerning the costs of Remedial Activities to address Existing Environmental Conditions and Environmental Conditions created by an offsite third party may have terminated previously pursuant to the provisions of 29.07 below, if Tenant previously reached the monetary cap on such expenditures applicable to the Demised Properties.

Section 29.06 Without limiting the foregoing or anything contained in Article 8, Tenant acknowledges that Governmental Authorities have imposed, and from time to time may impose, obligations affecting some or all of the Demised Properties, or operations thereon, in response to climate change including energy efficiency mandates, water conservation mandates, restrictions on sales or use of certain fuels, mandates for alternative fuels, permitting obligations, restrictions on or a duty to inventory and report green house gas emissions, requirements to purchase carbon credits, construction, operational or other measures to mitigate risks of drought, fire, flood, rising sea levels, storm surge risks, so-called "extreme weather" risks and other legal obligations, whether adopted pursuant to Environmental Laws or other Laws. Tenant at its sole cost and expense shall ensure the Demised Properties, and operations thereon, comply with any such applicable Laws, permits, and requirements of all Governmental Authorities having jurisdiction over the relevant Demised Properties during the term of the Lease. Moreover, Tenant agrees that the cost or disruption to operations imposed by any such applicable Laws, permits, and requirements of all Governmental Authorities having jurisdiction over the relevant Demised Properties shall not excuse full performance of this Lease by Tenant. Tenant shall not be obligated by this Lease to undertake the energy efficiency and similar measures set forth in this Section 29.06 unless compelled by applicable Law.

Section 29.07 (1) Notwithstanding anything contained herein to the contrary (excepting the Santa Barbara Demised Property, as noted in this clause (1)), with respect to Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term, Tenant's liability under this Article 29 and Schedule 29.08 for the cost of Remedial Activities to address such Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term shall be limited to a maximum amount of \$210,000 for each Demised Property (other than the Eagle Rock Demised Property and the Santa Barbara Demised Property), \$500,000 for the Eagle Rock Demised Property and no maximum amount for the Santa Barbara Demised Property.

(2) Tenant shall advise Landlord in writing as soon as Tenant knows, or reasonably should have known, such monetary cap for the applicable Demised Property is likely to be met or exceeded. Without limiting Section 36.02, time is of the essence for this covenant. The parties then shall meet and confer at the earliest practicable time (not to exceed fifteen (15) Business Days after Tenant's notice) to develop a plan to manage such costs for Remedial Activities to address Existing Environmental Conditions and/or Environmental Conditions created by an offsite third party during the Lease Term, which are projected to exceed the monetary cap. Tenant shall advise Landlord on the date that the monetary cap is reached for the Demised Property, and on that date the obligations in Section 29.02, Section 29.03, Section 29.05, Section 29.06 and Schedule 29.08 (if applicable) shall terminate as to Existing Environmental Conditions and as to Environmental Conditions created by an offsite third party during the Lease Term; provided, however, that although the contractual indemnification obligations in Section 29.05 shall have terminated, thereafter the parties shall bear the costs of their respective obligations regarding such Existing Environmental Conditions and as to Environmental Conditions created by an offsite third party during the Lease Term, if any, as determined under applicable Law. If the monetary cap is reached as to the costs of Remedial Activities to address Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term, then as between Landlord and Tenant, Tenant shall not be liable for sums exceeding the applicable cap at the applicable Demised Property for the costs of Remedial Activities to address Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term.

Section 29.08 Tenant hereby agrees to undertake and perform those obligations set forth in the Environmental Covenant at Schedule 29.08 attached hereto and the parties hereby incorporate the terms of the Environmental Covenant as though set forth in full herein. The obligations in Schedule 29.08 are subject to the terms of this Article 29; provided, however, in the event of a conflict between the general terms of Article 29 and the specific terms and covenants in the SB Environmental Covenant, the specific terms and covenants in the SB Environmental Covenant shall prevail.

ARTICLE 30 LANDLORD ASSIGNMENT

Section 30.01 This Lease shall be fully assignable by Landlord or its successors and assigns, in whole or in part, subject to the terms of Article 27 and this Article. In the event that from time to time Landlord desires to partially assign its interest in this Lease with respect to one or more of the Demised Properties (including to one or more Affiliates of Landlord), then (a) Landlord shall determine in its sole discretion, the Base Rent allocated to any Demised Properties covered by the partial assignment (the "Allocated Base Rent Amount") which Allocated Base Rent Amount when taken together with the Base Rent payable under this Lease and any other Allocated Base Rent Amounts shall be economically neutral to Tenant, (b) Landlord, at its cost and expense (other than incidental attorneys' fees or costs incurred by Tenant which shall be paid solely by Tenant), shall prepare a landlord assignment lease agreement (or landlord assignment lease agreements, in Landlord's discretion) in the form attached hereto as Exhibit E with respect to any such Demised Properties (each, a "Landlord Assignment Lease Agreement"); (c)

upon the assignment by Landlord, this Lease shall be amended to exclude any such Demised Properties from this Lease, the Base Rent hereunder shall be reduced by the Allocated Base Rent Amount; and (d) the Base Rent payable under the Landlord Assignment Lease Agreement (or Landlord Assignment Lease Agreements) shall equal the Allocated Base Rent Amount. In such event, Tenant shall execute any such new Landlord Assignment Lease Agreement within seven (7) Business Days after delivery to Tenant of an execution version thereof. In addition, Tenant shall execute and deliver (or cause to be executed and delivered, as applicable) to Landlord any other instruments and documents requested by Landlord and reasonably approved by Tenant in connection with the assignment and any commercially reasonable subordination, non-disturbance and attornment agreement that may be requested by Landlord's assignee's lenders and reasonably approved by Tenant. Without limiting the foregoing, Tenant agrees to cooperate reasonably with Landlord in connection with any such assignment. From and after the effective date of any such Landlord Assignment Lease Agreement, Landlord shall be automatically released (without need for any further agreement or other document) from any liability thereafter arising with respect to the Demised Properties covered thereby. In no event shall Landlord have any liability under any Landlord Assignment Lease Agreement. Without limiting the foregoing, (x) Tenant agrees that Landlord may agree in its sole discretion with any purchaser or assignee of any Demised Property covered by a Landlord Assignment Lease Agreement to provide (or have a Landlord's Affiliate provide) asset management and/or act as servicer regarding such Demised Property; (y) Tenant acknowledges that any Landlord Assignment Lease Agreement may be, in Landlord's sole discretion, a "master lease" agreement covering multiple Demised Properties (which Landlord Assignment Lease Agreement may include, in Landlord's sole discretion, (i) language materially identical to that contained in Recital C and Section 30.03 of this Lease, even if such language does not appear in the form of Landlord Assignment Lease Agreement attached hereto as Exhibit E, and (ii) a provision regarding applicable law and waiver of jury trial materially identical to Article 26 of this Lease in lieu of the language in Article 26 of the form of Landlord Lease Assignment Agreement attached hereto as Exhibit E); and (z) any Landlord assignee that is a Landlord's Affiliate may, in its sole discretion, elect to conform the terms of such Landlord Assignment Lease Agreement (other than Base Rent) to this Lease rather than to the form of Landlord Assignment Lease Agreement attached hereto as Exhibit E.

Section 30.02 Landlord and Tenant agree that this Lease constitutes a true lease and not a financing or other form of transaction (including for federal income tax purposes). In furtherance of the foregoing, Landlord and Tenant each irrevocably waives any claim or defense based upon the characterization of this Lease as anything other than a true lease and irrevocably waives any claim or defense that asserts that this Lease is anything other than a true lease. Landlord and Tenant covenant and agree that they will not assert that this Lease is anything but a true lease. Landlord and Tenant each stipulate and agree not to challenge the validity, enforceability or characterization of this Lease of the Demised Properties as a true lease and further stipulate and agree that nothing contained in this Lease creates or is intended to create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like. Landlord and Tenant each shall support the intent of the parties that the lease of the Demised Properties pursuant to this Lease is a true lease and does not create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like, if, and to the extent that, any challenge occurs. Landlord and Tenant agree to treat this Lease as an operating lease (rather than a capital lease) for federal, state and local income tax purposes, unless required to do otherwise pursuant to a final resolution as determined by an applicable taxing authority that this Lease is not properly classified as an operating lease. Landlord shall claim all depreciation for United States federal, state and local income tax purposes with respect to the Demised Properties, other than the costs for Alterations, replacements, Remedial Activities and other capital expenditures in connection with the Demised Properties as permitted or required under this Lease that are incurred by the Tenant after the Commencement Date but during the

term of this Lease, which costs may be deducted, amortized, or depreciated by Tenant for United States federal, state and local income tax purposes to the extent permitted under the Code and the Treasury Regulations promulgated thereunder (and corresponding provisions of state and local tax law), and which costs of Alterations, replacements, Remedial Activities and other capital expenditures (or the value thereof) are not intended to be in substitution for additional rent payable to Landlord; provided, however, that notwithstanding the foregoing, any such Alterations, replacements, benefits of Remedial Activities and other capital expenditures shall immediately become the property of the Landlord for all purposes other than to the extent set forth herein for United States federal, state, and local income tax purposes. Upon any Lease assignment pursuant to Section 30.01, Landlord shall endeavor to reasonably cooperate with Tenant in any attempt by Tenant to obtain from Tenant's auditors a written acknowledgment that, after giving effect to such assignment, the Lease as so modified together with any Landlord Assignment Lease Agreement qualifies for operating lease treatment for accounting and tax purposes. In no event shall failure of Tenant to obtain any such written acknowledgment affect Landlord's right to assign pursuant to Section 30.01 or constitute a breach of this Lease by Landlord.

Section 30.03 Landlord and Tenant agree that this Lease constitutes a single and indivisible lease as to all of the Demised Properties collectively, and shall not be subject to severance or division unless and to the extent, pursuant to Section 30.01, Landlord elects to effect a partial assignment of this Lease. In furtherance of the foregoing, and except as may result from the amendment of this Lease to eliminate certain properties and reduce Base Rent in conjunction with the execution of Landlord Assignment Lease Agreements pursuant to the terms of Section 30.01, Landlord and Tenant each (a) waives any claim or defense based upon the characterization of this Lease as anything other than a master lease of all the Demised Properties and irrevocably waives any claim or defense that asserts that this Lease is anything other than a master lease, (b) covenants and agrees that it will not assert that this Lease is anything but a unitary, unseverable instrument pertaining to the lease of all, but not less than all, of the Demised Properties, (c) stipulates and agrees not to challenge the validity, enforceability or characterization of this Lease of the Demised Properties as a unitary, unseverable instrument pertaining to the lease of all, but not less than all, of the Demised Properties, and (d) shall support the intent of the parties that this Lease is a unitary, unseverable instrument pertaining to the lease of all, but not less than all, of the Demised Properties, if, and to the extent that, any challenge occurs. To the extent that legal, tax or title insurance requirements in consummating the purchase of the Demised Properties by Landlord or leasing the Demised Properties to Tenant, may require, or may have required, individual purchase price allocations (including allocations of values for individual state transfer tax purposes and title insurance coverage amounts) or individual rent allocations (including allocations of rents in certain states for tax purposes), Landlord and Tenant agree that such individual allocations are solely to comply with legal, tax or title insurance requirements, and shall not be used or construed, directly or indirectly, to vary the intent of Landlord and Tenant that this Lease constitutes a single and indivisible lease of all the Demised Properties collectively, and is not an aggregation of separate leases. This Section 30.03 does not limit in any way Tenant's express rights under this Lease, including, without limitation, Tenant's rights pursuant to Article 31.

ARTICLE 31 REPLACEMENTS

Section 31.01 Property Replacements. Tenant, at its election, may substitute up to an aggregate of three (3) of the Portfolio Properties (each a "**Replaced Property**") with tracts of similar real property on which Tenant operates another grocery store or other Permitted Use (each a "**Replacement Property**"), provided, however, that in no event shall Tenant have the right to substitute more than three (3) Portfolio Properties in the aggregate. Tenant shall submit for Landlord's review at least thirty (30) days prior to any substitution (such period, the "**Consideration Period**"), evidence of the fair market

value of the proposed Replacement Property reasonably satisfactory to Landlord and any Landlord's Lender and compliant with Landlord's Lender's regulatory requirements, as well as current survey, current environmental report, records of any administrative proceedings or environmental claims involving the proposed Replacement Property, current title report and profit/loss statements for the previous two years of the Replacement Property and similar data with respect thereto, as well as evidence of the fair market value of the proposed Replaced Property reasonably satisfactory to Landlord and any Landlord's Lender and compliant with Landlord's Lender's regulatory requirements, and other information with respect to the Replaced Property as Landlord and Landlord's Lender may reasonably request. Provided that (a) Landlord, in its reasonable discretion, and Landlord's Lenders and Landlord's Mortgagees, in their reasonable discretion acting in accordance with prudent institutional lender standards relating to transactions similar to the transactions contemplated by this Lease, approve the substitution (such approval rights encompassing, without limitation, Landlord's reasonable determination as to whether the substitution will qualify as a like-kind exchange in which no gain is recognized pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended), and (b) if any Landlord's Lender has transferred all or any portion of its loan to a "real estate mortgage investment conduit" ("**REMIC**") such substitution is in compliance with all the provisions of the federal income tax law relating to REMICs, which appear in Sections 860A through 860G of the Internal Revenue Code of 1986, as amended from time to time ("**Code**"), then such substitution of the Replacement Property for the Replaced Property shall be permitted hereunder. Without limiting the foregoing, upon the written request of Landlord or Landlord's Lenders or Landlord's Mortgagees, as the case may be, Tenant shall deliver to Landlord as a condition precedent to any approval of the substitution of a Replacement Property for a Replaced Property, a legal opinion, in form and substance acceptable to Landlord or Landlord's Lenders or Landlord's Mortgagees, as the case may be, in its reasonable discretion, to the effect that, with respect to any REMIC trust that holds any loan secured by a mortgage on the Demised Properties, the release of the Replaced Property and the substitution of the Replacement Property will not cause (x) such loan to fail to be a "qualified mortgage" within the meaning of Section 860G(a)(3) of the Code, (y) any failure of such REMIC trust to qualify as a "real estate mortgage investment conduit" within the meaning of Section 860D of the Code for federal income tax purposes, or (z) the imposition of any tax upon the REMIC trust or any of such REMIC trust's assets, including, without limitation, any tax on "prohibited transactions" imposed under Section 860F(a)(2) of the Code. Subject to the foregoing, in the event that there is a failure to approve the proposed substitution, Landlord shall deliver to Tenant a written notice within ten (10) days following the expiration of the Consideration Period, disapproving the proposed substitution and describing which of Landlord's and/or Landlord's Lenders' or Landlord's Mortgagees' conditions have not been satisfied. In the event of any such disapproval, Tenant shall have an additional fifteen (15) day period from and after the date Landlord's disapproval notice is delivered to Tenant to submit any additional information or documentation to Landlord regarding satisfaction of the foregoing conditions. In the event all the foregoing conditions are still not satisfied, then Landlord shall deliver to Tenant a second written notice within ten (10) days following the expiration of such fifteen (15) day period disapproving the proposed substitution and describing which of said conditions have not been satisfied. If all other reasonable conditions of Landlord, Landlord's Lenders and Landlord's Mortgagees regarding the proposed substitution have been satisfied except that Landlord believes that the Replacement Property does not have equivalent or greater fair market value to the Replaced Property, then Tenant may, by written notice delivered to Landlord within twenty (20) days after Landlord delivers to Tenant Landlord's second written notice of Landlord's disapproval of the proposed substitution, invoke the following arbitration procedure to determine whether the Replacement Property has an equivalent or greater fair market value to the Replaced Property (in which event the proposed substitution shall be deemed approved), or a fair market value less than the Replaced Property (in which event the proposed substitution shall remain disapproved). The date when such Tenant's notice invoking the arbitration is delivered to Landlord is referred to in this Section as the "**Notice Date**"). For the avoidance of doubt

Landlord will reasonably cooperate with Tenant in the event a substitution is required by judicial or other governmental requirement applicable to Tenant.

(1) Submission of Proposed Value. Within five (5) days after the Notice Date, (a) Landlord shall deliver to Tenant an MAI fair market value appraisal for each of the Replacement Property and the Replaced Property supporting its assertion that the fair market value of the Replacement Property is less than the fair market value of the Replaced Property, and (b) Tenant shall deliver to Landlord an MAI fair market value appraisal for each of the Replacement Property and the Replaced Property supporting its assertion that the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property. If either party (as referred to this Section, a “**Failing Party**”) fails to deliver its appraisals to the other party on or before the last day of such five (5)-day period, but the other party delivers its appraisals to the Failing Party on or before the last day of such five (5)-day period, the assertion supported by such other party’s appraisals delivered pursuant to subsection (1), above (i.e. that the fair market value of the Replacement Property is less than, or equal to or greater than (as the case may be), the fair market value of the Replaced Property) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such five (5)-day period.

(2) Appointment and Qualifications of Arbitrator. If the arbitration is not deemed concluded pursuant to subsection (1), above, then within fifteen (15) days after the Notice Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous ten-year (10-year) period in the appraisal of grocery stores or other applicable Permitted Uses within the county in which the applicable Replacement Property is located (each such appraiser chosen pursuant to this subsection (2), an “**Arbitrator**”). Each of Landlord and Tenant shall notify the other party, in writing, of its Arbitrator (and the business address thereof) within two Business Days after the appointment thereof (collectively, the “**Arbitrator Appointment Notices**”). Each of Landlord and Tenant agrees that any Arbitrator may be (but is not required to be) an appraiser who prepared one or both of the fair market value appraisals delivered by Landlord and Tenant pursuant to subsection (1), above.

(3) Appointment of Third Arbitrator. If each party appoints an Arbitrator and notifies the other party in accordance with subsection (2), above, then the two Arbitrators shall, within ten (10) days after delivery of the later of the two Arbitrator Appointment Notices, agree on and appoint a third Arbitrator (whom shall be a licensed real estate appraiser with all other qualifications for the initial two Arbitrators chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Arbitrator and the business address thereof. If the two Arbitrators fail to agree on and appoint a third Arbitrator within such ten (10) day period, then either Landlord or Tenant may elect to have the third Arbitrator selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Arbitrator and the parties shall cooperate reasonably with each other and the AAA (including by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Arbitrator. If any fees of the third Arbitrator or the AAA are required to be paid in advance (prior to the completion of the arbitration procedure described in this Section) in order for such Arbitrator, or the AAA, as the case may be, to commence or continue its work in connection with the arbitration described in this Section, each party shall promptly pay one-half of such fees as and when due, and if either Landlord or Tenant fails to pay its one-half share of

any such fees as and when due (such party is referred to in this Section as the “**Delinquent Party**”), and the other party does pay its one-half share of any such fees as and when due, then if the Delinquent Party fails to pay its one-half share of all such fees within ten (10) days after written notice from the other party, the assertion supported by such other party’s appraisals delivered pursuant to subsection (1) (i.e. that the fair market value of the Replacement Property is less than, or equal to or greater than (as the case may be), the fair market value of the Replaced Property) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such ten (10)-day period.

(4) **Arbitrators’ Decision.** If the arbitration is not previously deemed concluded pursuant to subsection (3), above, then within thirty (30) days after the appointment of the third Arbitrator, the three Arbitrators shall decide whether the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property and shall notify Landlord and Tenant in writing of each Arbitrator’s decision. The determination of each Arbitrator shall be limited to the sole issue of, and each Arbitrator shall have neither the right nor the power to determine any issue other than, whether the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property, as determined by such Arbitrator. The decision of the majority of the three Arbitrators shall be binding on Landlord and Tenant (subject to subsection (5), below), and the arbitration shall be deemed concluded upon delivery to Landlord and Tenant of such notifications of the Arbitrators’ decisions.

(5) **If Only One Arbitrator Is Appointed.** If the arbitration is not previously deemed concluded pursuant to subsection (1), and if either Landlord or Tenant fails to appoint an Arbitrator within fifteen (15) days after the Notice Date or fails to deliver an Arbitrator Appointment Notice in accordance with subsection (2), above, and the other party does appoint an Arbitrator within such fifteen (15) day period and delivers an Arbitrator Appointment Notice in accordance with subsection (2), above, then the Arbitrator timely appointed by such other party shall reach a decision regarding whether the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property, as determined by such Arbitrator, and notify Landlord and Tenant of that decision within thirty (30) days after such Arbitrator’s appointment. Such decision of the Arbitrator shall be binding on Landlord and Tenant, and the arbitration shall be deemed concluded upon delivery of such notification of the Arbitrator’s decision.

(6) **Cost of Arbitration.** If the Arbitrators (or Arbitrator, pursuant to subsection (5), above) determine that the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property, then Tenant shall be deemed the “**Winning Party**” under this subsection (6) and Landlord shall be deemed the “**Losing Party**” under this subsection (6). If the Arbitrators (or Arbitrator, pursuant to subsection (5), above) determine that the fair market value of the Replacement Property is less than the fair market value of the Replaced Property, then Landlord shall be deemed the “**Winning Party**” under this subsection (6) and Tenant shall be deemed the “**Losing Party**” under this subsection (6). In addition, in the event the arbitration is deemed concluded due to a Failing Party not timely delivering its appraisals as described in subsection (1), or a Delinquent Party failing to pay its share of fees after written notice as described in subsection (3), such Failing Party or Delinquent Party (as the case may be) shall be deemed the “**Losing Party**” under this subsection (6), and the party that is not the Failing Party or Delinquent Party (as the case may be) shall be deemed the “**Winning Party**” under this subsection (6). Each party shall initially pay the fees and expenses

of its legal counsel, appointed arbitrator, any written reports prepared by any appraiser in connection with its duties under this Section, one-half of the fees of the third arbitrator, and one-half the fees of the AAA (if applicable), provided, however, that the Losing Party shall be obligated to reimburse the Winning Party for all such fees and expenses of the arbitration paid by the Winning Party promptly upon the completion of the arbitration procedure described in this Section.

In the event Landlord approves the substitution of the Replacement Property for the Replaced Property, Tenant shall execute and deliver to Landlord such instruments and documents as Landlord shall reasonably require in connection therewith, including a special warranty or similar deed, an amendment to this Lease, and an amended or new memorandum of lease (or similar instrument) covering the Replacement Property, and Landlord shall convey the Replaced Property to Tenant (or Tenant's designee) as is, with all faults, without any express or implied warranties. Any substitution of a Replacement Property for a Replaced Property shall not alter any of the other obligations of Landlord or Tenant under this Lease, including the Base Rent due from Tenant hereunder. Without limitation, Tenant shall be responsible for all Additional Rent (including real property taxes) regarding the Replaced Property up to the date of transfer. Tenant shall pay all reasonable out-of-pocket expenses paid or incurred by Landlord pursuant to this Section, including, (i) Landlord's, Affiliates of Landlord's and Landlord's Lenders' legal fees and expenses, the costs of any title policies (owner's and/or lender's) on the Replacement Property, recording costs, and, without limiting any of Tenant's obligations set forth in Article 3 of this Lease, any sales, transfer, and other taxes and recording fees, and any taxes required to be withheld, which may be payable in connection with the conveyance of Replacement Property by Tenant or Replaced Property to Tenant (including any interest or penalties imposed with respect to the late payment of any such taxes), and (ii) such amount, which, when added to such payment, shall yield to Landlord (after deduction of all expenses payable by Landlord with respect to all such payments) a net amount which Landlord would have realized from such payment had no such expenses been incurred; provided, however, that so long as no Event of Default has occurred and is continuing, if an arbitration has been completed under subsections (1) through (6) of this Section, and if Tenant was the Winning Party (as defined above in subsection (6)), then Tenant shall not be obligated to reimburse Landlord for fees and expenses incurred by Landlord in connection with such arbitration, and Landlord shall be obligated to reimburse Tenant for fees and expenses incurred by Tenant in connection with such arbitration.

ARTICLE 32 INTENTIONALLY OMITTED

ARTICLE 33 LANDLORD'S RIGHTS UNDER LEASE

Any and all rights of Landlord under this Lease shall inure to the benefit of Landlord's successors and assigns, as well as Landlord's Lenders and/or any Landlord's Mortgagees and their respective successors and assigns as third party beneficiaries.

ARTICLE 34 RIGHT OF FIRST OFFER

Section 34.01 Tenant's Right of First Offer. Landlord hereby grants Tenant a right of first offer to purchase one or more Demised Properties, subject to the terms and conditions set forth in this Section 34.01. Provided that no Default or Event of Default has occurred and is continuing under this Lease, Landlord shall not sell a Demised Property to any third party without first providing written notice to Tenant describing the material terms that Landlord intends to offer to a prospective buyer along with a written offer to sell the applicable Demised Property to Tenant upon the same terms and conditions, including, the purchase price and any other economic terms (except that such offer from Landlord to

Tenant shall be deemed not to include any obligation by Tenant, as buyer, to enter into any leases regarding the applicable Demised Property, even if such offer references a lease between a prospective buyer, as landlord, and Tenant, as tenant, regarding the applicable Demised Property). Tenant shall have ten (10) Business Days after receipt of Landlord's written offer (such period, the "**Tenant Review Period**") in which to exercise its right of first offer with respect to the applicable Demised Property being offered to such third party by delivering written notice thereof to Landlord. During the Tenant Review Period, Landlord shall provide Tenant all property related due diligence reasonably requested by Tenant and any other commercially reasonable diligence items or rights requested by Tenant. After exercise of the right of first offer, the Demised Property shall be sold to Tenant on the terms described in the written offer to Tenant (and excluding any lease regarding the Demised Property, as described above), or on such other terms as Tenant and Landlord may mutually agree, and the closing of such sale shall occur no later than the forty-fifth (45th) day after Tenant exercises its right of first offer pursuant to a purchase and sale agreement reasonably acceptable to Landlord and Tenant. If Tenant does not exercise in a timely manner its right of first offer as provided herein, then (a) Tenant's right of first offer with respect to Landlord's written offer of the applicable Demised Property shall be deemed waived, (b) Tenant shall have no further right to purchase the applicable Demised Property pursuant to such written offer (but shall have the right provided under this Section 34.01 as to any subsequent written offers from Landlord involving such Demised Property not sold by Landlord pursuant to clause (c) until Tenant exercises or waives such right as to such written offer), and (c) Landlord may offer to sell the Demised Property pursuant to its intended offer to any third party, provided that such sale is on the same material terms contained in Landlord's written offer to Tenant (except that the purchase price need only be ninety-five percent (95%) or greater than the purchase price set forth in Landlord's offer to Tenant pursuant to such written offer and this Section 34.01) and is documented pursuant to a binding purchase and sale agreement entered into within one hundred eighty (180) days after the expiration of the Landlord Review Period. Without limiting the foregoing, if Tenant does not exercise in a timely manner its right of first offer as provided herein, then Tenant shall deliver a written notice to Landlord expressly acknowledging Tenant's waiver of its right of first offer, within five (5) Business Days after Landlord's request for such notice. Notwithstanding the foregoing, Tenant's right of first offer shall not apply to any of the following: (1) the contribution of any Demised Property to a trust, partnership, limited liability company, corporation or other entity in which Landlord, its trustees, successor trustees or one or more of its beneficiaries or in the case of individuals or individual beneficiaries, their heirs hold a controlling material interest; (2) a foreclosure sale, trustee sale, deed in lieu of foreclosure or similar process with respect to any mortgage or deed of trust encumbering any Demised Property (provided, however, that Tenant's right of first offer shall apply to a transfer of a Demised Property from a Landlord's Mortgagee to a third party transferee or other purchaser at a foreclosure sale to a third party transferee (and subsequent transfers, as applicable) following a foreclosure sale, trustee sale, deed in lieu of foreclosure or similar process with respect to any mortgage or deed of trust encumbering any Demised Property); (3) any sale of any Demised Property (A) by Landlord to any affiliated company in Landlord's own consolidated tax group, (B) in connection with a merger, consolidation, or acquisition involving the entirety of Landlord, or (C) to any entity acquiring all or a majority of the value of all of Landlord's assets (including Landlord's non-real property assets as well as Landlord's interest in all Demised Properties), or (4) any transfer of a Demised Property to a Governmental Authority in connection with (or under threat of) an eminent domain proceeding regarding such Demised Property. Notwithstanding the foregoing, in the event of a contribution or transfer described in clause (1) above, or any of the events described in clause (3) above, Tenant's right of first offer shall continue to apply to the applicable Demised Property and Landlord's interest in this Lease following any such contribution or event. Notwithstanding any other provision in this Article 34, if Landlord proposes to sell more than one Portfolio Property in a single transaction, Tenant's right of first offer hereunder shall be subject to Tenant exercising its right of first offer with respect to all of the Portfolio Properties being sold in such single transaction. For the avoidance of doubt, if any such

Portfolio Property is part of another proposed sale by Landlord, then Tenant shall have a right of first offer as to all such Portfolio Properties being sold in such single transaction (for example, if a Portfolio Property is offered in a proposed sale of more than one of the Portfolio Properties, Tenant waives or is deemed to have waived its right of first offer in connection with such sale, such sale is not consummated and such Portfolio Property is again offered in a proposed sale on its own or together with other Portfolio Properties (i.e., not the same package of Portfolio Properties), then Tenant shall maintain its right of first offer as to that subsequent offer involving such Portfolio Property or Portfolio Properties).

Section 34.02 Landlord's Right of First Offer. Tenant hereby grants Landlord a right of first offer to purchase any of the properties listed on Schedule 34.02 (the "**Additional Tenant Properties**") subject to the terms and conditions set forth in this Section 34.02 and Tenant shall execute and cause to be recorded a memorandum of such right of first offer regarding each Additional Tenant Property in the form of the memorandum attached hereto as Exhibit H in each county where an Additional Tenant Property is located prior to the recordation of any mortgage or deed of trust encumbering such Additional Tenant Property. Tenant shall not sell an Additional Tenant Property to any party without first providing written notice to Landlord describing the material terms that Tenant intends to offer to a prospective buyer along with a written offer to sell the applicable Additional Tenant Property to Landlord upon the same terms and conditions, including, the purchase price and any other economic terms (except that such offer from Tenant to Landlord shall be deemed not to include any obligation by Landlord, as buyer, to enter into any leases regarding the applicable Additional Tenant Properties, even if such offer references a lease between a prospective buyer, as landlord, and Tenant, as tenant, regarding the applicable Additional Tenant Property). Landlord shall have ten (10) Business Days after receipt of Tenant's written offer (such period, the "**Landlord Review Period**"), in which to exercise its right of first offer with respect to the applicable Additional Tenant Property being offered to such party by delivering written notice thereof to Tenant. During the Landlord Review Period, Tenant shall provide Landlord all Due Diligence Items reasonably requested by Landlord, commercially reasonable access to the applicable Additional Tenant Property to conduct its due diligence and any other commercially reasonable diligence items or rights requested by Landlord. After exercise of the right of first offer, the applicable Additional Tenant Property shall be sold to Landlord on the terms described in the written offer to Landlord (and excluding any lease regarding the applicable Additional Tenant Property, as described above), or on such other terms as Tenant and Landlord may mutually agree, and the closing of such sale shall occur no later than the forty-fifth (45th) day after Landlord exercises its right of first offer pursuant to a purchase and sale agreement reasonably acceptable to Landlord and Tenant. If Landlord does not exercise in a timely manner its right of first offer as provided herein, then (a) Landlord's right of first offer with respect to Tenant's written offer with respect to the applicable Additional Tenant Property shall be deemed waived, (b) Landlord shall have no further right to purchase the applicable Additional Tenant Property pursuant to such written offer (but shall have the right provided under this Section 34.02 as to any subsequent written offer from Tenant involving such Additional Tenant Property not sold by Tenant pursuant to clause (c) until Landlord exercises or waives such right as to such written offer), and (c) Tenant may offer to sell the applicable Additional Tenant Property to any party, provided that such sale is on the same material terms contained in Tenant's written offer to Landlord (except that the purchase price need only be ninety-five percent (95%) or greater than the purchase price set forth in Tenant's offer to Landlord pursuant to such written offer and this Section 34.02) and is documented pursuant to a binding purchase and sale agreement entered into within one hundred eighty (180) days after the expiration of the Tenant Review Period. Without limiting the foregoing, if Landlord does not exercise in a timely manner its right of first offer as provided herein, then Landlord shall deliver a written notice to Tenant expressly acknowledging Landlord's waiver of its right of first offer, within five (5) Business Days after Tenant's request for such notice. Notwithstanding the foregoing, Landlord's right of first offer shall not apply to any of the following: (1) the contribution of any Additional Tenant Property to a trust, partnership, limited liability

company, corporation or other entity in which Tenant, its trustees, successor trustees or one or more of its beneficiaries or in the case of individuals or individual beneficiaries, their heirs hold a controlling material interest; (2) a foreclosure sale, trustee sale or deed in lieu of foreclosure with respect to any mortgage or deed of trust encumbering any Additional Tenant Property (provided, however, that Landlord's right of first offer shall apply to a transfer of an Additional Tenant Property from a Tenant's Lender or other purchaser at a foreclosure sale to a third party transferee (and subsequent transfers, as applicable) following a foreclosure sale, trustee sale, deed in lieu of foreclosure or similar process with respect to any mortgage or deed of trust encumbering any Additional Tenant Property); (3) any sale of any Additional Tenant Property (A) by Tenant to a Person directly or indirectly controlling, controlled by, or under common control with Tenant (for purposes of this clause (A), "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with") means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise), (B) in connection with a merger, consolidation, or acquisition involving the entirety of Tenant, or (C) to any entity acquiring all of Tenant's assets or a majority of the value of all of Tenant's assets (including Tenant's non-real property assets as well as Tenant's leasehold interest in all Portfolio Properties then owned by Tenant), or (4) any transfer of an Additional Tenant Property to a Governmental Authority in connection with (or under threat of) an eminent domain proceeding regarding such Additional Tenant Property. Notwithstanding the foregoing, in the event of a contribution or transfer described in clause (1) above, or any of the events described in clause (3) above, Landlord's right of first offer shall continue to apply to the applicable Additional Tenant Property following any such contribution or event. Notwithstanding any other provision in this Article 34, if Tenant proposes to sell more than one of the Additional Tenant Properties in a single transaction, Landlord's right of first offer hereunder shall be subject to Landlord exercising its right of first offer with respect to all of the Additional Tenant Properties being sold in such single transaction. Without limiting Tenant's continuing obligation under this Section 34.02, no Permitted Assignee or other Tenant assignee consented to by Landlord shall be obligated under this Section 34.02 except to the extent such Permitted Assignee or other assignee owns any Additional Tenant Properties. This Section 34.02 shall survive any expiration or termination of this Lease. For the avoidance of doubt, (i) if any Additional Tenant Properties are part of another proposed sale by Tenant, then Landlord shall have a right of first offer as to all such Additional Tenant Properties being sold in such single transaction (for example, if an Additional Tenant Property is offered in a proposed sale of more than one Additional Tenant Property, Landlord waives or is deemed to have waived its right of first offer in connection with such sale, such sale is not consummated and such Additional Tenant Property is again offered in a proposed sale on its own or together with other Additional Tenant Properties (i.e., not the same package of Additional Tenant Properties), then Landlord shall maintain its right of first offer as to that subsequent offer involving such Additional Tenant Property or Additional Tenant Properties) and (ii) after a Tenant assignment pursuant to Article 22 of this Lease, the rights of Landlord under this Section 34.02 shall not apply to such assignee so long as such assignee is not an owner of any Additional Tenant Property but shall continue as to the owner or owners of the Additional Tenant Properties and survive any such assignment with respect to such Additional Tenant Properties.

ARTICLE 35 LIQUOR

Landlord may require Tenant to obtain Commercial General Liability insurance regarding liquor liability (in amounts and otherwise consistent with the requirements set forth in Article 10) for any sites that serve liquor or other alcoholic beverages, and in connection with any repossession of the Demised Properties pursuant to Article 15, Tenant (on behalf of itself and any Tenant's Affiliate holding liquor licenses with respect to the Demised Properties) shall provide reasonable cooperation to Landlord in transferring any liquor licenses to Landlord, or in assisting Landlord in obtaining a liquor license, where necessary or

advisable in Landlord's reasonable discretion. This Article shall survive any termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 36 INTERPRETATION; MISCELLANEOUS

Section 36.01 For purposes of this Lease, (a) the words "include", "includes" and "including" shall be deemed to be followed by the words "without limitation" (unless already expressly followed by such phrase), and (b) the words "herein", "hereof", "hereby", "hereto" and "hereunder" refer to this Lease as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Exhibits, and Schedules mean the Articles and Sections of, and the Exhibits and Schedules attached to, this Lease; (y) to a lease, instrument or other document means such lease, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Lease; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Lease to the same extent as if they were set forth verbatim herein. Titles to Articles and headings of Sections are inserted for convenience of reference only and shall not be deemed a part of or to affect the meaning or interpretation of this Lease. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any one or more of the members of the relevant class. All references in this Lease to sums denominated in dollars or with the symbol "\$" refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. Where a provision of this Lease requires that that consent of a party shall not be unreasonably withheld, or that such consent is in such party's reasonable discretion, such provision shall be deemed to require that such consent not be unreasonably withheld, conditioned, or delayed, and unless a party is expressly given hereunder the right to consent in its sole discretion, any consent required hereunder shall not be unreasonably withheld, conditioned or delayed.

Section 36.02 This Lease may be executed in counterparts and shall be binding on all the parties hereto as if one document had been signed. The delivery of an executed copy of this Lease by facsimile transmission shall have the same force and effect as the delivery of the original, signed copy of this Lease. Time is of the essence of every provision of this Lease. Any provision of this Lease explicitly providing for the performance by Tenant of obligations upon or after the expiration or termination of this Lease shall survive any such expiration or termination as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, such obligations shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant), unless otherwise provided. This Lease and the Exhibits attached hereto, all of which form a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Demised Properties, and there are no covenants, promises, agreements, conditions or understandings heretofore made, either oral or written, between them other than as herein set forth. No modification, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party. The captions, section numbers, and index 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 nor in any way affect this Lease. Nothing contained in this Lease shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of landlord and tenant. Except as

explicitly set forth in this Lease, there shall be no third party beneficiaries of this Lease or any of the agreements contained herein. The failure of Landlord or Tenant to insist upon strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any rights or remedies that party or any other such party may have, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

ARTICLE 37 QUIET ENJOYMENT SUBJECT TO DILIGENCE MATTERS

From and after the Commencement Date until the expiration or termination of the Lease Term, and provided no Event of Default has occurred, Landlord covenants that Tenant shall have quiet enjoyment of the Demised Properties, subject however, to all Diligence Matters.

ARTICLE 38 NO MERGER OF TITLE

There shall be no merger of this Lease with any of the leasehold estates created hereunder with any fee estate or other leasehold interest in any of the Demised Properties, whether by reason of the fact that the same Person may acquire, hold or own, directly or indirectly more than one or all of such legal interests in any Demised Property unless and until (a) under applicable Law such estates may be merged, and (b) all Persons having any leasehold interest or fee estate in any of the Demised Properties, or any part thereof sought to be merged, shall enter into a written agreement effecting such a merger under applicable Law and shall duly record same; provided, however, no such merger shall occur unless in each instance Landlord (if Landlord is a party to such estates) and any Landlord's Lender (if Landlord is a party to such estates) shall be a party to such agreement.

ARTICLE 39 ADDITIONAL CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES

(a) Tenant hereby represents, warrants and certifies to Landlord as follows: Tenant is not a "foreign person" within the meaning of Section 1445(f) of the Internal Revenue Code and, after making due inquiry, no person who owns a controlling interest in or otherwise controls Tenant is, (a) listed on the Specially Designated Nationals and Blocked Persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists") and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (b) a person (a "Designated Person") either (i) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (ii) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "Executive Orders"). Neither Tenant nor any person or entity who owns a controlling interest in or otherwise controls Tenant (x) is a person or entity with which Landlord is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law or (y) is a person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Orders or (z) is affiliated or associated with a person or entity listed in the preceding clause (x) or clause (y). To Tenant's knowledge, Tenant does not (I) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders or (II) engage in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. As used herein, "Anti-Terrorism Law" means the OFAC Laws and Regulations, the Executive Orders and the Uniting and Strengthening

America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as amended.

(b) Landlord hereby represents, warrants and certifies to Tenant as follows: Landlord is not a “foreign person” within the meaning of Section 1445(f) of the Internal Revenue Code and, after making due inquiry, no person who owns a controlling interest in or otherwise controls Landlord is (a) listed on any of the Lists; or (b) a Designated Person. Neither Landlord nor any person who owns a controlling interest in or otherwise controls Landlord is (x) a person or entity with which Tenant is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law or (y) a person or entity that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Orders or (z) is affiliated or associated with a person or entity listed in the preceding clause (x) or clause (y). To Landlord’s knowledge, Landlord does not (I) deal in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders or (II) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(c) Tenant hereby represents that, as of the Commencement Date, the organizational chart of Tenant attached hereto as Exhibit G is a true, correct and complete depiction of all direct and indirect equity interests in Tenant and its subsidiaries.

(d) Each of Tenant and Landlord hereby represents that it does not intend to apply the constant rental accrual method (within the meaning of section 1.467-3(d) of the Treasury Regulations promulgated under the Internal Revenue Code of 1986) to any Rent paid by Tenant under this Lease, unless required to do so pursuant to a final resolution of liability for any tax as determined by an applicable taxing authority.

ARTICLE 40 NO PLAN ASSETS; NO GOVERNMENT PLAN

Tenant represents that it is not and shall not at any time during the Lease Term become (1) an employee benefit plan defined in Section 3(3) of ERISA which is subject to ERISA, (2) a plan as defined in Section 4975(e)(1) of the Code which is subject to Section 4975 of the Code, (3) a “governmental plan” within the meaning of Section 3(32) of ERISA or (4) an entity any of whose underlying assets constitute “plan assets” of any such employee benefit plan, plan or governmental plan for purposes of Title I or ERISA, Section 4975 of the Code or any state statutes applicable to Persons regulating investments of governmental plans.

ARTICLE 41 BROKERS

Landlord and Tenant each (a) represents to the other party that such representing party has dealt with no broker or brokers in connection with the negotiation, execution and delivery of this Lease and (b) agrees to indemnify, defend, protect (with counsel selected by the indemnified party, subject to the approval of the indemnifying party (unless the indemnifying party is the Tenant and an Event of Default has occurred)) and hold such other party free and harmless of, from and against any and all Losses arising from (including all brokerage commissions and/or finder’s fees due or alleged to be due as a result of) any agreement or purported agreement made by such indemnifying party.

ARTICLE 42 INDEMNITIES NOT LIMITED

In no event shall any indemnification by Tenant of Landlord or any Landlord Party under this Lease or any other Transaction Document be limited by the existence or policy limits of any insurance carried by Tenant. In no event shall any indemnification by Landlord of Tenant under this Lease or any other Transaction Document be limited by the existence or policy limits of any insurance carried by Landlord (for the avoidance of doubt, Landlord is not required to carry any insurance pursuant to this Lease).

ARTICLE 43 STATE SPECIFIC PROVISIONS

Section 43.01 California. Without limiting the choice of law provision set forth in Article 26, the following provisions shall apply to the extent that the laws of the State of California govern the interpretation or enforcement of this Lease with respect to any Demised Properties located in the State of California:

(a) **Effect of Waivers.** Each of Landlord and Tenant hereby waives the benefits of California Civil Code Section 1542, which provides as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

(b) **Eminent Domain.** The provisions of this Lease, including those in Article 12, constitute an express agreement between Landlord and Tenant that applies in the event there is any taking of any part of the Demised Property for any public or quasi-public use under any statute or by right of eminent domain or by purchase in lieu thereof (collectively, “Condemnation”). Tenant and Landlord each hereby waives all rights it may have under California Code of Civil Procedure Section 1265.130, or otherwise, to terminate this Lease based on a total or partial Condemnation.

(c) **Damage and Destruction.** The provisions of this Lease, including those in Article 11, constitute an express agreement between Landlord and Tenant that applies in the event that any Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature. Landlord and Tenant, each therefore, fully waives the provisions of any statute or regulation, including California Civil Code Sections 1932(2) and 1933(4), relating to any rights or obligations concerning any such fire or other casualty.

(d) **Notices.** When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by California Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Article 17 shall replace and satisfy the statutory service-of-notice procedures, including those required by California Code of Civil Procedure Section 1162 or any similar or successor statute.

(e) **Remedies.** It is intended that Landlord shall have the remedy described in California Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign, the landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any

default by Tenant, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all rent as it becomes due.

Section 43.02 Nevada. With respect to any Demised Properties located in the State of Nevada:

(a) Prior to commencing any Alterations, Tenant shall (a) provide five Business Days prior written notice to Landlord, so that Landlord may post notices on and about the Demised Properties with respect to Landlord's non-responsibility for mechanics' liens (which Tenant shall not permit to be defaced or removed) and (b) at its expense either: (1) obtain and record with the Office of the County Recorder of the county in which the affected Demised Properties are located a surety bond that satisfies the requirements Nevada Revised Statutes ("NRS") §108.2403(2) or (2) establish a construction disbursement account as required by NRS §108.2403(1), and do each of the following: (i) notify each person who gives Tenant a notice of right to lien of the recording of the surety bond or establishment of the construction disbursement account as required by NRS §108.2403(2)(f); (ii) record a notice of posted security satisfying the requirements of NRS §104.2403; (iii) serve the notice of posted security upon persons in accordance with NRS §108.2403(2)(f); (iv) otherwise comply with all requirements of Chapter 108 of the NRS applicable to the construction of any such Alterations; and (v) provide evidence satisfactory to Landlord that Tenant has complied with the foregoing requirements.

(b) PURSUANT TO NRS §108.234(3)(e), LANDLORD HEREBY NOTIFIES TENANT THAT TENANT IS REQUIRED TO COMPLY WITH THE PROVISIONS OF NRS CHAPTER 108 APPLICABLE TO A LESSEE, WHICH PROVISIONS INCLUDE, AMONG OTHERS, OBTAINING SECURITY FOR MECHANICS' AND MATERIALMEN'S LIENS AND RECORDING A NOTICE OF POSTED SECURITY BEFORE CAUSING A WORK OF IMPROVEMENT TO BE CONSTRUCTED, ALTERED OR REPAIRED UPON PROPERTY THE LESSEE IS LEASING IN ACCORDANCE WITH NRS §108.2403. TENANT ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THE EFFECT OF THIS PROVISION AND NRS §108.2403.

Section 43.03 Arizona. Without limiting the choice of law provision set forth in Article 26, the following provisions shall apply to the extent that the laws of the State of Arizona govern the interpretation or enforcement of this Lease with respect to any Demised Properties located in the State of Arizona:

(a) Waiver. The provisions of this Lease, including those in Article 11, constitute an express agreement between Landlord and Tenant that applies in the event that any Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature. Each of Landlord and Tenant, therefore, fully waives the provisions of any statute or regulation, including Arizona Revised Statutes ("A.R.S.") Section 33-343, relating to any rights or obligations concerning any such fire or other casualty.

(b) Indemnity. In any instance in this Lease where the phrase "harmless of, from and against" or the phrase "harmless from and against" appears, such phrase is amended to read in its entirety as follows: "harmless of, for, from and against".

(c) Effective Rate of Interest. Tenant agrees to pay an effective rate of interest equal to the rate stated in this Lease and in any other documents evidencing the obligations of Tenant to Landlord, plus any additional rate, if any, resulting from any charge or fee in the nature of interest paid or

to be paid by Tenant in connection therewith, or any benefit received or to be received by Landlord in connection therewith.

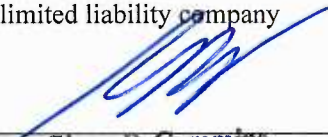
(d) Environmental Laws. The definition of “**Environmental Laws**” shall include, without limitation, the Arizona Hazardous Waste Management Act, A.R.S. Section 49-921 *et seq.*; and the Arizona Environmental Quality Act, A.R.S. Section 49-1001 *et seq.*

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the date first above written.

LANDLORD:

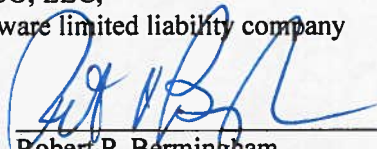
EM-50 UAV SLBCO LLC,
a Delaware limited liability company

By: 
Name: Glenn P. Cummins
Title: Treasurer

TENANT:

Y-OPCO, LLC,
a Delaware limited liability company

By:



Robert P. Bermingham
Vice President & Secretary

Signature Page

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

ACKNOWLEDGMENTS

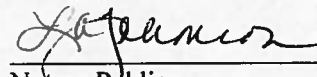
STATE OF California)
) ss.
COUNTY OF Los Angeles)

November

Robert P.

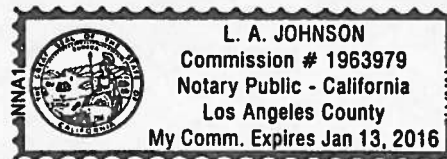
On this 21st day of , before me, the undersigned, personally appeared Bermingham, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)



Notary Public

My commission expires: 11/13/2016



[ACKNOWLEDGMENTS CONTINUE ON NEXT PAGE]

STATE OF New York)
COUNTY OF New York) ss.

On this 20th day of , before me, the undersigned, personally appeared Glenn P. Cummins, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)

Kathleen A. Halvey
Notary Public

My commission expires:

1/6/16

KATHLEEN A. HALVEY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01HA6179532
Qualified in New York County
My Commission Expires January 06, 2016

Acknowledgment

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

SCHEDULE 1

DEFINED TERMS

The following capitalized terms used in this Lease have the following meanings.

“AAA” means the American Arbitration Association or any successor thereto.

“Additional Tenant Properties” is defined in Section 34.02.

“Additional Rent” means any and all fees, expenses, taxes and charges of every kind and nature arising in connection with or relating to the Demised Properties that Tenant is obligated to pay under the terms of this Lease (other than Base Rent), including (i) any and all taxes (including Real Estate Taxes), fees, utility service charges, insurance premiums, and other costs, and any amounts owed by Tenant under any indemnity to Landlord hereunder, including as set forth in Article 9 and Article 29; (ii) all fees and penalties that may accrue on any amounts due from Tenant hereunder if Tenant fails to pay such amounts in a timely manner; and (iii) all other Losses that Landlord may suffer or incur in enforcing this Lease (whether or not any formal action is brought by Landlord against Tenant) or in otherwise taking actions permitted under this Lease following a Default (as hereinafter defined) by Tenant (including making Repairs (as hereinafter defined) and fulfilling other obligations of Tenant as provided in Article 7, and purchasing insurance required to be maintained by Tenant under this Lease, as provided in Article 10), or as a result of, arising out of, or in connection with any notice, request or other action by Tenant, whether or not expressly permitted by the terms of this Lease. In addition, “Additional Rent” includes any rent or other income received by Tenant from any subtenant of any Demised Property to the extent applicable to periods after the expiration or termination of this Lease as to such Demised Property.

“Adjustment Dates” is defined in Section 3.02(a).

“Affiliate” means in relation to any Person, any other Person: (i) directly or indirectly controlling, controlled by, or under common control with, the first Person; (ii) directly or indirectly owning or holding five percent or more of any equity interest in the first Person; or (iii) five percent or more of whose voting stock or other equity interest is directly or indirectly owned or held by the first Person. For purposes of this definition, “control” (including with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Without limiting the foregoing, the Affiliates of any Person that is an entity shall include all natural persons who are officers, agents, directors, members, partners, or employees of the entity Person.

“Allocated Base Rent Amount” is defined in Section 30.01.

“Alteration Information” is defined in Article 6.

“Alterations” is defined in Article 6.

“Arbitrator” is defined in Section 31.01.

“Arbitrator Appointment Notices” is defined in Section 31.01.

“**Base Date**” is defined in Section 3.02(a).

“**Base Rent**” is defined in Section 3.02(b).

“**Base Rent Escalation**” is defined in Section 3.02(a).

“**Base Rent Reduction Arbitration**” is defined in Section 11.02.

“**Base Rent Reduction Arbitration Date**” is defined in Schedule 4a.

“**Base Rent Reduction Arbitrator**” is defined in Schedule 4a.

“**Base Rent Reduction Arbitrator Appointment Notices**” is defined in Schedule 4a.

“**Base Rent Reduction Delinquent Party**” is defined in Schedule 4a.

“**Beneficial Owner**” is defined in Article 39.

“**Building Equipment**” is defined in the Recitals to this Lease.

“**Business Day**” means any day excluding (i) Saturday, (ii) Sunday, (iii) any day that is a legal holiday under the Laws of the State of New York or the State in which any of the Demised Properties is located, and (iv) any day on which banking institutions located in the State of New York or the State in which any of the Demised Properties is located are generally not open for the conduct of regular business.

“**Capital Alteration**” means an Alteration that consists of a capital repair and/or replacement to maintain or improve a Demised Property, including structural repairs, roof replacements, material HVAC repairs and replacements, material mechanical and plumbing repairs and replacements and material boiler repair and replacements.

“**Casualty Removal Arbitration**” is defined in Section 11.02.

“**Casualty Removal Arbitration Date**” is defined in Schedule 4b.

“**Casualty Removal Arbitrator**” is defined in Schedule 4b.

“**Casualty Removal Arbitrator Appointment Notices**” is defined in Schedule 4b.

“**Casualty Removal Delinquent Party**” is defined in Schedule 4b.

“**Code**” is defined in Section 31.01.

“**Commencement Date**” is defined in the first paragraph of this Lease.

“**Condemnation Date**” means, as to any Demised Property subject to condemnation, the earliest of (a) the date on which the applicable authority takes possession of such Demised Property, or portion thereof, or (b) the date on which title to such Demised Property, or portion thereof, is vested in the applicable authority.

“**Consideration Period**” is defined in Section 31.01.

SCHEDULE 1-2

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items (1982-84=100), published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI is not published for any month during the Lease Term, Landlord, in its reasonable discretion, shall substitute a comparable index published by the Bureau of Labor Statistics of the U.S. Department of Labor. If such an index is not published by the Bureau of Labor Statistics, Landlord, in its reasonable discretion, shall select a comparable index published by a nationally recognized responsible financial periodical.

“**De Minimis Amounts**” means, with respect to any given level of Hazardous Materials, that level or quantity of Hazardous Materials in any form or combination of forms, the use, storage or release of which does not constitute a violation of, or require regulation, remediation, reporting or monitoring under, any Environmental Laws and is customarily employed in the ordinary course of, or associated with, similar businesses located in the states in which the relevant Demised Property is located.

“**Deeds**” has the meaning set forth in the F&E Agreement.

“**Default**” is defined in Section 15.01.

“**Delinquent Party**” has the meaning set forth in Section 31.01.

“**Demised Properties**” is defined in the Recitals to this Lease.

“**Designated Person**” is defined in Article 39.

“**Diligence Matters**” is defined in Article 5.

“**Disclosures**” is defined in Section 23.02.

“**Due Diligence Information**” means (a) all studies, reports, agreements, leases, tax statements, zoning and other land use information, engineering and construction drawings, reports (including, without limitation, geotechnical reports, soils reports, and environmental reports) surveys, documents, plans, specifications, maps, permits, certificates of occupancy, and entitlements concerning or relating to any applicable Additional Tenant Property and (b) all audited and unaudited profit and loss statements of Tenant regarding such Additional Tenant Property for the most recent two (2) full calendar years and (c) such other information regarding or relating to Tenant or such Additional Tenant Property as may be reasonably requested by Landlord and in the possession or control of Tenant.

“**Eagle Rock Demised Property**” means the Demised Property located at 4211 Eagle Rock Blvd., Los Angeles, California 90065.

“**End of Term Casualty**” has the meaning set forth in Section 11.02.

“**Environmental Claims**” is defined in Section 29.04.

“**Environmental Conditions**” means the conditions of Environmental Media and the conditions of any part of the Demised Properties, including building or structural materials, that affect or may affect Environmental Media. Environmental Conditions include the Release of Hazardous Materials to Environmental Media.

“Environmental Guidance Standards” means guidance documents, health and safety screening standards, policy manuals, remedial action guidelines, public health goals, risk screening levels, vapor intrusion investigation and mitigation guidance, and similar policy or procedure documents which a Governmental Authority has published, made publicly available, and which a reputable, experienced and credentialed environmental professional likely would consult or employ in undertaking a voluntary project, or which a Governmental Authority likely would employ if overseeing an investigation, risk assessment, abatement, remediation, monitoring, or longer term “operations and maintenance” work at the applicable Demised Property. Examples, without limitation, are US EPA Region IX Preliminary Remediation Goals, the LUFT Fuel Manual, California Regional Water Quality Control Board Risk Based Screening Levels and Cal EPA, DTSC’s Final Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion into Indoor Air.

“Environmental Laws” means any federal, state or local law, statute, ordinance, permit condition, regulation or written policy pertaining to public or worker health or safety, natural resources, climate change, or the regulation or protection of the indoor or outdoor environment, the regulation or reporting of Hazardous Materials, including the following: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq. as amended (“CERCLA”), the Solid Waste Disposal Act, 42 U.S.C. §§ 6901, et seq. as amended (“RCRA”), the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C. §§ 1251, et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601, et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001, et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 USC §§ 7401, et seq.; the National Environmental Policy Act of 1970, as amended, 42 USC §§ 4321, et seq.; the Rivers and Harbors Act of 1899, as amended, 33 USC §§ 401, et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. §§ 801, et seq. the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531, et seq.; the Occupational Safety and Health Act of 1970, as amended 29 U.S.C. §§ 651, et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f), et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq. as amended, and all regulations, published governmental policies, and administrative or judicial orders promulgated under or implementing or enforcing said laws; and (ii) all state or local laws which implement the foregoing federal laws or which pertain to public health and safety, occupational health and safety, natural resources or environmental protection, or the regulation or reporting of Hazardous Materials, all as amended from time to time, and all regulations, published governmental policies, and administrative or judicial orders promulgated under the foregoing laws; (iii) all federal and state common law, including the common law of public or private nuisance, trespass, negligence or strict liability, where such common law pertains to public health and safety, occupational health and safety, natural resources, and environmental protection.

“Environmental Media” means soil, fill material, or other geologic materials at all depths, groundwater at all depths, surface water including storm water and sewerage, indoor and outdoor air, and all living organisms, including all animals and plants, whether such Environmental Media are located on or off the Demised Properties. For purposes of this Lease groundwater underlying any Demised Property shall be deemed part of such Demised Property even if such groundwater is owned by a third party.

“ER Environmental Covenant” is defined in Schedule 29.08.

“ERISA” means the Employee Retirement Income Security Act of 1974, and all rules and regulations promulgated thereunder.

“Estoppel Certificate” is defined in Article 24.

“Event of Default” is defined in Section 15.01.

“Excluded Personal Property” is defined in the Recitals to this Lease.

“Executive Orders” is defined in Article 39.

“Existing Environmental Conditions” means those Environmental Conditions which exist as of the Commencement Date, due to an act or omission by any person at any time prior to the Commencement Date, in, on, under at, about any Demised Property, or any Hazardous Materials migrating to or from such Demised Property. Existing Environmental Conditions include any “daughter” or “breakdown” Hazardous Materials for any original Release that pre-dates the Lease Term. Existing Environmental Conditions shall not include Environmental Conditions which are the subject of a final “case closure” or “no further action” determination by a Governmental Authority, unless during the Lease Term: (1) a Governmental Authority reopens the matter, or (2) Tenant or any person fails to comply with any applicable activity and use limitations respecting the Environmental Conditions, or (3) changes in Law, including Environmental Law, require the Existing Environmental Conditions be addressed.

“Extension Notice” is defined in Section 2.02(a).

“F&E Agreement” means that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of November 21, 2013 by and among Fresh & Easy Neighborhood Market, Inc., a Delaware corporation and Fresh & Easy Property Co. LLC, a Delaware limited liability company and Landlord.

“Failing Party” has the meaning set forth in Section 31.01.

“First Option Extension Properties” is defined in Section 2.02(c).

“First Option Period” is defined in Section 2.02(a).

“GAAP” means generally accepted accounting principles as in effect in the United States of America from time to time.

“Governmental Authority” means (i) any international, foreign, federal, state, county or municipal government, or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (iii) any court, administrative tribunal or public utility.

“Hazardous Materials” means any ignitable, reactive, explosive, corrosive, carcinogenic, mutagenic, toxic or radioactive material, whether virgin material, secondary material, by-product, waste or recycled material, defined, regulated or designated as a contaminant, pollutant, hazardous or toxic substance, material, waste, contaminant or pollutant under any Environmental Laws or any other federal, state or local law, statute, regulation, ordinance, or governmental policy presently in effect or as amended or promulgated in the future, and shall specifically include: (i) those materials included within the definitions of “hazardous substances,” “extremely hazardous substances,” “hazardous materials,” “toxic substances” “toxic pollutants,” “hazardous air pollutants” “toxic air contaminants,” “solid waste,” “hazardous waste,” “pollutants,” contaminants,” “greenhouse gasses” or similar categories under any Environmental Laws; and (ii) specifically including any material, waste or substance that contains: (A) petroleum or petroleum derivatives byproducts, including crude oil and any fraction thereof and waste oil; (B) asbestos; (C) polychlorinated biphenyls; (D) formaldehyde; (E) radon; and (F) any methane. If not

already defined as a Hazardous Material under any of the foregoing terms, mold and fungi of any type or concentration shall be deemed a Hazardous Material hereunder if present in any Improvements under such conditions or circumstance as to represent a condition hazardous to human health or safety. Hazardous Materials may be man-made or naturally occurring.

“Holdback Agreement” has the meaning set forth in the Omnibus Agreement.

“Improvements” is defined in the Recitals to this Lease.

“Land” is defined in the Recitals to this Lease.

“Landlord” is defined in the first paragraph of this Lease.

“Landlord Assignment Lease Agreement” is defined in Section 30.01.

“Landlord Award Amount” means the amount of the award actually received by Landlord for any taking of any portion of any Demised Property, less any and all costs and expenses incurred by Landlord in connection with such taking (including any and all costs and expenses incurred by Landlord in connection with obtaining such award).

“Landlord Parties” means, collectively, (i) Landlord, Affiliates of Landlord, Landlord’s Lenders and any Landlord’s Mortgagee, and (ii) any members, partners, shareholders, officers, directors, employees, agents, attorneys, contractors, affiliates, heirs, successors or assigns of any of Landlord, Affiliates of Landlord, Landlord’s Lenders, or any Landlord’s Mortgagee.

“Landlord Review Period” is defined in Section 34.02.

“Landlord’s Account” is defined in Section 3.01.

“Landlord’s Lenders” means any persons or entities providing financing to Landlord or Affiliates of Landlord.

“Landlord’s Mortgagee” means any Persons holding a mortgage, deed of trust, deed to secure debt or similar instrument encumbering Landlord’s interest in the Demised Properties or portion thereof (whether or not any such Person is also a Landlord’s Lender).

“Late Fee” is defined in Section 15.06.

“Law” means all international, foreign, federal, state and local statutes, treaties, rules, regulations, ordinances, codes, directives, orders, or written policies issued pursuant thereto, and published administrative or judicial precedents.

“Lease” is defined in the first paragraph of this agreement.

“Lease Term” is defined in Section 2.01(a).

“Leasehold Mortgage” means any leasehold deed of trust, mortgage, deed to secure debt, assignment of leases and rents, assignment, security agreement, or other security document securing financing from a lender of Tenant and encumbering Tenant’s leasehold interest in any Demised Property.

“Licensed Equipment” is defined in the Recitals to this Lease.

“Liens” means liens, security interests, charges and encumbrances.

“Lists” is defined in Article 39.

“Losing Party” has the meaning set forth in Section 31.01.

“Losses” means all losses, claims, demands, actions, causes of action, settlements, obligations, duties, indebtedness, debts, controversies, remedies, choses in action, liabilities, costs, penalties, fines, damages, injuries, judgments, forfeitures, or expenses (including reasonable attorneys’, consultant, testing and investigation and expert fees and court costs), whether known or unknown, and whether liquidated or unliquidated.

“Minor Project” means (i) a non-structural minor maintenance or repair project or (ii) a “cosmetic refresh” project involving only painting, carpeting, floor covering and installation of moveable replacement Tenant Equipment and similar items, unless in either case (i) or (ii) the costs exceed, in the aggregate for any such project, for any affected Demised Property, \$500,000.

“Notice Date” has the meaning set forth in Section 31.01.

“OFAC” is defined in Article 39.

“OFAC Laws and Regulations” is defined in Article 39.

“Omnibus Agreement” means that certain Omnibus Agreement and Joint Escrow Instructions, by and between Landlord and Tenant.

“Option Period” is defined in Section 2.02(a).

“Original Lease Term” is defined in Section 2.01(a).

“Other Lease Event of Default” means an “Event of Default” (as defined in any Other Lease) under any Other Lease.

“Other Lease Option Period” means any “Option Period” (as defined in any Other Lease) under any Other Lease.

“Other Leases” means that certain Master Land and Building Lease (Portfolio 1) dated as of the date hereof by and between Landlord and Tenant, together with that certain Land and Building Lease (Distribution Center) dated as of the date hereof by and between Landlord and Tenant, and each an **“Other Lease”**.

“Other Leases First Option Extension Properties” means those Portfolio Properties listed on an “Extension Notice” (as defined in the applicable Other Lease) given pursuant to an Other Lease that Tenant desires be subject to an extension pursuant to Section 2.02(c) of such Other Lease.

“Other Leases Second Option Extension Properties” means those Portfolio Properties listed on an “Extension Notice” (as defined in the applicable Other Lease) given pursuant to an Other Lease that Tenant desires be subject to an extension pursuant to Section 2.02(e) of such Other Lease.

“Other Leases Third Option Extension Properties” means those Portfolio Properties listed on an “Extension Notice” (as defined in the applicable Other Lease) given pursuant to an Other Lease that Tenant desires be subject to an extension pursuant to Section 2.02(g) of such Other Lease.

“Other Lists” is defined in Article 39.

“Other Parties” is defined in Section 29.02.

“PE First Option” is defined in Section 2.02(c).

“PE First Option Period” is defined in Section 2.02(c).

“PE Option” is defined in Section 3.02(a).

“PE Option Initial Base Rent” is defined in Section 3.02(a).

“PE Option Extension Properties” is defined in Section 3.02(a).

“PE Option Period” is defined in Section 3.02(a).

“PE Second Option” is defined in Section 2.02(e).

“PE Second Option Period” is defined in Section 2.02(e).

“PE Third Option” is defined in Section 2.02(g).

“PE Third Option Period” is defined in Section 2.02(g).

“Permitted Assignee” is defined in Section 22.01(b).

“Permitted Liens” means (i) Liens to secure claims for labor, material or supplies in respect of obligations not overdue; (ii) Liens in respect of judgments or awards that have been in force for less than the applicable period for making an appeal so long as execution is not levied thereunder or in respect of which Tenant shall at the time in good faith be prosecuting an appeal or proceedings for review and in respect of which a stay of execution shall have been obtained pending such appeal or review; (iii) Liens of carriers, warehousemen, mechanics and materialmen and other like Liens that have been in existence less than 120 days after the date of creation thereof in respect of obligations not overdue; and (iv) purchase money Liens on Tenant Equipment to secure purchase money indebtedness incurred in connection with the acquisition of such Tenant Equipment, which Liens cover only the Tenant Equipment so acquired.

“Permitted Uses” means any lawful retail use other than the uses listed on Schedule 3.

“Person” means an individual, corporation, partnership, joint venture, association, joint-stock company, trust, estate, limited liability company, non-incorporated organization or association, or any other entity, any Government Authority or any agency or political subdivision thereof.

“Petition” means a petition in bankruptcy (including any such petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief) under the Bankruptcy Code of the United States of America, or under any other present or future federal or state statute, law or regulation of similar intent or application.

“Portfolio Properties” means each Demised Property together with each “Demised Property” as defined in the Other Leases.

“Rating Agency” means any of the following: Standard & Poor’s Ratings Group; Moody’s Investors Service, Inc.; Fitch Ratings, Inc.; and any other nationally-recognized statistical rating agency.

“Real Estate Taxes” means (i) all taxes and general and special assessments and other impositions in lieu thereof, or as a supplement thereto and any other tax measured by the value of real property and assessed on a uniform basis against the owners of real property, including any substitution in whole or in part therefor due to a future change in the method of taxation, and including any increase in any of the foregoing resulting from any sale, exchange, mortgage, encumbrance, or other disposition by Landlord, in each case assessed against, or allocable or attributable to, any of the Demised Properties and accruing during or prior to the Lease Term, and (ii) all transfer taxes imposed in connection with this Lease, and any and all transfer taxes assessed against, or allocable or attributable to, any of the Demised Properties and accruing during or prior to the Lease Term (except that the transferor or transferee, as applicable, shall pay all transfer taxes attributable to transfers to third parties during the Lease Term). For the avoidance of doubt, the term “Real Estate Taxes” shall include any interest or penalty, addition to tax or other additional amount imposed with respect to the foregoing clauses (i) and (ii).

“Reassessment” is defined in Section 3.03(c).

“Release” means any active or passive spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into any Environmental Media. For the purposes of this Lease, “Release” also includes any threatened Release.

“Remedial Activities” means any investigation, work plan preparation removal, repair, cleanup, abatement, remediation, monitored natural attenuation, natural resource damage assessment and restoration, closure, post-closure, detoxification or remedial activity of any kind whatsoever necessary to address Environmental Conditions.

“REMICs” is defined in Section 31.01.

“Rent” means Base Rent plus Additional Rent.

“Repairs” means all replacements (other than Restoration Work and restoration in connection with eminent domain), renewals, alterations, additions and betterments necessary for Tenant to properly maintain each Demised Property in good order and condition, safe and fit for its permitted use under this Lease.

“Replaced Property” is defined in Section 31.01.

“Replacement Property” is defined in Section 31.01.

“Restoration Work” is defined in Section 11.01.

“Santa Barbara Demised Property” means the Demised Property located at 324-336 N. Milpas St. and 918 E. Gutierrez Street, Santa Barbara, California 93103.

“SB Environmental Covenant” is defined in Schedule 29.08.

“SDN List” is defined in Article 39.

“Second Option Extension Properties” is defined in Section 2.02(e).

“Second Option Period” is defined in Section 2.02(a).

“SNDA” is defined in Section 23.01.

“Subordination and Attornment Provisions” is defined in Section 22.01(b).

“Subtenant Minor Project” means (i) a non-structural minor maintenance or repair project or (ii) a “cosmetic refresh” project involving only painting, carpeting, floor covering and installation of moveable replacement Tenant Equipment and similar items, unless the costs exceed, in the aggregate for any such project, for any affected Demised Property, the percentage of the square footage of such Demised Property subject to subtenant’s sublease multiplied by \$500,000.

“Subtenant SNDA” is defined in Section 23.01.

“Tenant” is defined in the first paragraph of this Lease.

“Tenant Equipment” is defined in the Recitals to this Lease.

“Tenant’s Lender” means any lender of Tenant that holds a Leasehold Mortgage.

“Tenant Review Period” is defined in Section 34.01.

“Third Option Extension Properties” is defined in Section 2.02(g).

“Third Option Period” is defined in Section 2.02(a).

“Third-Party Option Property” means any Demised Property encumbered by or subject to any agreement or other instrument which contains a purchase right, termination right, recapture right, reversion of title, or option in favor of any third party that is exercisable upon the occurrence of certain events or circumstances described in such agreement or other instrument.

“Transaction Documents” means, collectively, this Lease, the Other Leases, the Omnibus Agreement and the Deeds, each of which are dated of even date herewith, and any other agreements entered into by and between Landlord and Tenant regarding any of the foregoing or the Demised Properties.

“Transfer Parties” is defined in Section 23.02.

“Unreimbursed Costs” means any fees or other costs that are not reimbursed or subject to reimbursement pursuant to applicable Law or regulations, insurance, contractual indemnities or any other means.

“Use” means the receipt, handling, generation, storage, treatment, recycling, disposal, transfer, transportation, introduction, or incorporation into, on, about, under or from the Demised Properties.

“**Winning Party**” has the meaning set forth in Section 31.01.

SCHEDULE 2

EXCLUDED PERSONAL PROPERTY

Stores: The following property shall be Tenant's Equipment, not Building Equipment:

- Refrigeration Equipment (Cases, Compressors, Racks – excluding HVAC and any walk-in coolers or freezers)

SCHEDULE 3

Permitted Use Exceptions

“Permitted Uses” shall not include:

- (1) any unlawful use;
- (2) any use which constitutes a public or private nuisance or produces objectionable noise, smell or vibration;
- (3) any noise or sound audible beyond the boundaries of a tenant’s space that is reasonably objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (4) tanning, bowling alley, karate center, skating rink, or other live sports facility other than a first class or nationally recognized gym, fitness center or spa;
- (5) any laundromat or commercial laundry or dry cleaning plant (other than shops serving as a drop-off and pick-up cleaning establishment which do no processing on their premises);
- (6) funeral parlor, crematorium, mortuary or similar service;
- (7) off track betting or bingo parlor, or other betting or gambling establishment;
- (8) any liquor store (a grocery store or similar establishment that sells liquor with such sales representing 20% or less of gross sales shall not be an excluded use) other than a first class wine boutique or nationally recognized chain such as BevMo;
- (9) any tavern or bar, billiard, pool room; provided, however, that first class restaurants with food service as a primary function that also serve liquor such as Applebee’s or Chili’s shall not be prohibited uses;
- (10) any cash for gold, or so called “second hand” or surplus store, pawn shop, flea market, swap meet, junk yard, or auction fire sale, liquidation, second hand or surplus store or flea market (excluding any store that is part of a recognized national or regional chain of first class stores selling second hand merchandise, including, but not limited to, Funcholand, Play It Again Sports and Once Upon A Child, and excluding quality antique stores);
- (11) massage parlor (excluding (a) facilities for therapeutic massage incidental to a permitted retail use such as a first class or nationally recognized day spa and (b) nationally recognized massage chains of comparable quality to Massage Envy);
- (12) living quarters (including, without limitation, drug rehabilitation or “halfway” house) or for residential purposes;
- (13) theater (movie or live), movie theater, auditorium or meeting hall, catering or banquet facility, night club, discotheque, dance hall or ballroom; provided, however, that use of electronic media incidental to another permitted use shall not be a prohibited use
- (14) church or other place of public assembly or religious worship, except that retail stores selling religious merchandise are expressly not prohibited;
- (15) any gun range or use which involves any unusual firing, explosive or other damaging or dangerous hazard (including the storage, display or sales of explosives or fireworks);
- (16) pornographic use (i.e., the exhibition, sale or display of sexually explicit printed materials, audio or video tapes, videocassettes, or film, or sexual devices or sexually oriented entertainment unless, (i) incidental to a permitted use, (ii) permitted by law, and (iii) commonly exhibited, sold, rented or displayed in first class shopping centers similar in the metropolitan area where the property is located), adult book or video tape store (i.e., stores a significant part of the inventory of which is not available for sale or rental to

SCHEDULE 3

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- children under 15 years old because such inventory explicitly deals with or depicts human sexuality);
- (17) hotel or motel;
 - (18) school (except training incidental to a retail use; provided same is conducted within the applicable retail premises), library, reading room, beauty school, barber college or house of worship;
 - (19) drug paraphernalia store or so called "head" shop;
 - (20) medical marijuana store;
 - (21) any car wash or the performance of any automobile or boat body and fender repair work or other business servicing boats or motor vehicles (including quick lube oil change service, tire center, gasoline or service station, dispensing of petroleum products);
 - (22) any trailer court, mobile home park, sales office or lot for sale, rental or leasing of new or used boats, automobiles, motorcycles, trucks, mobile homes, trailers or other vehicles, labor camp, junk yard, stock yard;
 - (23) off track betting, gambling, gaming or check cashing facility (other than a bona fide banking institution);
 - (24) Amusement park, carnival, circus, fair, disco, nightclub or other entertainment facility including video game room, pool hall, arcade, indoor children's recreational facility or other amusement center (provided, however, that incidental interactive kiosks, games and equipment related to the otherwise permitted primary use of an owner, occupant or tenant, will not be prohibited hereunder);
 - (25) any business operated primarily only on a seasonal or part time basis;
 - (26) any office use; provided that the foregoing shall not prohibit (i) office use which is incidental to a retail operation and which is conducted from within the applicable retail premises, and (ii) quasi-retail offices providing services to the general public and customarily found in first class retail shopping centers in the metropolitan area where the applicable Demised Property is located (such as medical or dental services, travel agencies, insurance services, and real estate offices);
 - (27) animal raising or boarding (other than pet supply stores and veterinarian offices that are an incidental use in a national or regional pet store, provided the same does not sell animals raised in puppy mills);
 - (28) any assembling, manufacturing, distribution facility;
 - (29) any factory, processing or rendering plant, warehouse or storage facility (except reasonable storage of items incidental to another permitted use);
 - (30) any noxious, toxic, caustic or corrosive fuel or gas;
 - (31) any dust, dirt or fly-ash in excessive quantities;
 - (32) any heavy industrial use or for a purpose which causes strong or offensive odors, fumes, dust or vapors and/or untidiness; provided, however, that restaurants are not precluded hereby; any distilling, refining, smelting, agriculture or mining operation; or drilling for or removal of subsurface substances, dumping, disposal, incineration or reduction of garbage or refuse (other than handling or reducing such waste produced on the premises from otherwise authorized uses and, in such latter event, only if handled in a reasonably clean and sanitary manner), provided, however, that such activities will be permitted in connection with the construction of buildings and tenant improvements).

SCHEDULE 4a

Base Rent Reduction Arbitration

In the event that Landlord and Tenant fail agree on the monthly fair market rental for any applicable Demised Property in connection with the determination of a Base Rent reduction pursuant to Section 11.02 or Section 12.05 then:

(1) Submission of Proposed Base Rent. Within five (5) days after the date provided in Section 11.02 or Section 12.05, as applicable, that Landlord and Tenant shall submit to Base Rent Reduction Arbitration (the “**Base Rent Reduction Arbitration Date**”), (a) Landlord shall deliver to Tenant an appraisal setting forth an estimate of the monthly fair market rental for the applicable Demised Property or applicable portion thereof together with any supporting documentation for its assertion, and (b) Tenant shall deliver to Landlord an appraisal setting forth an estimate of the monthly fair market rental for the applicable Demised Property or applicable portion thereof together with any supporting documentation for its assertion. If either party fails to deliver its appraisal to the other party on or before the last day of such five (5)-day period, but the other party delivers its appraisal on or before the last day of such five (5)-day period, the assertion supported by such other party’s appraisal delivered pursuant to this subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such five (5)-day period.

(2) Appointment and Qualifications of Arbitrator. If the arbitration is not deemed concluded pursuant to subsection (1), above, then within fifteen (15) days after the Base Rent Reduction Arbitration Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous ten-year (10-year) period in the appraisal of net leased retail properties within the county in which the applicable Demised Property is located (each such appraiser chosen pursuant to this subsection (2), a “**Base Rent Reduction Arbitrator**”). Each of Landlord and Tenant shall notify the other party, in writing, of its Arbitrator (and the business address thereof) within two (2) Business Days after the appointment thereof (collectively, the “**Base Rent Reduction Arbitrator Appointment Notices**”). Each of Landlord and Tenant agrees that any Arbitrator may be (but is not required to be) an appraiser who prepared one or both of the appraisals delivered by Landlord and Tenant pursuant to subsection (1), above.

(3) Appointment of Third Arbitrator. If each party appoints a Base Rent Reduction Arbitrator and notifies the other party in accordance with subsection (2), above, then the two Base Rent Reduction Arbitrators shall, within ten (10) days after delivery of the later of the two Base Rent Reduction Arbitrator Appointment Notices, agree on and appoint a third Base Rent Reduction Arbitrator (whom shall be a licensed real estate appraiser with all other qualifications for the initial two Base Rent Reduction Arbitrators chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Base Rent Reduction Arbitrator and the business address thereof. If the two Base Rent Reduction Arbitrators fail to agree on and appoint a third Base Rent Reduction Arbitrator within such ten (10) day period, then either Landlord or Tenant may elect to have the third Base Rent Reduction

Arbitrator selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Base Rent Reduction Arbitrator and the parties shall cooperate reasonably with each other and the AAA (including by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Base Rent Reduction Arbitrator. If any fees of the third Base Rent Reduction Arbitrator or the AAA are required to be paid in advance (prior to the completion of the arbitration procedure described in this Schedule) in order for such Base Rent Reduction Arbitrator, or the AAA, as the case may be, to commence or continue its work in connection with the arbitration described in this Schedule, each party shall promptly pay one-half of such fees as and when due, and if either Landlord or Tenant fails to pay its one-half share of any such fees as and when due (such party is referred to in this Schedule as the “**Base Rent Reduction Delinquent Party**”), and the other party does pay its one-half share of any such fees as and when due, then if the Base Rent Reduction Delinquent Party fails to pay its one-half share of all such fees within ten (10) days after written notice from the other party, the assertion supported by such other party’s appraisals delivered pursuant to subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such ten (10)-day period.

(4) Base Rent Reduction Arbitrators’ Decision. If the arbitration is not previously deemed concluded pursuant to subsection (3), above, then within thirty (30) days after the appointment of the third Base Rent Reduction Arbitrator, the three Base Rent Reduction Arbitrators shall decide the appraisal that best estimates the monthly fair market rental for the applicable Demised Property or applicable portion thereof and shall notify Landlord and Tenant in writing of each Base Rent Reduction Arbitrator’s decision. The determination of each Base Rent Reduction Arbitrator shall be limited to the sole issue of, and each Base Rent Reduction Arbitrator shall have neither the right nor the power to determine any issue other than, the monthly fair market rental for the applicable Demised Property or applicable portion thereof, as determined by such Base Rent Reduction Arbitrator. The decision of the majority of the three Base Rent Reduction Arbitrators shall be binding on Landlord and Tenant (subject to subsection (5), below), and the arbitration shall be deemed concluded upon delivery to Landlord and Tenant of such notifications of the Base Rent Reduction Arbitrators’ decisions.

(5) If Only One Base Rent Reduction Arbitrator Is Appointed. If the arbitration is not previously deemed concluded pursuant to subsection (1), and if either Landlord or Tenant fails to appoint a Base Rent Reduction Arbitrator within fifteen (15) days after the Base Rent Reduction Arbitration Date or fails to deliver a Base Rent Reduction Arbitrator Appointment Notice in accordance with subsection (2), above, and the other party does appoint a Base Rent Reduction Arbitrator within such fifteen (15) day period and delivers a Base Rent Reduction Arbitrator Appointment Notice in accordance with subsection (2), above, then the Base Rent Reduction Arbitrator timely appointed by such other party shall reach a decision regarding the applicable Base Rent reduction, as determined by such Base Rent Reduction Arbitrator, and notify Landlord and Tenant of that decision within thirty (30) days after such Base Rent Reduction Arbitrator’s appointment. Such decision of the Base Rent Reduction Arbitrator shall be binding on Landlord and Tenant, and the arbitration shall be deemed concluded upon delivery of such notification of the Base Rent Reduction Arbitrator’s decision.

(6) Cost of Base Rent Reduction Arbitration. If the Base Rent Reduction Arbitrators (or Base Rent Reduction Arbitrator, pursuant to subsection (5), above)

determine that the monthly fair market rental for the applicable Demised Property or applicable portion thereof is closer to Tenant's estimate of the applicable Base Rent reduction, then Tenant shall be deemed the "**Removal Base Rent Winning Party**" under this subsection (6) and Landlord shall be deemed the "**Removal Base Rent Losing Party**" under this subsection (6). If the Base Rent Reduction Arbitrators (or Base Rent Reduction Arbitrator, pursuant to subsection (5), above) determine that the monthly fair market rental for the applicable Demised Property or applicable portion thereof is closer to Landlord's estimate of the applicable Base Rent reduction, then Landlord shall be deemed the "**Removal Base Rent Winning Party**" under this subsection (6) and Tenant shall be deemed the "**Removal Base Rent Losing Party**" under this subsection (6). In addition, in the event the arbitration is deemed concluded due to a party not timely delivering its estimate as described in subsection (1), or a Base Rent Reduction Delinquent Party failing to pay its share of fees after written notice as described in subsection (3), such failing party or Base Rent Reduction Delinquent Party (as the case may be) shall be deemed the "**Removal Base Rent Losing Party**" under this subsection (6), and the party that is not such failing party or Base Rent Reduction Delinquent Party (as the case may be) shall be deemed the "**Removal Base Rent Winning Party**" under this subsection (6). Each party shall initially pay the fees and expenses of its legal counsel, appointed arbitrator, any written reports prepared by any appraiser in connection with its duties under this Schedule, one-half of the fees of the third arbitrator, and one-half the fees of the AAA (if applicable), provided, however, that the Removal Base Rent Losing Party shall be obligated to reimburse the Removal Base Rent Winning Party for all such fees and expenses of the arbitration paid by the Removal Base Rent Winning Party promptly upon the completion of the arbitration procedure described in this Schedule.

SCHEDULE 4b**Casualty Removal Arbitration**

In the event that Landlord and Tenant fail to agree on whether the cost to complete the Restoration Work at the relevant Demised Property is in excess of twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property pursuant to Section 11.02 then:

(1) Submission of Proposed Value. Within five (5) days after the date provided in Section 11.02 that Landlord and Tenant shall submit to Casualty Removal Arbitration (the “**Casualty Removal Arbitration Date**”), (a) Landlord shall deliver to Tenant its estimate of the cost to complete such Restoration Work together with an MAI fair market value appraisal for the replacement value of such Demised Property supporting its assertion that the cost to complete the Restoration Work at the relevant Demised Property is less than or equal to twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property, and (b) Tenant shall deliver to Landlord its estimate of the cost to complete such Restoration Work together with an MAI fair market value appraisal for the replacement value of such Demised Property supporting its assertion that the cost to complete the Restoration Work at the relevant Demised Property is greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property. If either party fails to deliver its estimate and appraisal to the other party on or before the last day of such five (5)-day period, but the other party delivers its estimate and appraisal to the failing party on or before the last day of such five (5)-day period, the assertion supported by such other party’s estimate and appraisal delivered pursuant to subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such five (5)-day period.

(2) Appointment and Qualifications of Arbitrator. If the arbitration is not deemed concluded pursuant to subsection (1), above, then within fifteen (15) days after the Casualty Removal Arbitration Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous ten-year (10-year) period in the appraisal of grocery stores or other applicable Permitted Uses within the county in which the applicable Demised Property is located (each such appraiser chosen pursuant to this subsection (2), a “**Casualty Removal Arbitrator**”). Each of Landlord and Tenant shall notify the other party, in writing, of its Casualty Removal Arbitrator (and the business address thereof) within two Business Days after the appointment thereof (collectively, the “**Casualty Removal Arbitrator Appointment Notices**”). Each of Landlord and Tenant agrees that any Casualty Removal Arbitrator may be (but is not required to be) an appraiser who prepared one or both of the replacement value appraisals delivered by Landlord and Tenant pursuant to subsection (1), above.

(3) Appointment of Third Casualty Removal Arbitrator. If each party appoints a Casualty Removal Arbitrator and notifies the other party in accordance with subsection (2), above, then the two Casualty Removal Arbitrators shall, within ten (10) days after delivery of the later of the two Casualty Removal Arbitrator Appointment Notices, agree on and appoint a third Casualty Removal Arbitrator (whom shall be a licensed real estate appraiser with all other qualifications

for the initial two Casualty Removal Arbitrators chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Casualty Removal Arbitrator and the business address thereof. If the two Casualty Removal Arbitrators fail to agree on and appoint a third Casualty Removal Arbitrator within such ten (10) day period, then either Landlord or Tenant may elect to have the third Casualty Removal Arbitrator selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Casualty Removal Arbitrator and the parties shall cooperate reasonably with each other and the AAA (including by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Casualty Removal Arbitrator. If any fees of the third Casualty Removal Arbitrator or the AAA are required to be paid in advance (prior to the completion of the arbitration procedure described in this Schedule) in order for such Casualty Removal Arbitrator, or the AAA, as the case may be, to commence or continue its work in connection with the arbitration described in this Schedule, each party shall promptly pay one-half of such fees as and when due, and if either Landlord or Tenant fails to pay its one-half share of any such fees as and when due (such party is referred to in this Schedule as the “**Casualty Removal Delinquent Party**”), and the other party does pay its one-half share of any such fees as and when due, then if the Casualty Removal Delinquent Party fails to pay its one-half share of all such fees within ten (10) days after written notice from the other party, the assertion supported by such other party’s estimate and appraisal delivered pursuant to subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such ten (10)-day period.

(4) Arbitrators’ Decision. If the arbitration is not previously deemed concluded pursuant to subsection (3), above, then within thirty (30) days after the appointment of the third Casualty Removal Arbitrator, the three Casualty Removal Arbitrators shall decide whether the estimated cost to complete such Restoration Work is equal to or greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property and shall notify Landlord and Tenant in writing of each Casualty Removal Arbitrator’s decision. The determination of each Casualty Removal Arbitrator shall be limited to the sole issue of, and each Casualty Removal Arbitrator shall have neither the right nor the power to determine any issue other than, whether the estimated cost to complete such Restoration Work is equal to or greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property, as determined by such Casualty Removal Arbitrator. The decision of the majority of the three Casualty Removal Arbitrators shall be binding on Landlord and Tenant (subject to subsection (5), below), and the arbitration shall be deemed concluded upon delivery to Landlord and Tenant of such notifications of the Casualty Removal Arbitrators’ decisions.

(5) If Only One Casualty Removal Arbitrator Is Appointed. If the arbitration is not previously deemed concluded pursuant to subsection (1), and if either Landlord or Tenant fails to appoint a Casualty Removal Arbitrator within fifteen (15) days after the Casualty Removal Arbitration Date or fails to deliver a Casualty Removal Arbitrator Appointment Notice in accordance with subsection (2), above, and the other party does appoint a Casualty Removal Arbitrator within such fifteen (15) day period and delivers a Casualty Removal Arbitrator Appointment Notice in accordance with subsection (2), above, then the Casualty Removal Arbitrator timely appointed by such other party shall reach a decision regarding whether the

estimated cost to complete such Restoration Work is greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property, as determined by such Casualty Removal Arbitrator, and notify Landlord and Tenant of that decision within thirty (30) days after such Casualty Removal Arbitrator's appointment. Such decision of the Casualty Removal Arbitrator shall be binding on Landlord and Tenant, and the arbitration shall be deemed concluded upon delivery of such notification of the Casualty Removal Arbitrator's decision.

6. Cost of Casualty Removal Arbitration. If the Casualty Removal Arbitrators (or Casualty Removal Arbitrator, pursuant to subsection (5), above) determine that the estimated cost to complete such Restoration Work greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property, then Tenant shall be deemed the "**Casualty Removal Winning Party**" under this subsection (6) and Landlord shall be deemed the "**Casualty Removal Losing Party**" under this subsection (6). If the Casualty Removal Arbitrators (or Casualty Removal Arbitrator, pursuant to subsection (5), above) determine that the estimated cost to complete such Restoration Work is less than or equal to twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of such Demised Property, then Landlord shall be deemed the "**Casualty Removal Winning Party**" under this subsection (6) and Tenant shall be deemed the "**Casualty Removal Losing Party**" under this subsection (6). In addition, in the event the arbitration is deemed concluded due to a failing party not timely delivering its estimate and appraisal as described in subsection (1), or a Casualty Removal Delinquent Party failing to pay its share of fees after written notice as described in subsection (3), such failing party or Casualty Removal Delinquent Party (as the case may be) shall be deemed the "**Casualty Removal Losing Party**" under this subsection (6), and the party that is not the failing party or Casualty Removal Delinquent Party (as the case may be) shall be deemed the "**Casualty Removal Winning Party**" under this subsection (6). Each party shall initially pay the fees and expenses of its legal counsel, appointed arbitrator, any written reports prepared by any appraiser in connection with its duties under this Schedule, one-half of the fees of the third arbitrator, and one-half the fees of the AAA (if applicable), provided, however, that the Casualty Removal Losing Party shall be obligated to reimburse the Casualty Removal Winning Party for all such fees and expenses of the arbitration paid by the Casualty Removal Winning Party promptly upon the completion of the arbitration procedure described in this Schedule.

SCHEDULE 4.03

None.

SCHEDULE 22.05

UNOCCUPIED SPACE

Store	Mailing Address	City	State	Zip	Unoccupied Space (sf)
1003	4211 Eagle Rock Blvd.	Los Angeles	CA	90065	17,142

SCHEDULE 22.05

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SCHEDULE 29.08

ENVIRONMENTAL COVENANTS

“SB Environmental Covenant”

Tenant specially represents and warrants that Remedial Activities at the Demised Property located in Santa Barbra, California (the “**SB Remediation Property**”) are being undertaken pursuant to Clean-up and Abatement Order No. R3-2011-0017 issued in November 2011 (the “**CAO**”) by the Central Coast Regional Water Quality Control Board (“**RWQCB**”).

Tenant represents and warrants that to the best of its knowledge Fresh & Easy Neighborhood Market, Inc., a Delaware corporation and Fresh & Easy Property Co. LLC, a Delaware limited liability company (the “**F&E Sellers**”) are in compliance with the CAO.

As to the obligations of the F&E Sellers under the CAO, even if amended from time to time, or under any successor Clean-up and Abatement Order, Tenant shall diligently pursue to completion all work required, pay all RWQCB oversight costs when due (subject to any right to contest the accuracy of such invoices), and secure a “no further action” or “case closure” determination from the RWQCB at the earliest practicable time. Tenant may petition for closure under a commercial use standard, but if the RWQCB requires achievement of an unrestricted use standard then Tenant shall achieve that standard. If case closure under a commercial use standard is pursued, Landlord shall be entitled to review prior to final approval any activity and use limitations and/or any proposed deed restrictions. Landlord may in its sole discretion refuse to consent to any activity and use limitations or deed notices which imposes operations and maintenance obligations on current or future surface users of the SB Remediation Property, or which raises repair, operating or maintenance costs. Landlord agrees that a prohibition on use of ground water underlying the SB Remediation Property is an acceptable onsite activity and use restriction.

Tenant shall either produce from its files, or diligently pursue with an appropriate Governmental Authority, issuance of a “case closure” or “no further action” letter respecting the removal of an underground storage tank from the SB Remediation Property, such removal having taken place circa 2011 (the “**UST Closure Letter**”).

Within thirty (30) days of commencement of the Lease Term, Tenant shall notify the Regional Board in writing that Tenant shall be the successor responsible party to the F&E Sellers under the CAO. Tenant shall use its best efforts to ensure a seamless transition regarding performance under the CAO. If Landlord is named in any CAO respecting the same conditions which are the subject of the current CAO, Tenant shall diligently pursue performance of Landlord’s obligations.

Tenant agrees that Landlord (by and through its agents and consultants) may enter the SB Remediation Property to conduct such additional Remedial Activities as Landlord shall from time to time for good cause shown may need to conduct. Such Remedial Activities shall include Phase II work, including indoor air quality assessments. Good cause to conduct such Remedial Activities shall include, without limitation, investigations required by a Governmental Authority (whether under an order or styled as a letter request), investigations required in connection with pending or threatened litigation under Environmental Laws against Landlord, investigations to determine whether indoor air quality is affected by Hazardous Materials in excess of Environmental Guidance Standards, or an investigation of a public or worker health or safety threat which is not being addressed actively or directly under the CAO. Such Landlord Remedial Activities shall not materially interfere with Tenant’s quiet enjoyment and authorized use of the SB Remediation Property, nor shall such Remedial Activities materially interfere with Tenant’s (or any other party’s) orderly implementation of the CAO. Tenant shall cooperate in all reasonable respects to allow such Landlord Remedial Activities, but Tenant shall not be responsible for the cost (other than to the extent such cost is paid out of funds under the Holdback Agreement) of

SCHEDULE 29.08

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such Landlord Remedial Activities. Landlord may use funds under the Holdback Agreement respecting the SB Remediation Property to fund this work, except that Landlord may not use Holdback Agreement funds to pay for due diligence investigations in connection with or in anticipation of a prospective purchaser or tenant, such as a Phase I report or a Phase II report in connection with the sale or lease of the SB Remediation Property.

Landlord also may elect to pursue such Remedial Activities which Tenant fails to diligently pursue, or to timely complete, as required under this Schedule 29.08, or if Tenant fails to pursue or achieve an unrestricted use standard for all or any portion of the SB Remediation Property when required by a Governmental Authority. Landlord may use funds under the Holdback Agreement respecting the SB Remediation Property to fund this work.

Tenant shall provide to Landlord periodic progress reports of Remedial Activities under the CAO, in connection with the UST Closure Letter, and any other material Remedial Activities. Tenant shall provide Landlord a copy of all submittals to the RWQCB documenting Remedial Activities under the CAO (excluding non-substantive or informal e-mails). Tenant shall advise Landlord in writing when Tenant assumes the obligations of the F&E Sellers under the CAO.

Tenant and its consultants shall comply with all applicable Laws, including Environmental Laws, and use due care in the conduct of the Remedial Activities. Tenant shall employ only experienced and reputable consultants. Landlord shall have the right to disapprove the first recommended consultant in its sole discretion, in which case Tenant shall suggest a second consultant. If Landlord disapproves the second consultant it shall set forth good cause for doing so, in which case Tenant shall recommend a third consultant, subject again to Landlord's disapproval only for good cause shown.

As between Landlord and Tenant, Tenant shall conduct all Remedial Activities at Tenant's sole cost and expense, excepting those Remedial Activities Landlord may conduct under this SB Environmental Covenant using funds pursuant to the applicable Holdback Agreement. Tenant hereby agrees to repair and restore, at Tenant's sole cost and expense, damage caused by Tenant or its consultants pursuant to the Remedial Activities at and near the SB Remediation Property.

Tenant shall take all necessary actions and implement all protections necessary to ensure that all actions taken in connection with the Remedial Activities performed by Tenant (including its consultants) with respect to the SB Remediation Property and all equipment, materials and substances generated, used or brought onto the SB Remediation Property pose no threat to the safety of persons or the environment and cause no (unrepaired) damage to the SB Remediation Property, or to the property of other persons.

The CAO includes both onsite and offsite Remedial Activities. The obligations herein apply to such offsite locations only to the extent Remedial Activities under the CAO or otherwise under Environmental Laws are or must be conducted by the F&E Sellers or by Tenant on the property of others. Ground water underlying the SB Remediation Property shall be deemed part of the SB Remediation Property for purposes of the obligations herein, even if such ground water is owned by a third party.

Tenant shall be the generator of record for all wastes generated as a result of any Remedial Activities, and liable and responsible for all costs, fees, permits, taxes, oversight charges, associated with the Remedial Activities including, if necessary, payment of sums to access third party property to conduct or complete the Remedial Activities.

At the completion of any Remedial Activity, Tenant shall cause its consultants to remove such equipment, wells, materials and wastes (if any) for proper offsite disposal and shall restore any affected portion of the SB Remediation Property (and the property of others, if applicable) to the condition it was in prior to initiation of the Remedial Activities.

Tenant shall not permit any mechanic's or materialmen's liens or any other liens to attach to the SB

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Remediation Property by reason of the performance of any Remedial Activities. The provisions of this paragraph shall survive the termination of this environmental covenant for a period of one year.

Tenant shall maintain, at its expense, and shall cause the approved consultant to maintain, at their expense, insurance coverages in the following amounts:

- (i) Worker's Compensation – Coverage A: statutory amount
Coverage B: Employer's Liability insurance:
\$500,000 Each Accident
- (ii) Commercial General Liability including contractual liability coverage, on an occurrence basis, including Bodily Injury and Property Damage Liability for the following limits:
General Aggregate \$ 2,000,000
Each Occurrence \$ 1,000,000
- (iii) Owned, Hired and Non-Owned Business Automobile liability insurance in an amount no less than \$1,000,000 per accident Combined Single Limit for bodily injury and property damage
- (iv) Umbrella Policy (Occurrence form with defense costs outside the limits): \$1,000,000 Each Occurrence/\$1,000,000 Aggregate Excess of the Employer's Liability, Commercial General Liability and Automobile Liability coverages on a following form basis, including coverage for Additional Insureds.

Within ten (10) days after the Effective Date, Tenant shall furnish Landlord with Certificates of Insurance. The insurance shall remain in effect until completion of all Remedial Activities required under this SB Environmental Covenant.

This SB Environmental Covenant shall remain in effect during the Lease Term.

Tenant and Landlord shall cooperate with each other in all reasonable respects so as to effectuate the implementation of this SB Environmental Covenant.

These obligations under this SB Environmental Covenant shall be governed by the laws of the State of California, including the applicable California Environmental Laws, and including Environmental Guidance Standards. The definition of the term "commercial use standards," or "unrestricted use standards" (also known as "residential use standards") shall be the most stringent of the applicable definitions used in Environmental Guidance Standards in use in the State of the Demised Property, including Maximum Contaminant Levels for ground water, if the Remedial Activities are self-directed. If a Governmental Authority is exercising jurisdiction over the Remedial Activities, the Environmental Guidance Standards actually selected by the Governmental Authority shall be the applicable standards for that project. The foregoing sentence does not determine whether commercial use standards or unrestricted use standards apply at a Demised Property, but only how the standards, once selected and determined to be applicable, are to be defined.

The covenants, promises and undertakings in this SB Environmental Covenant are cumulative and in addition to all other obligations under the Lease, but remain subject to the terms of Article 29; provided, however, in the event of a conflict between the general terms of Article 29 and the specific terms and covenants in this SB Environmental Covenant, the specific terms and covenants in this SB Environmental Covenant shall prevail.

SCHEDULE 29.08 MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

ENVIRONMENTAL COVENANT

“ER Environmental Covenant”

Landlord shall conduct a Phase II investigation to determine if Hazardous Materials are located at or emanating from the Eagle Rock Demised Property (the **“Remediation Property”**) and whether Remedial Activities to abate such Hazardous Materials are necessary, under the terms of Article 29 and as set forth below in this ER Environmental Covenant.

If Landlord’s Phase II investigation identifies Hazardous Materials above unrestricted use standards, Tenant shall prepare a Phase II scope of work within thirty (30) days and submit the same to Landlord. Landlord shall review such Phase II scope of work proposal and provided comments within fifteen (15) days of receipt. Tenant shall revise the Phase II scope of work proposal to incorporate Landlord’s reasonable comments. If the Phase II workplan involves a self-directed clean-up, and if the reasonably projected time period to achieve the remedial action objectives is expected to exceed five (5) years, then Landlord’s comments respecting technologies or approaches to achieve the remedial action objectives more quickly shall be deemed reasonable, provided the cost is not materially greater (i.e., estimated at less than 25%). If the approach involves enrollment in a voluntary clean up program, or otherwise suggests resort to Governmental Authority oversight, then Landlord shall be entitled to communicate to the Governmental Authority its preferences, should Tenant not accept Landlord’s suggestions on the Phase II scope of work, but the Governmental Authority shall determine the final scope of work.

The Phase II work may be conducted iteratively, in phases. If the investigations document exceedances of unrestricted use screening standards, then Tenant shall diligently pursue such Remedial Activities as are necessary to achieve unrestricted use standards at the earliest practicable time, except as otherwise provided for in this environmental covenant. If groundwater is impacted above Maximum Contaminant Levels, the Remedial Activities shall include notice to the Regional Water Quality Control Board. Tenant may petition for closure under a commercial use standard with the applicable Governmental Authority, but if such Governmental Authority requires achievement of an unrestricted use standard then Tenant shall achieve that standard. If case closure under a commercial use standard is pursued by Tenant, Landlord shall be entitled to review prior to final approval any activity and use limitations and/or any proposed deed restrictions. Landlord may in its sole discretion refuse to consent to any activity and use limitations or deed notices which impose operations and maintenance obligations on current or future surface users of the Remediation Property. Landlord agrees that a prohibition on use of ground water underlying the Remediation Property is an acceptable onsite activity and use restriction.

Tenant shall diligently pursue to completion at its own expense all Remedial Activities mandated hereunder. If a Governmental Authority is exercising jurisdiction over any Remedial Activities, Tenant shall comply with all orders, or agreements and shall pay all oversight costs when due (subject to any right to contest the accuracy of such invoices), as applicable.

The Remedial Activities shall continue until the later of: (a) achievement of unrestricted use standards, including Maximum Contaminant Levels in ground water; or (b) if a Governmental Authority is exercising jurisdiction, until Tenant secures a “no further action” or “case closure” determination. Tenant may petition a Governmental Authority for case closure under a commercial use standard, but not if the Remedial Activities are self-directed (in which case unrestricted use standards shall be documented as achieved) and only if Landlord consents to such standard (as set forth above). Tenant bears the risk of Landlord’s refusal to consent to a less stringent standard than an unrestricted use standard and Landlord shall not be held liable for additional costs or time expended by Tenant to achieve an unrestricted use standard.

Landlord also may elect to pursue such Remedial Activities which Tenant fails to diligently pursue, or to timely complete, as required under this Schedule 29.08, or if Tenant fails to pursue or achieve an unrestricted use standard for all or any portion of the Remediation Property when required by a Governmental Authority. Landlord may use funds under the Holdback Agreement respecting the Remediation Property to fund this work.

SCHEDULE 29.08

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

Tenant shall provide to Landlord periodic progress reports of Remedial Activities, and any other material Remedial Activities.

Tenant and its consultants shall comply with all applicable Laws, including Environmental Laws, and use due care in the conduct of the Remedial Activities. Tenant shall employ only experienced and reputable consultants. Landlord shall have the right to disapprove the first recommended consultant in its sole discretion, in which case Tenant shall suggest a second consultant. If Landlord disapproves the second consultant it shall set forth good cause for doing so, in which case Tenant shall recommend a third consultant, subject again to Landlord's disapproval only for good cause shown.

As between Landlord and Tenant, Tenant shall conduct all Remedial Activities at Tenant's sole cost and expense, excepting those Remedial Activities Landlord may conduct under this ER Environmental Covenant using funds pursuant to the applicable Holdback Agreement. Tenant hereby agrees to repair and restore, at Tenant's sole cost and expense, damage caused by Tenant or its consultants pursuant to the Remedial Activities at and near the Remediation Property.

Tenant shall take all necessary actions and implement all protections necessary to ensure that all actions taken in connection with the Remedial Activities performed by Tenant (including its consultants) with respect to the Remediation Property and all equipment, materials and substances generated, used or brought onto the Remediation Property pose no threat to the safety of persons or the environment and cause no (unrepaired) damage to the Remediation Property, or to the property of other persons.

The obligations herein apply to offsite locations to the extent Remedial Activities are or must be conducted on the property of others by Tenant. Ground water underlying the Remediation Property shall be deemed part of the Remediation Property for purposes of the obligations herein, even if such ground water is owned by a third party.

Tenant shall be the generator of record for all wastes generated as a result of any Remedial Activities, and liable and responsible for all costs, fees, permits, taxes, oversight charges, associated with the Remedial Activities including, if necessary, payment of sums to access third party property to conduct or complete the Remedial Activities.

At the completion of any Remedial Activity by Tenant, Tenant shall cause its consultants to remove such equipment, wells, materials and wastes (if any) for proper offsite disposal and shall restore any affected portion of the Remediation Property (and the property of others, if applicable) to the condition it was in prior to initiation of the Remedial Activities.

Tenant shall not permit any mechanic's or materialmen's liens or any other liens to attach to the Remediation Property by reason of the performance of any Remedial Activities. The provisions of this paragraph shall survive the termination of this ER Environmental Covenant for period of one year.

Unless agreed in writing by the Parties, Tenant shall maintain, at its expense, and shall cause the approved consultant to maintain, at their expense, insurance coverages in the following amounts:

- (i) Worker's Compensation – Coverage A: statutory amount
Coverage B: Employer's Liability insurance:
\$500,000 Each Accident
- (ii) Commercial General Liability including contractual liability coverage, on an occurrence basis, including Bodily Injury and Property Damage Liability for the following limits:

SCHEDULE 29.08

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

General Aggregate	\$ 2,000,000
Each Occurrence	\$ 1,000,000

- (iii) Owned, Hired and Non-Owned Business Automobile liability insurance in an amount no less than \$1,000,000 per accident Combined Single Limit for bodily injury and property damage
- (iv) Umbrella Policy (Occurrence form with defense costs outside the limits): \$1,000,000 Each Occurrence/\$1,000,000 Aggregate Excess of the Employer's Liability, Commercial General Liability and Automobile Liability coverages on a following form basis, including coverage for Additional Insureds.

Within ten (10) days of the Effective Date, Tenant shall furnish Landlord with Certificates of Insurance. The insurance shall remain in effect until completion of all Remedial Activities required under this ER Environmental Covenant.

This ER Environmental Covenant shall remain in effect during the Lease Term.

Tenant and Landlord shall cooperate with each other in all reasonable respects so as to effectuate the implementation of this ER Environmental Covenant.

The obligations under this ER Environmental Covenant shall be governed by the laws of the State of California, including the applicable California Environmental Laws, and including Environmental Guidance Standards. The definition of the term "commercial use standards," or "unrestricted use standards" (also known as "residential use standards") shall be the most stringent of the applicable definitions used in Environmental Guidance Standards in use in the State of the Demised Property, including Maximum Contaminant Levels for ground water, if the Remedial Activities are self-directed. If a Governmental Authority is exercising jurisdiction over the Remedial Activities, the Environmental Guidance Standards actually selected by the Governmental Authority shall be the applicable standards for that project. The foregoing sentence does not determine whether commercial use standards or unrestricted use standards apply at a Demised Property, but only how the standards, once selected and determined to be applicable, are to be defined.

The covenants, promises and undertakings in this ER Environmental Covenant are cumulative and in addition to all other obligations under the Lease, but remain subject to the terms of Article 29.

SCHEDULE 34.02**ADDITIONAL TENANT PROPERTIES***Real Estate Asset List*

Store #	Region	Mailing Address (USGN)	City	State	Zip Code (USGN)
ASSETS ON THE BALANCE SHEET					
• 19 FH Sites					
1078	Phoenix	3050 S. Dobson Rd.	Chandler	AZ	85248
1143	Phoenix	4588 South Higley Road	Gilbert	AZ	85297
1452	Las Vegas	4760 W. Cactus Ave.	Clark County	NV	89141
1025	Phoenix	10781 N Frank Lloyd Wright Blvd.	Scottsdale	AZ	85259
1023	Phoenix	2758 South Crismon Road	Mesa	AZ	85212
1035	Las Vegas	3220 S. Nellis Blvd.	Las Vegas	NV	89121
1069	Las Vegas	3053 N. Jones Blvd.	Las Vegas	NV	89108
1061	Phoenix	10725 W. Thomas Rd.	Avondale	AZ	85323
1316	San Francisco	4036 Lone Tree Way	Antioch	CA	94509
1017	Phoenix	3000 North Alma School Road	Chandler	AZ	85224-1470
1413	San Francisco	3141 Balfour Road	Brentwood	CA	94513
1042	Phoenix	1904 W. Glendale Ave.	Phoenix	AZ	85021
1240	Riverside	23735 Jackson Ave.	Murrieta	CA	92562
1482	Los Angeles	7500 Melrose Ave	Los Angeles	CA	90036
1139	Las Vegas	3489 E. Owens Avenue	Las Vegas	NV	89110
1281	Riverside	82-935 Avenue 48	Indio	CA	92201
1045	Phoenix	3232 E Guadalupe Rd	Gilbert	AZ	85234
1478	San Diego	1325 Plaza Blvd.	National City	CA	91950
1487	Ventura County	5955 Calle Real	Goleta	CA	93117

EXHIBIT A**LOCATION/ADDRESS/LEGAL DESCRIPTION OF DEMISED PROPERTIES**

Unit No.	Address	City	ST
1041	1537 S. Higley Rd	Gilbert	Arizona
1081	1660 W. Sunset Rd.	Henderson	Nevada
1135	150 Cinnamon Drive	Lemoore	California
1455	324-336 N. Milpas and 918 E. Gutierrez Street	Santa Barbara	California
1003	4211 Eagle Rock Blvd.	Los Angeles	California
1102	7752 N. El Capitan Way	Las Vegas	Nevada
1222	3231 E. University Ave.	San Diego	California

[LEGAL DESCRIPTIONS FOLLOW]

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

LEGAL DESCRIPTION

1537 S. Higley Rd., Gilbert, AZ

Real property in the City of Gilbert, County of Maricopa, State of Arizona, described as follows:

Fee Parcel I

LOT 2A, HIGLEY & RAY COMMERCIAL, ACCORDING TO PLAT RECORDED IN BOOK 976 OF MAPS, PAGE 49, RECORDS OF MARICOPA COUNTY, ARIZONA.

Easement Parcel II

Easements rights for pedestrian and vehicular access, ingress and egress, parking, utilities, drainage and other purposes as set forth in Article II of that certain Common Operation and Reciprocal Easement Agreement recorded August 31, 2006 as 2006-1165523 of Official Records, as amended by Supplement No. 1 recorded August 31, 2006 as 2006-1165524 of Official Records and First Amendment to Supplement No. 1 recorded June 23, 2009 as 2009-571799 of Official Records and Supplement No. 2 recorded September 26, 2006 as 2006-1270771 of Official Records and First Amendment to Supplement No. 2 recorded August 07, 2008 as 2008-691245 of Official Records and Second Amendment to Supplement No. 2 recorded July 24, 2009 as 2009-685124 of Official Records and Supplement No. 3 recorded September 28, 2006 as 2006-1287110 of Official Records and Supplement No. 4 recorded May 09, 2007 as 2007-542358 of Official Records and First Amendment to Supplement No. 4 recorded December 11, 2008 as 2008-1049374 and re-recorded December 17, 2008 as 2008-1063394 of Official Records and Supplement No. 5 recorded September 14, 2007 as 2007-1023126 of Official Records and Supplement No. 6 recorded June 23, 2009 as 2009-571800 of Official Records.

Easement Parcel III

Easements rights for pedestrian and vehicular access, ingress and egress, parking, utilities, drainage, and other purposes as set forth in Declaration of Easements, Covenants, Conditions and Restrictions recorded September 14, 2007 as 2007-1023128 of Official Records.

Easement Parcel IV

Easement rights for pedestrian and vehicular access as shown on the plat of Higley & Ray Commercial, as recorded in Plat Book 976 of Maps, Page(s) 49.

Easement Parcel V

Easement rights for pedestrian and vehicular access purposes as shown on the plat of NEC Higley & Ray Commercial, as recorded in Plat Book 910 of Maps, Page(s) 35.

Easement Parcel VI

Easement rights for pedestrian and vehicular access, ingress and egress and utility purposes as contained in that certain Declaration of Easement, Covenants, Conditions and Restrictions, recorded December 21, 2004 in 2004-1497079 of Official Records and First Amendment recorded September 26, 2006 as 2006-1270770 of Official Records.

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

LEGAL DESCRIPTION

7752 N. El Capitan Way, Las Vegas, NV

Real property in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

PARCEL I:

A PORTION OF PARCEL 2 AS SHOWN ON THAT CERTAIN FINAL MAP TITLED "DURANGO SQUARE, A COMMERCIAL SUBDIVISION" RECORDED IN BOOK 121, PAGE 88 OF PLATS ON FILE AT THE CLARK COUNTY, NEVADA RECORDER'S OFFICE, LYING WITHIN THE SOUTH HALF (S ½) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 17, TOWNSHIP 19 SOUTH, RANGE 60 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF DURANGO DRIVE AND EL CAPITAN WAY; THENCE ALONG THE CENTERLINE OF SAID EL CAPITAN WAY NORTH 44° 49' 51" WEST, 351.24 FEET; THENCE NORTH 45° 10' 09" EAST, 45.00 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL 2, BEING A POINT ON THE NORTHERLY RIGHT-OF-WAY OF SAID EL CAPITAN WAY AND THE POINT OF BEGINNING;

THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY THE FOLLOWING THREE (3) COURSES: 1) NORTH 44° 49' 51" WEST, 36.58 FEET; 2) NORTH 46° 05' 55" WEST, 225.97 FEET; 3) NORTH 44° 49' 51" WEST, 156.01 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 2, BEING A POINT ON THE NORTH LINE OF THE SOUTH HALF (S ½) OF THE NORTHEAST QUARTER (NE ¼) OF SAID SECTION 17;

THENCE ALONG THE NORTH LINE OF THE SOUTH HALF (S ½) OF THE NORTHEAST QUARTER (NE ¼) OF SAID SECTION 17 AND THE NORTH LOT LINE OF SAID PARCEL 2 SOUTH 89° 49' 16" EAST, 462.79 FEET;

THENCE DEPARTING SAID NORTH LOT LINE SOUTH 00° 10' 44" WEST, 85.65 FEET;

THENCE SOUTH 38° 29' 11" WEST, 263.40 FEET TO THE POINT OF BEGINNING.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED MARCH 31, 2008 IN BOOK 20080331 AS INSTRUMENT NO. 01193 OF OFFICIAL RECORDS.

ALSO KNOWN AS PARCEL 2A ON THAT CERTAIN RECORD OF SURVEY ON FILE IN FILE 172 OF SURVEYS, PAGE 36, RECORDED MARCH 31, 2008 IN BOOK 20080331 AS DOCUMENT NO. 01190, OFFICIAL RECORDS.

PARCEL II:

EASEMENTS APPURTENANT FOR ACCESS, INGRESS AND EGRESS, DRAINAGE, UTILITIES AND PARKING, AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND CROSS-EASEMENTS RECORDED JUNE 14, 2004 IN BOOK 20040614 AS INSTRUMENT NO. 0003294, AND AMENDED BY THAT CERTAIN DOCUMENT ENTITLED RATIFICATION OF DECLARATION RECORDED MARCH 30, 2005 IN BOOK 20050330 AS INSTRUMENT NO. 0003512 AND FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND CROSS-EASEMENTS RECORDED MARCH 31, 2008 IN BOOK 20080331 AS INSTRUMENT NO. 0001168 AND SUPPLEMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND CROSS-EASEMENTS RECORDED MARCH 31, 2008 IN BOOK 20080331 AS INSTRUMENT NO. 0001192, OFFICIAL RECORDS.

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

LEGAL DESCRIPTION

3231 E. University Ave., San Diego, CA

Real property in the City of San Diego, County of San Diego, State of California, described as follows:

PARCEL NO. 1:

UNIT NO. CU1, AS SHOWN AND DESCRIBED IN THE CONDOMINIUM PLAN FOR THIRTY-TWO & U, RECORDED AS INSTRUMENT NO. 2010-0702427 (THE "PLAN"), ENCUMBERING PARCELS 1 AND 2 OF PARCEL MAP NO. 20726, AS SHOWN ON A MAP RECORDED ON OCTOBER 14, 2009 AS FILE NO. 2009-0571118 OFFICIAL RECORDS OF SAN DIEGO COUNTY.

RESERVING THEREFROM A NON-EXCLUSIVE EASEMENT FOR MAINTENANCE OF THE COMMON AREA (AS DEFINED IN THE DECLARATION DESCRIBED BELOW)

RESERVING THEREFROM, FOR THE BENEFIT OF GRANTOR, ITS SUCCESSOR IN INTEREST, THE ASSOCIATION, AND OWNERS OF CONDOMINIUMS IN THE PROJECT, NON-EXCLUSIVE EASEMENTS FOR ACCESS, INGRESS, EGRESS, ENCROACHMENT, SUPPORT, MAINTENANCE, DRAINAGE, USE, REPAIR, AND FOR OTHER PURPOSES, ALL AS DESCRIBED IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS FOR THIRTY-TWO & U RECORDED ON , AS INSTRUMENT NO. 2010-0702428 , IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER (THE DECLARATION).

PARCEL NO. 2:

AN UNDIVIDED 13,910 / 21,220 FEE SIMPLE INTEREST AS A TENANT IN COMMON IN AND TO ALL OF THE REAL PROPERTY COMPRISING THE COMMON AREA, AS DESCRIBED AND DEPICTED ON THE PLAN.

PARCEL NO. 3

NON-EXCLUSIVE EASEMENTS FOR ACCESS, INGRESS, EGRESS, ENCROACHMENT, SUPPORT, MAINTENANCE, DRAINAGE, USE ENJOYMENT, REPAIR AND FOR OTHER PURPOSES, ALL AS DESCRIBED IN THE DECLARATION.

APN: 446-471-24-01

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

LEGAL DESCRIPTION

1660 W. Sunset Rd., Henderson, NV

Real property in the City of Henderson, County of Clark, State of Nevada, described as follows:

Fee Parcel I

A PORTION OF LOT 1 AS SHOWN IN THAT CERTAIN FINAL MAP TITLED, "SUNSET VILLAGE, A COMMERCIAL SUBDIVISION", RECORDED IN BOOK 96, PAGE 63 OF PLATS ON FILE AT THE CLARK COUNTY, NEVADA RECORDER'S OFFICE, LYING WITHIN THE SOUTHEAST QUARTER (SE ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 4, TOWNSHIP 22 SOUTH, RANGE 62 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF SUNSET ROAD AND ARROYO GRANDE AVENUE;

THENCE ALONG THE CENTERLINE OF SAID ARROYO GRANDE AVENUE NORTH 00° 01' 52" WEST, 330.00 FEET;

THENCE DEPARTING SAID CENTERLINE NORTH 89° 58' 08" EAST, 40.00 FEET TO THE EASTERLY RIGHT-OF-WAY OF SAID ARROYO GRANDE AVENUE, BEING THE NORTHWEST CORNER OF SAID LOT 1 AND THE POINT OF BEGINNING;

THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY AND ALONG THE NORTH LINE OF SAID LOT 1 NORTH 89° 58' 08" EAST, 291.55 FEET;

THENCE DEPARTING SAID NORTH LOT LINE SOUTH 00° 01' 52" EAST, 250.00 FEET TO THE NORTHERLY RIGHT-OF-WAY OF SAID SUNSET ROAD;

THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY THE FOLLOWING EIGHT (8) COURSES: 1) SOUTH 89° 58' 08" WEST, 1.55 FEET; 2) SOUTH 00° 01' 52" EAST, 10.00 FEET; 3) SOUTH 89° 58' 08" WEST, 19.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 10.00 FEET, FROM WHICH BEGINNING THE RADIUS BEARS SOUTH 89° 58' 08" WEST; 4) SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90° 00' 00", AN ARC LENGTH OF 15.71 FEET; 5) SOUTH 89° 58' 08" WEST, 46.26 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 100.00 FEET; 6) NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 15° 07' 42", AN ARC LENGTH OF 26.40 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 100.00 FEET, THROUGH WHICH A RADIAL LINE BEARS NORTH 15° 05' 50" EAST; 7) NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 15° 01' 15", AN ARC LENGTH OF 26.22 FEET; 8) NORTH 89° 55' 25" WEST, 108.83 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 54.00 FEET;

THENCE DEPARTING THE NORTH RIGHT-OF-WAY OF SAID SUNSET ROAD AND NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 89° 32' 51", AN ARC LENGTH OF 84.40 FEET TO A POINT OF NON-TANGENCY, TO WHICH A RADIAL LINE BEARS SOUTH 89° 37' 26" WEST, BEING A POINT ON THE EASTERLY RIGHT-OF-WAY OF SAID ARROYO GRANDE AVENUE;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY THE FOLLOWING SIX (6) COURSES: 1) NORTH 00° 01' 52" WEST, 141.19 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 20.00 FEET, 2) NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90° 00' 00", AN ARC LENGTH OF 31.42 FEET TO A POINT OF NON-TANGENCY, TO WHICH A RADIAL LINE BEARS NORTH 00° 01' 52" WEST; 3) NORTH 00° 01' 52" WEST, 19.00 FEET; 4) SOUTH 89° 58' 08" WEST, 10.00 FEET; 5) NORTH 00° 01' 52" WEST, 19.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 10.00 FEET, FROM WHICH BEGINNING THE RADIUS BEARS NORTH 00° 01' 52" WEST; 6) NORTHWESTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 90° 00' 00", AN ARC LENGTH OF 15.71 FEET TO A

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

POINT OF NON-TANGENCY, TO WHICH A RADIAL LINE BEARS SOUTH 89° 58' 08" WEST AND THE POINT OF BEGINNING.

SAID PARCEL IS FURTHER DESCRIBED AS LOT B-1 AS PER MAP ON FILE IN BOOK 181 OF SURVEYS, PAGE 13 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

NOTE: THE ABOVE METES AND BOUNDS DESCRIPTION APPEARED PREVIOUSLY IN THAT CERTAIN DOCUMENT RECORDED JUNE 22, 2010 IN BOOK 20100622 AS INSTRUMENT NO. 02265 OF OFFICIAL RECORDS.

EASEMENT PARCEL II

EASEMENTS FOR PEDESTRIAN AND VEHICULAR INGRESS, EGRESS, UTILITIES, PARKING AND INCIDENTAL PURPOSES PURSUANT TO THE DECLARATION OF RESTRICTIONS AND GRANT OF LICENSE FOR SUNSET VILLAGE RECORDED AUGUST 25, 2000 IN BOOK 20000825 AS INSTRUMENT NO. 01396 OF OFFICIAL RECORDS.

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

LEGAL DESCRIPTION

150 Cinnamon Drive, Lemoore, CA

Real property in the City of Lemoore, County of Kings, State of California, described as follows:

PARCEL A:

PARCEL 2 OF PARCEL MAP, IN THE CITY OF LEMOORE, COUNTY OF KINGS, STATE OF CALIFORNIA, RECORDED DECEMBER 29, 2005 IN BOOK 17 AT PAGE 71 OF PARCEL MAPS, KINGS COUNTY RECORDS.

PARCEL B:

RECIPROCAL EASEMENTS AS DEFINED AND DESCRIBED IN INSTRUMENT ENTITLED "DECLARATION OF RESTRICTIONS AND GRANT OF RECIPROCAL EASEMENTS", RECORDED JANUARY 12, 2006 AS INSTRUMENT NO. 06-1189, OFFICIAL RECORDS.

APN: 021-330-012-000

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

LEGAL DESCRIPTION

324-336 N. Milpas and 918 E. Gutierrez Street, Santa Barbara, CA

Real property in the City of Santa Barbara, County of Santa Barbara, State of California, described as follows:

PARCEL ONE:

THAT PORTION OF BLOCK 259 IN THE CITY OF SANTA BARBARA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN SAID BLOCK ON THE SOUTHEASTERLY LINE OF GUTIERREZ STREET, 175 FEET DISTANT IN A SOUTHWESTERLY DIRECTION FROM THE INTERSECTION OF GUTIERREZ AND ALISOS STREETS; AND RUNNING

THENCE FROM SAID POINT OF BEGINNING SOUTHWESTERLY ALONG THE LINE OF GUTIERREZ STREET, 50 FEET;

THENCE AT RIGHT ANGLES INTO SAID BLOCK 259 SOUTHEASTERLY, 125 FEET;

THENCE AT RIGHT ANGLES NORTHEASTERLY, 50 FEET;

THENCE AT RIGHT ANGLES NORTHWESTERLY, 125 FEET TO THE LINE OF GUTIERREZ STREET AND THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED IN THE DEED TO FLORENCE PACKARD, AN UNMARRIED WOMAN, BY DEED RECORDED JANUARY 06, 1955 AS INSTRUMENT NO. 248 IN BOOK 1290, PAGE 302 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL TWO:

PARCELS TWO, THREE AND FOUR, BEING PORTIONS OF BLOCK 259 IN THE CITY OF SANTA BARBARA, ACCORDING TO THE OFFICIAL MAP THEREOF, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS DESCRIBED IN THE DEED TO FRESH AND EASY PROPERTY COMPANY LLC RECORDED OCTOBER 13, 2010 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AS INSTRUMENT NO. 2010-0056897 OF OFFICIAL RECORDS, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID PARCEL THREE, AS DESCRIBED IN SAID DEED;

THENCE, 1ST, ALONG THE SOUTHEASTERLY LINE OF GUTIERREZ STREET, 60.00 FEET WIDE, AND ALONG THE NORTHWESTERLY LINE OF SAID PARCEL THREE, AND CONTINUING ALONG THE NORTHWESTERLY LINE OF PARCEL TWO, AS DESCRIBED IN

EXHIBIT A

MASTER LAND AND BUILDING LEASE
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SAID DEED, NORTH 41° 30' 00" EAST, 225.00 FEET TO THE MOST NORTHERLY CORNER OF SAID PARCEL TWO;

THENCE, 2ND, ALONG THE NORTHEASTERLY LINE OF SAID PARCEL TWO, SOUTH 48° 30' 00" EAST, 122.00 FEET TO THE MOST NORTHERLY CORNER OF PARCEL FOUR, AS DESCRIBED IN SAID DEED;

THENCE, 3RD, ALONG THE NORTHEASTERLY LINE OF SAID PARCEL FOUR, SOUTH 48° 30' 00" EAST, 60.00 FEET TO THE MOST EASTERLY CORNER OF SAID LAST-MENTIONED PARCEL;

THENCE, 4TH, ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL FOUR, SOUTH 41° 30' 00" WEST, 225.00 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL FOUR;

THENCE, 5TH, ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL FOUR AND CONTINUING ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL THREE, NORTH 48° 30' 00" WEST, 182.00 FEET TO THE POINT OF BEGINNING.

APN: 031-371-25 (Affects Parcel One) and 031-371-26 (Affects Parcel Two)

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LEGAL DESCRIPTION

4211 Eagle Rock Blvd., Los Angeles, CA

Real property in the City of Los Angeles, County of Los Angeles, State of California, described as follows:

PARCEL 1:

THAT PORTION OF LOT(S) 13 OF TRACT NO. 3441, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 37 PAGE(S) 87 AND 88 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF SAID LOT 13, DISTANT NORTHERLY 170 FEET FROM THE MOST SOUTHERLY CORNER OF SAID LOT 13; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE 50 FEET; THENCE NORTHEASTERLY PARALLEL WITH THE NORTHWESTERLY LINE OF SAID LOT, 150 FEET TO A POINT IN THE NORTHEASTERLY LINE OF SAID LOT 13; THENCE SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE, 50 FEET; THENCE SOUTHWESTERLY PARALLEL WITH SAID NORTHWESTERLY LINE OF SAID LOT 13, 150 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

THE NORTHWESTERLY 50 FEET OF THE SOUTHEASTERLY 170 FEET OF LOT 13 OF TRACT NO. 3441, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 37 PAGES 87 AND 88 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

ALL OF LOT 14 AND THE SOUTHEASTERLY 120 FEET OF LOT 13 OF TRACT 3441, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 37 PAGES 87 AND 88 OF MAPS.

PARCEL 4:

THE NORTH 45 FEET OF LOT(S) 13 OF TRACT NO. 3441, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 37 PAGE(S) 87 AND 88 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

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(PORTFOLIO 2)

PARCEL 5:

THAT PORTION OF LOT(S) "A" OF TRACT NO. 2942, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 30 PAGE(S) 67 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 13 OF TRACT 3441, AS PER MAP RECORDED IN BOOK 37 PAGES 87 AND 88 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTHWESTERLY ALONG THE NORTHWESTERLY PROLONGATION OF THE WESTERLY LINE OF SAID LOT 66 FEET; THENCE NORTHEASTERLY PARALLEL WITH THE NORTHWESTERLY LINES OF LOTS 13 AND 14 OF SAID TRACT NO. 3441; A DISTANCE OF 300 FEET TO A POINT IN THE WESTERLY LINE OF THE LAND CONVEYED TO GEORGE MILLER AND WIFE, BY DEED RECORDED IN BOOK 2285 PAGE 382 OFFICIAL RECORDS; THENCE SOUTH 30° 16' EAST ALONG SAID WESTERLY LINE, 66 FEET TO THE NORTHWESTERLY LINE OF SAID TRACT NO. 3441; THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE, 300 FEET TO THE POINT OF BEGINNING.

APN: 5473-024-024

EXHIBIT A

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

EXHIBIT B
FORM OF SNDA

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (“*Agreement*”) is entered into as of [____], 20[___] (the “*Effective Date*”) by and among [_____] (together with any other holder of the Loan (defined below) and their respective successors and assigns, the “*Mortgagee*”), [_____] a [_____] (hereinafter, the “*Tenant*”) and [_____] a [_____] (the “*Landlord*”), with reference to the following facts:

A. Landlord owns fee simple title in the real property described in Exhibit “A” attached hereto (the “*Property*”).

B. Mortgagee has made or intends to make a loan to Landlord (the “*Loan*”).

C. To secure the Loan, Landlord has or will encumber the Property by entering into a mortgage or deed of trust in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the “*Mortgage*”) to be recorded in land records.

D. Pursuant to the Lease dated [____], (the “*Lease*”) between Landlord and Tenant, Landlord leased to Tenant a portion of the Property, as said portion is more particularly described in the Lease (the “*Leased Premises*”).

E. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in the Property and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Mortgagee agree:

1. Definitions. The following terms shall have the following meanings for purposes of this agreement.

a. Foreclosure Event. A “*Foreclosure Event*” means: (i) foreclosure under the Mortgage; (ii) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which Mortgagee becomes owner of the Property; or (iii) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord’s interest in the Property in lieu of any of the foregoing.

b. Former Landlord. A “*Former Landlord*” means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

c. Offset Right. An “**Offset Right**” means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant’s payment of Rent or performance of Tenant’s other obligations under the Lease, arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

d. Rent. The “**Rent**” means any fixed rent, base rent or additional rent under the Lease.

e. Successor Landlord. A “**Successor Landlord**” means any party that becomes owner of the Property as the result of a Foreclosure Event.

f. Termination Right. A “**Termination Right**” means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

g. Other Capitalized Terms. If any capitalized term is used in this Agreement and no separate definition is contained in this Agreement, then such term shall have the same respective definition as set forth in the Lease.

2. Subordination. The Lease, as the same may hereafter be modified, amended or extended, shall be, and shall at all times remain, subject and subordinate to the Mortgage (but not to the terms thereof), the lien imposed by the Mortgage, and all advances made under the Mortgage. notwithstanding the foregoing, Mortgagee may elect, in its sole and absolute discretion, to subordinate the lien of the Mortgage to the Lease.

3. Nondisturbance, Recognition and Attornment.

a. No Exercise of Mortgage Remedies Against Tenant. So long as the Tenant is not in default under the Lease beyond any applicable grace or cure periods (an “Event of Default”), Mortgagee (i) shall not terminate or disturb Tenant’s possession of the Leased Premises or rights under the Lease, except in accordance with the terms of the Lease and (ii) shall not name or join Tenant as a defendant in any exercise of Mortgagee’s rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant’s rights under the Lease or this Agreement in such action.

b. Recognition and Attornment. Upon Successor Landlord taking title to the Property (i) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (ii) Tenant shall recognize and attorn to Successor Landlord as Tenant’s direct landlord under the Lease as affected by this Agreement; and (iii) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant. Tenant hereby acknowledges that pursuant to the Mortgage and assignment of rents, leases and profits, Landlord has granted to the Mortgagee an absolute, present assignment of the Lease and Rents

which provides that Tenant continue making payments of Rents and other amounts owed by Tenant under the Lease to the Landlord and to recognize the rights of Landlord under the Lease until notified otherwise in writing by the Mortgagee. After receipt of such notice from Mortgagee, the Tenant shall thereafter make all such payments directly to the Mortgagee or as the Mortgagee may otherwise direct, without any further inquiry on the part of the Tenant. Landlord specifically agrees that Tenant may conclusively rely upon any written notice Tenant receives from Mortgagee notwithstanding any claim by Landlord contesting the validity of any term or condition of such notice, including, but not limited to, any default claimed by Mortgagee, and that Landlord shall not make any claim of any kind whatsoever against Tenant or Tenant's leasehold interest with respect to any amounts paid to Mortgagee by Tenant or any acts performed by Tenant pursuant to such written notice and such amounts paid to Mortgagee shall be credited to amounts due under the Lease as if such amounts were paid directly to Landlord.

c. Further Documentation. The provisions of this Article 3 shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article 3 in writing upon request by either of them within ten (10) days of such request.

4. Protection of Successor Landlord. Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

a. Claims Against Former Landlord. Any Offset Right that Tenant may have against any Former Landlord, unless (i) such Offset Right arises after the date Mortgagee encumbers the Property with the Mortgage and (ii) Tenant shall have given written notice to Mortgagee of such Offset Right promptly upon Tenant's actual knowledge of the occurrence of the event(s) giving rise to such Offset Right. The foregoing shall not limit either (x) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of a Foreclosure Event or because of events occurring on or before the date of a Foreclosure Event, notice of which shall have been given to Mortgagee, or (y) Successor Landlord's obligation to correct any conditions that existed as of the date of a Foreclosure Event that violate Successor Landlord's obligations as landlord under the Lease.

b. Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of a Foreclosure Event and Tenant's receipt of notice of such Foreclosure Event other than, and only to the extent that, the Lease expressly required such a prepayment or such payment was delivered to Mortgagee or Successor Landlord.

c. Security Deposit; Representations and Warranties. Any obligation (i) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee or Successor Landlord; or (ii) arising from a breach by Former Landlord of representations and warranties contained in the Lease; or (iii) without in any way superceding subsection (a) above, to pay Tenant any sum(s) accrued prior to Successor Landlord becoming

owner of the Property and owed to Tenant by Former Landlord, unless actually paid over to Successor Landlord.

d. Modification, Amendment or Waiver. Any modification or amendment of the Lease, or any waiver of the terms of the Lease, made without Mortgagee's written consent (which consent shall not be unreasonably withheld, conditioned or delayed), excepting, however, commercially reasonable non-material amendments or modifications of the Lease (for the avoidance of doubt, such non-material modifications do not include any changes in the rights of any "Lender" as such term is defined in the Lease, reductions in rent, reductions in length of term, imposition of material obligations on Landlord or material reductions of the obligations of Tenant under the Lease) which are the result of good faith, arm's length negotiations between Landlord and Tenant and of which Mortgagee receives prompt notice together with a copy of such amendment.

e. Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

5. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor landlord's (or its successors' or assigns') interest, if any, in the Property from time to time, including insurance and condemnation proceeds, security deposits, escrows, Successor Landlord's interest in the Lease, and the proceeds from any sale, lease or other disposition of the Property (or any portion thereof) by Successor Landlord (collectively, the "***Successor Landlord's Interest***"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord. Nothing set forth in this paragraph shall be construed to limit Tenant's equitable remedies, including specific performance and injunctive relief.

6. Casualty and Condemnation. Mortgagee agrees that, notwithstanding any provision of the Mortgage or any instrument secured by the Mortgage, any insurance proceeds and any condemnation awards which may be received by any party hereto and which relate to the Property shall be used or disbursed in accordance with the terms of the Lease.

7. Mortgagee's Right to Cure. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Offset Right or Termination Right:

a. Notice to Mortgagee. Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "***Default Notice***") and, thereafter, the opportunity to cure such breach or default as provided for below.

b. Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and, without limiting anything contained in Section 4(a) above, shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing. In addition, as to any breach or default by Landlord the cure of which requires possession and control of the Property, if Mortgagee undertakes such cure or causes such cure to be commenced by a receiver within the period permitted by this paragraph, and so long as Mortgagee continues to or causes a receiver to diligently and in good faith cure such breach or default, Mortgagee's cure period shall continue for such additional time as Mortgagee may reasonably require to either (i) obtain possession and control of the Property with due diligence and thereafter cure the breach or default with reasonable diligence and continuity; or (ii) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default. Nothing set forth in this paragraph shall limit Tenant's offset rights or rights to cure a breach or default and receive any reimbursement to which it is entitled under the Lease.

8. Miscellaneous.

a. Notices. Any notice or request given or demand made under this Agreement by one party to the other shall be in writing, and may be given or be served by hand delivered personal service, or by depositing the same with a reliable overnight courier service or by deposit in the United States mail, postpaid, registered or certified mail, and addressed to the party to be notified, with return receipt requested or by telefax transmission, with the original machine-generated transmit confirmation report as evidence of transmission. Notice deposited in the mail in the manner hereinabove described shall be effective from and after the expiration of three (3) days after it is so deposited; however, delivery by overnight courier service shall be deemed effective on the next succeeding business day after it is so deposited and notice by personal service or telefax transmission shall be deemed effective when delivered to its addressee or within two (2) hours after its transmission unless given after 3:00 p.m. on a business day, in which case it shall be deemed effective at 9:00 a.m. on the next business day. For purposes of notice, the addresses and telefax number of the parties shall, until changed as herein provided, be as follows:

(a) If to the Mortgagee, at:

and

(b) If to the Tenant, at:

and:

b. Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

c. Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

d. Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage.

e. Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If a Foreclosure Event occurs, then all rights and unaccrued obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement or under the Lease.

f. Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of New York, excluding such State's principles of conflict of laws.

g. Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

h. Due Authorization. Tenant represents to Mortgagee that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions. Mortgagee represents to Tenant that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

i. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Mortgagee, Tenant and Landlord have caused this Agreement to be executed as of the date first above written.

MORTGAGEE:

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

TENANT:

EXHIBIT B

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

LANDLORD:

EXHIBIT B

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

MORTGAGEE'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

EXHIBIT B

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

TENANT'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

EXHIBIT B

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

LANDLORD'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

EXHIBIT B

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

LIST OF EXHIBITS

If any exhibit is not attached hereto at the time of execution of this Agreement, it may thereafter be attached by written agreement of the parties, evidenced by initialing said exhibit.

Exhibit "A" - Legal Description of the Land

EXHIBIT B

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

EXHIBIT C

FORM OF TENANT'S ESTOPPEL CERTIFICATE

The undersigned, _____, whose address is _____
 _____ represents and certifies as follows:

1. The undersigned is the tenant ("**Tenant**") under that certain Master Land and Building Lease dated _____ with _____ as Landlord (the "**Lease**"), covering the properties described therein (collectively the "**Demised Properties**"), a true and correct copy of which (together with all amendments thereof) is attached hereto as Exhibit A. [Tenant understands that _____ ("**Secured Party**") intends to enter into financing arrangements with Landlord, as borrower, to be secured, among other things, by certain mortgages, deeds of trust and assignments of leases and rents, as amended, covering the Demised Properties.]

2. The Lease constitutes the only agreement, promise, understanding or commitment (either written or oral) Tenant has with respect to the Demised Properties and any right of occupancy or use thereof, except as follows:

3. The Lease is in full force and effect and has not been assigned, subleased, supplemented, modified or amended, in whole or in part, except as follows:

4. Tenant has not given Landlord any notice of termination under the Lease.

5. Tenant took possession of the Demised Properties on or about _____, _____, and commenced paying rent on or about _____, _____. Tenant presently occupies the Demised Properties, is open for business and operating at all of the Demised Properties, and is paying rent on a current basis. No rent has been paid by Tenant in advance except for the monthly rental that becomes due on _____, and no deposits, including security deposits and prepayments of rent, have been made in connection with the Lease.

6. The monthly base rental is the sum of _____ Dollars (\$_____). Landlord has not agreed to reimburse Tenant for or to pay Tenant's rent obligation under any other lease.

7. The Lease term commenced on _____, expires on _____, and there are no options to renew except: _____.

EXHIBIT C

MASTER LAND AND BUILDING LEASE
 (PORTFOLIO 2)

8. To the best knowledge of Tenant, there are no defaults under the Lease by Landlord, nor have any events occurred that with the passage of time or giving of notice or both, will result in any such default, except as follows: _____ . To the best knowledge of Tenant, Tenant does not presently have (nor with the passage of time or giving of notice or both will have) any offset, charge, lien, claim, termination right or defense under the Lease.

9. Tenant has no right of first offer, right of first refusal, or option to purchase, with respect to all or any portion of any Demised Properties[.], except as set forth in Article [] of the Lease].

10. Tenant is aware that Landlord and the other addressees hereto[, including Secured Party,] intend to rely upon this Certificate and the statements set forth herein and that the statements and facts set forth above shall be binding on Tenant to the extent of such reliance by Landlord and any other addressee hereto; provided, however, that Tenant's liability shall be limited to being estopped from claiming that its statements in this Certificate are not accurate (subject to, as applicable, the "best knowledge" limitations expressly set forth in this Certificate).

11. To the best of Tenant's knowledge, Tenant is not entitled to any concession or rebate of rent or other charges from time to time due and payable under the Lease, except as expressly set forth in the Lease, and there are no unpaid or unreimbursed construction allowances or other offsets due Tenant under the Lease.

12. To the best of Tenant's knowledge and belief, there are no rental, lease or similar commissions payable with respect to the Lease.

13. Any notices to be provided hereunder shall be provided pursuant to the notice provisions of the Lease.

14. Tenant and the persons executing this Certificate on behalf of Tenant have the power and authority to execute and deliver this Certificate, thereby binding Tenant.

IN WITNESS WHEREOF, Tenant has executed this Certificate this ____ day of _____, 20____.

"TENANT"

a _____

By: _____
Name: _____
Title: _____

EXHIBIT C

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

EXHIBIT D

FORM OF MEMORANDUM OF LEASE

(Above space reserved for recorder and recording information)

This instrument prepared by and
after recording return to:

Pircher, Nichols & Meeks
1925 Century Park East
Suite 1700
Los Angeles, California 90067-2512
Attention: Real Estate Notices (SAH
#5602.3)
Facsimile: 310-201-8922

MEMORANDUM OF LEASE AND RIGHT OF FIRST OFFER

This Memorandum of Lease and Right of First Offer is made and entered into as of _____,
_____, _____ by and between _____, a _____ ("**Landlord**"), and
_____, a _____, whose address is _____ ("**Tenant**"),
who agree as follows:

1. **Terms and Premises.** Pursuant to a certain Master Land and Building Lease (the "**Lease**") dated on or about the date hereof entered into between Landlord and Tenant, Landlord has leased to Tenant and Tenant has leased from Landlord that certain real property, together with all the improvements thereon and appurtenances thereunto belonging (the "**Premises**"), more particularly described on Exhibit "A" attached hereto and incorporated herein, for a term of [_____] ([____]) YEARS from _____, _____, expiring on _____, _____. Tenant has [_____] ([____]) [____]-year options to extend the term of the Lease, all as more particularly set forth in the Lease. Tenant has a right of first offer to purchase the Premises, as more particularly set forth in the Lease.

2. **Purpose of Memorandum of Lease.** This Memorandum of Lease is executed and recorded to give public notice of the Lease between the parties and all terms and conditions of the Lease are incorporated by reference into this Memorandum and this Memorandum of Lease does not modify the provisions of the Lease. If there are any conflicts between the Lease and this Memorandum of Lease, the provisions of the Lease shall prevail. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any term not defined herein shall have the meaning as set forth in the Lease.

EXHIBIT D

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

[SIGNATURES AND ACKNOWLEDGMENTS ON NEXT PAGE]

EXHIBIT D

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

LANDLORD:

TENANT:

_____,
a _____

_____,
a _____

By: _____

By: _____

Date: _____

Date: _____

Signed, sealed, and delivered this _____
day of _____, _____ in the presence of:

Signed, sealed, and delivered this _____
day of _____, _____ in the presence of:

Witness

Witness

Notary Public, County of _____,
State of _____

Notary Public, County of _____,
State of _____

My commission expires: _____

My commission expires: _____

(Notary Seal)

(Notary Seal)

[SIGNATURES CONTINUE ON NEXT PAGE]

EXHIBIT D

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

EXHIBIT "A"

EXHIBIT D

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

EXHIBIT E

FORM OF LANDLORD ASSIGNMENT LEASE AGREEMENT

(See Attached)

EXHIBIT E

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

LAND AND BUILDING LEASE

between

[____],
a [____],

as LANDLORD

and

[____],
a [____]

as TENANT

[____][____], **2013**

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LAND AND BUILDING LEASE

THIS LAND AND BUILDING LEASE (this "**Lease**") is made and entered into as of [_____] [____], 2013 (the "**Commencement Date**"), by and between [_____] a [_____] ("**Landlord**") and [_____] a [_____] ("**Tenant**").

RECITALS

A. Landlord owns (i) good and indefeasible title in fee simple to the land described on Exhibit A attached hereto (the "**Land**"); and (ii) all improvements and other structures located on the Land; any rights of way, easements, parking covenants, entitlements, privileges and other rights appurtenant to the Land, including regarding any street adjoining any portion of the Land and any air and development rights related to the Land and any and all fixtures at or on the Land, including all of the machinery, equipment and systems at or on any of the Land (collectively, "**Building Equipment**"), including, without limitation, the following (but specifically excluding any of the following that are not "fixtures" pursuant to applicable Law): built-in equipment; elevators; escalators; compressors; appliances; engines; electrical, telecommunications, plumbing, heating and lighting (including emergency lighting) fixtures, systems and equipment; radio frequency identification fixtures, systems and equipment; ventilating, and air conditioning fixtures, systems and equipment; data and other storage fixtures, systems and equipment; security fixtures, systems and equipment; fire sprinklers and fire suppression fixtures, systems and equipment; private telephone fixtures, systems and equipment; security cameras, systems and other equipment; paging and sound fixtures, systems and equipment; cleaning fixtures, systems and equipment; walk-in coolers and grill hoods; built-in sinks; built-in shelving; awnings, and supports for signs (all of the foregoing in this clause (ii), collectively, "**Improvements**"). The Land and all Improvements thereon are collectively referred to herein as the "**Demised Property**."

B. The personal property, trade fixtures and equipment owned or leased by Tenant located at the Demised Property and used in connection with the operation of the business at the Demised Property (other than the Building Equipment) are referred to herein collectively as the "**Tenant Equipment**."

C. Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, the Demised Property so that Tenant may, in accordance with and subject to the terms, conditions and restrictions of this Lease, operate (or cause the operation of) a grocery store or another Permitted Use at the Demised Property.

NOW, THEREFORE, in consideration of the lease of the Demised Property and the rents, covenants and conditions herein set forth, and with reference to the definitions of various terms used herein as set forth on Schedule 1 hereto, Landlord and Tenant do hereby covenant, promise and agree as follows:

ARTICLE 1 DEMISE OF PREMISES

Subject to the terms and conditions contained herein, Landlord does hereby lease unto Tenant, and Tenant does hereby hire from Landlord, for the term hereinafter provided in Article 2, the Demised Property for the use thereof by Tenant, Tenant's employees, customers and invitees.

ARTICLE 2 TERM

Section 2.01

(a) This Lease shall commence on the Commencement Date and terminate on [_____, 2033 (the "**Original Lease Term**") unless sooner terminated as hereinafter set forth. The "**Lease Term**," as such term is used herein, means the Original Lease Term as extended (or as may be extended) pursuant to Section 2.02 below, unless sooner terminated as hereinafter set forth.

(b) This Lease shall be deemed to be in full force and effect upon the Commencement Date. Tenant shall be deemed in possession of the Demised Property upon the Commencement Date.

Section 2.02

(a) Tenant shall have the option to extend the term of this Lease for up to three (3) separate option periods upon and subject to the terms set forth below in this Section 2.02. The first option period (the "**First Option Period**") shall commence at the expiration of the Original Lease Term. The second option period (the "**Second Option Period**") shall commence at the expiration of the First Option Period. The third option period (the "**Third Option Period**") shall commence at the expiration of the Second Option Period. The First Option Period, the Second Option Period and the Third Option Period are sometimes referred to herein collectively as the "**Option Periods**" and individually as an "**Option Period**." Each of the First Option Period and the Second Option Period shall continue for a period of five (5) years from and after the commencement date of such Option Period, and the Third Option Period shall continue for a period of three (3) years from and after the commencement date of such Option Period. Except as otherwise expressly provided herein, all of the terms and conditions of this Lease applicable to the Original Lease Term shall continue to apply during each Option Period. In no event shall Tenant have any options to extend the term of this Lease except as expressly provided herein. A notice delivered by Tenant to Landlord in order to extend the term of this Lease for any Option Period pursuant to the terms hereof is referred to herein as an "**Extension Notice**".

(b) To validly extend the Lease Term for the First Option Period for the Demised Property at the date of Tenant's delivery to Landlord of an Extension Notice for the First Option Period (i) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the Original Lease Term and not later than ten (10) months prior to the expiration of the Original Lease Term, and (ii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the First Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease.

(c) To validly extend the Lease Term for the Second Option Period for the Demised Property at the date of Tenant's delivery to Landlord of an Extension Notice for the Second Option Period (i) Tenant must have validly extended this Lease for the First Option Period, (ii) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the First Option Period and not later than ten (10) months prior to the expiration of the First Option Period, and (iii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the Second Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease.

(d) To validly extend the Lease Term for the Third Option Period for the Demised Property at the date of Tenant's delivery to Landlord of an Extension Notice for the Third Option Period (i) Tenant must have validly extended this Lease for the Second Option Period, (ii) Tenant must and shall deliver to Landlord such Extension Notice not earlier than fifteen (15) months prior to the expiration of the Second Option Period and not later than ten (10) months prior to the expiration of the Second Option Period, and (iii) as of the date such Extension Notice is delivered to Landlord there shall be no existing Event of Default under this Lease, and as of the date the Third Option Period is scheduled to commence there shall be no existing Default or Event of Default under this Lease.

(e) Without limiting anything contained in Section 36.02 hereof, time is of the strictest essence in the performance of each provision of this Section 2.02. Either party, upon request of the other, shall execute and acknowledge, in form suitable for recording, an instrument confirming any Option Period, with Tenant paying all applicable recording costs.

ARTICLE 3 RENT

Section 3.01 Rent. Tenant shall pay all Base Rent and Additional Rent, from and after the Commencement Date and thereafter throughout the Lease Term, without offset, deduction, or abatement, except as may be otherwise expressly provided herein. Notwithstanding the foregoing, any amounts due by Tenant to Landlord hereunder for which no due date is expressly specified herein shall be due within twenty-five (25) days following the delivery to Tenant by Landlord of written notice of such amounts due. Except as otherwise expressly provided herein, in the event of nonpayment by Tenant of any Rent, Landlord shall have the same rights and remedies in respect thereof regardless of whether such Rent is Base Rent or Additional Rent. All payments of Rent due to Landlord shall be paid to Landlord (at its election from time to time) in one of the following manners: (a) by electronic deposit into an account designated by Landlord (a "**Landlord's Account**"), (b) by mail at Landlord's address set forth in Article 17, or (c) by mail to any other place in the United States designated by Landlord upon at least thirty (30) days' prior written notice to Tenant.

Section 3.02 Base Rent.

(a) The following terms shall have the following meanings:

(i) "**Base Date**" means (A) if the Commencement Date is the first day of a calendar month, the Commencement Date, and (B) if the Commencement Date is other than the first day of a calendar month, the first day of the first calendar month occurring after the Commencement Date.

(ii) "**Adjustment Dates**" means, collectively, each anniversary of the Base Date.

(iii) "**Base Rent Escalation**" means one and one-half percent (1.5%).

(b) The base rent amount for the Demised Property for each month of the Lease Term shall be [\$ _____], as increased as hereinafter provided ("**Base Rent**"). Tenant shall pay to Landlord Base Rent, in advance, without demand therefor, on or before the first day of each and every calendar month during the Lease Term and if the Commencement Date is not the first day of a calendar month, Tenant shall pay to Landlord pro-rated Base Rent on the Commencement Date for the partial calendar month in which the Commencement Date occurs.

(c) Subject to the terms of Section 3.02(d) below, on each of the Adjustment Dates, the Base Rent shall increase by the Base Rent Escalation.

Section 3.03 Additional Rent.

(a) If by applicable Law, any general or special assessment or like charge may be paid in installments without any penalty whatsoever, then such assessment may be paid in such installments and Tenant shall only be liable for the portion thereof that is allocable or attributable to the Lease Term or any portion thereof. If such assessment or charge may be payable in installments with interest, Tenant may pay such assessment or charge in installments, together with all interest thereon.

(b) Tenant shall pay all Real Estate Taxes directly to the collecting authority no less than five (5) days prior to the delinquency date thereof and shall provide Landlord not less than three (3) Business Days prior to such delinquency date written evidence of payment in full reasonably acceptable to Landlord. Nothing in this Lease shall obligate Tenant to pay any estate, inheritance, franchise, net income or similar taxes of Landlord (other than any rental taxes imposed upon the Landlord that are measured by or based in whole or in part directly upon the Rent payable under this Lease, whether existing at the date hereof or hereinafter imposed by any Governmental Authority) nor shall any of same be deemed Real Estate Taxes, unless the same shall be specifically imposed in substitution for, or in lieu of, Real Estate Taxes. Notwithstanding the first sentence of this clause (b), upon the occurrence of both of the following events, Tenant shall pay Real Estate Taxes to Landlord no less than thirty (30) days prior to the delinquency date thereof in lieu of payment directly to the applicable collecting authority: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) the occurrence and continuance of any Default under this Section 3.03(b) by Tenant, or the occurrence and the continuance of any Event of Default under any provision in this Lease. Real Estate Taxes paid by Tenant to Landlord pursuant to this Section shall be used only for the payment of the Real Estate Taxes. If Tenant fails to pay the appropriate party (Landlord or the collecting authority, as provided herein) all Real Estate Taxes when due hereunder, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and all penalties or interest, or portion thereof, paid or incurred by Landlord as a result of such nonpayment or late payment by Tenant. Without limitation of the foregoing, Tenant shall deposit with Landlord no later than thirty (30) days prior to the end of the Lease Term an amount sufficient to pay unpaid Real Estate Taxes and other accrued liabilities that will encumber the Demised Property after the end of the Lease Term to the extent that Real Estate Taxes and such other liabilities have accrued and will accrue through the end of the Lease Term. Landlord shall segregate all such deposits from its other funds and use such deposits solely to pay such accrued liabilities as they come due.

(c) [Provided a Landlord assignment results in a reassessment of the Demised Property (a "**Reassessment**") for real estate tax purposes by the appropriate government authority under the terms of Proposition 13 (as adopted by the voters of the State of California in the June 1978 election), Tenant shall not be liable for any increase in Real Estate Taxes solely attributable to such assignment and Reassessment. For the avoidance of doubt, Tenant shall be liable for any increase in Real Estate Taxes that would have resulted absent any assignment and Reassessment.]¹

(d) Tenant shall have the right to undertake an action or proceeding against the applicable collecting authority seeking an abatement of Real Estate Taxes or a reduction in the valuation of the Demised Property and/or contest the applicability of any Real Estate Taxes (including, without

¹ For California only

limitation, a reduction in the value of the Demised Property if located in California under the terms of Proposition 8 (as adopted by the voters of the State of California in the November 1978 election)); provided, however, that Tenant delivers to Landlord prior written notice of any such action or proceeding by Tenant, and that Tenant has paid timely (and continues to pay timely) all Real Estate Taxes as provided in this Lease to the extent required by applicable Law. In any instance where any such permitted action or proceeding is being undertaken by Tenant, (i) Landlord shall cooperate reasonably with Tenant, at no cost or expense to Landlord, and execute any and all documents approved by Landlord and reasonably required in connection therewith and (ii) Tenant shall provide Landlord with all information reasonably requested by Landlord with respect to such action or proceeding within five (5) days after receipt of Landlord's written request. Tenant shall be entitled to any refund (after the deduction therefrom of all expenses incurred by Landlord in connection therewith) of any Real Estate Taxes (including penalties or interest thereon) received by Tenant or Landlord, whether or not such refund was a result of actions or proceedings instituted by Tenant, to the extent such refund relates to Real Estate Taxes actually paid by Tenant to Landlord or the collecting authority, as applicable.

(e) Tenant shall be solely responsible for, and shall pay directly to the applicable service providers, the cost of all utility services provided to the Demised Property throughout the Lease Term. Notwithstanding the foregoing, upon the occurrence of both of the following events, Tenant shall pay to Landlord the cost of any and all utility services provided to the Demised Property in lieu of payment directly to the applicable service providers: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) any Default under this Section 3.03(d) by Tenant, or any Event of Default. Funds paid by Tenant to Landlord pursuant to the immediately preceding sentence shall be used only for the payment of the cost of utility services to the Demised Property. If Tenant fails to pay the appropriate party (Landlord or the service providers, as provided herein) all such costs when due hereunder, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and all penalties or interest, or portion thereof, paid or incurred by Landlord as a result of such nonpayment or late payment by Tenant.

(f) Without limiting any of Tenant's other obligations set forth in this Article, Tenant shall pay to Landlord, with each payment due to Landlord hereunder (and as a part of Rent due hereunder), all sales and excise tax on rental income and all other similar taxes imposed upon Landlord with respect to rental or other payments under this Lease (including Real Estate Taxes paid to Landlord pursuant to Section 3.03(b), or directly to the applicable taxing authority, in each case to the extent deemed includible in Landlord's gross income or gross receipts) in the nature of a gross receipts tax, gross income tax, margins tax, sales tax, occupancy tax, occupation tax, commercial activity tax, commercial rents tax, business and occupation tax, privilege tax or the like, whether imposed by a federal, state or local taxing authority (but, for purposes of clarity, not including any tax imposed on net income or any franchise taxes of Landlord measured by net income or net worth), which, when added to such payment, shall yield to Landlord after deduction of all such tax payable by Landlord with respect to all such payments a net amount which Landlord would have realized from such payment had no such tax been imposed. To the extent permitted by applicable Law, Tenant may pay any such tax directly to the taxing authority, provided Tenant establishes such right to Landlord's satisfaction prior to making any such payment, and Tenant within ten (10) days after any such payment delivers to Landlord written evidence satisfactory to Landlord that such payment has been made.

(g) Any indemnity payments due to Landlord from Tenant hereunder that are attributable to liabilities, fixed or contingent, known or unknown (i) that existed as of the date hereof, or relate to periods prior to and including the date hereof, or (ii) to which the Demised Property was subject as of the date hereof, or that existed on the date hereof and ran with the Demised Property and became a

liability of the Landlord as the transferee or assignee of the previous owner of the Demised Property, shall not be treated as additional rent or other gross income of the Landlord for federal income tax purposes, but as an adjustment to the Landlord's adjusted basis in the Demised Property, which adjusted basis shall prior to the receipt by Landlord of such indemnity payments be deemed to include the amount of such liabilities. Tenant agrees that it will take no position inconsistent herewith for federal income tax purposes.

ARTICLE 4 USE

Section 4.01 Tenant's use of the Demised Property shall be limited to use as a grocery store or other Permitted Use, and Tenant shall not suffer or permit any Person (including any subtenant) to use the Demised Property for another purpose (and the Demised Property shall be used for no other purpose), without the prior written approval of Landlord, which approval may be granted or withheld in the reasonable discretion of Landlord.

Section 4.02 Notwithstanding any other provision of this Article, Tenant shall not use, or suffer or permit any Person (including any subtenant) to use, the Demised Property or any portion thereof for any purpose in violation of any applicable Law, or in violation of any warranties or guaranties, or in violation of any covenants or restrictions of record in effect as of the date of this Lease and any other covenants or restrictions of record encumbering the Demised Property during the Lease Term, provided such other covenants or restrictions of record are consented to by Tenant (such consent not to be unreasonably withheld, conditioned or delayed) or, without limiting any of the express terms of this Lease, caused by Tenant. From the Commencement Date and thereafter throughout the Lease Term, Tenant shall conduct its business in a commercially reasonable and reputable manner with respect to the Demised Property and in compliance with the terms and provisions of this Lease. The character of the occupancy of the Demised Property is an additional consideration and a material inducement for the granting of this Lease by Landlord to Tenant.

Section 4.03 [Without limiting the foregoing covenants in this Article 4, Tenant hereby agrees that it shall not cause any event or circumstance that triggers any purchase right, termination right, recapture right or option regarding the Demised Property set forth on Schedule 4.03, provided, however, that with respect to the "Reverter Rights" identified on Schedule 4.03, Tenant shall not be in breach of the foregoing covenant unless such rights are actually exercised. For the avoidance of doubt, Tenant shall not be in breach of the foregoing covenant in this Section by reason of any action of Landlord.][ONLY FOR APPLICABLE PROPERTIES]

Section 4.04 Without limitation, no provision of this Article 4 shall limit any of the covenants of Tenant contained in Article 22.

ARTICLE 5 PERFORMANCE OF OBLIGATIONS; ACCEPTANCE OF DEMISED PROPERTY

Tenant hereby represents, warrants and covenants to Landlord that Tenant has the right and lawful authority to enter into this Lease and perform Tenant's obligations hereunder. Landlord hereby represents, warrants and covenants to Tenant that Landlord has the right and lawful authority to enter into this Lease and perform Landlord's obligations hereunder. Tenant acknowledges that it has had access to the Demised Property prior to execution of this Lease and has had the opportunity to perform all tests, studies, inspections and investigations (including any investigations regarding zoning and use issues regarding the Demised Property) and has in fact evaluated the Demised Property to the extent required for

its operations, that it desires, and that Tenant is accepting the Demised Property in its AS IS condition existing on the date Tenant executes this Lease. Tenant hereby accepts the Demised Property in its condition as of the date of possession hereunder, subject to all applicable Law, as well as private easements and restrictions, governing and regulating the use, operation or maintenance of the Demised Property, whether or not of record (collectively, the “**Diligence Matters**”), and accepts this Lease subject thereto and to all matters disclosed hereby, and by any exhibits attached hereto. Tenant waives to the fullest extent allowed by Law any rights to notice by Landlord regarding the condition of the Demised Property, whether at law or in equity, and hereby waives any rights and remedies thereunder based in any alleged or actual failure of Landlord to provide any such notices. Tenant acknowledges that (a) neither Landlord nor any of its Affiliates has made any representation or warranty as to the suitability of the Demised Property for the conduct of the Tenant’s business and (b) Tenant is entering into this Lease solely on the basis of its own investigations and familiarity with the Demised Property and not on the basis of any representation, warranty, covenant, agreement, undertaking, promise, statement, arrangement or understanding by, on behalf of, or with, Landlord or any of its Affiliates, except as expressly set forth in this Lease.

ARTICLE 6 ALTERATIONS

Subject to the provisions of this Article 6, Tenant shall have no right to make alterations or additions to the Improvements (collectively, “**Alterations**”) at the Demised Property that (i) involve structural changes (unless otherwise approved by Landlord), (ii) would reduce the value of the Improvements as they existed prior to the time that said Alterations are made; or (iii) would adversely affect the structural integrity of the Improvements. Tenant shall not install any underground storage tanks and any above ground storage tanks shall include secondary containment sufficient to prevent spills, overfills or tank ruptures from causing a release to the environment. Any and all Alterations made by Tenant shall be at Tenant’s sole cost and expense. Prior to the commencement of construction, Tenant shall deliver promptly to Landlord detailed cost estimates for any such proposed Alterations, as well as all drawings, plans and other information regarding such Alterations (such estimates, drawings, plans and other information are collectively referred to herein as the “**Alteration Information**”). Landlord’s review and/or approval (if required) of any Alteration Information shall in no event constitute any representation or warranty of Landlord regarding (x) the compliance of any Alteration Information with any applicable Law, (y) the presence or absence of any defects in any Alteration Information, or (z) the safety or quality of any of the Alterations constructed in accordance with any plans or other Alteration Information. Landlord’s review and/or approval of any of the Alteration Information shall not preclude recovery by Landlord against Tenant based upon the Alterations, the Alteration Information, or any defects therein. In the event that Landlord’s consent is required for particular Alterations, Tenant shall request Landlord’s consent to such Alterations in writing, and Landlord will endeavor to respond to such request within ten (10) Business Days following Landlord’s receipt of such request. In the event that Landlord fails to so respond to Tenant’s request within the foregoing ten (10) Business Day period, then Tenant may deliver a second written request for Landlord’s consent to such Alterations containing a sentence in the header of the first page of the request set in at least 14-point bold font, all capital letters, stating “**LANDLORD’S FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS AFTER LANDLORD’S RECEIPT HEREOF SHALL CONSTITUTE LANDLORD’S CONSENT TO THE ALTERNATIONS PROPOSED HEREIN,**” and Landlord will endeavor to respond to such second request within ten (10) Business Days following receipt of the same. In the event that Landlord fails to so respond to Tenant’s second request within the foregoing ten (10) Business Day period, then Landlord shall be deemed to have consented to the Alterations set forth in Tenant’s written request. In making any and all Alterations, Tenant also shall comply with all of the following conditions:

(a) No Alterations shall be undertaken until Tenant shall have (i) procured and paid for, so far as the same may be required, all necessary permits and authorizations of all Governmental Authorities having jurisdiction over such Alterations, and (ii) delivered to Landlord at least five (5) days prior to commencing any such Alterations written evidence acceptable to Landlord, in its reasonable discretion, of all such permits and authorizations. Landlord shall, to the extent necessary (but at no cost, expense, or risk of loss to Landlord), join in the application for such permits or authorizations whenever necessary, promptly upon written request of Tenant.

(b) Any and all structural Alterations of the Improvements shall be performed under the supervision of an architect and/or structural engineer reasonably acceptable to Landlord.

(c) Except for minor, non-structural projects bearing no material risk of any liens for labor and/or materials being filed by third party contractors in connection therewith against Landlord or the Demised Property (but in all cases for any project that is not a Minor Project), Tenant shall notify Landlord at least fifteen (15) days' prior to commencing any Alterations, and Tenant shall permit Landlord access to the Demised Property in order to post and keep posted thereon such notices as may be provided or required by applicable Law to disclaim responsibility for any construction on the Demised Property. In addition, Landlord may require Tenant to file or record any such notices, or other similar notices, each in form and substance reasonably satisfactory to Landlord, in accordance with local law or custom.

(d) Any and all Alterations shall be conducted and completed in a commercially reasonable time period, in a good and workmanlike manner, and in compliance with all applicable Law, permits, and requirements of all Governmental Authorities having jurisdiction over the Demised Property, and of the local Board of Fire Underwriters, if any; and, upon completion of any and all Alterations, Tenant shall obtain and deliver to Landlord a copy of the amended certificate of occupancy for the Demised Property, if required under applicable Law or by any Governmental Authority. If any Alterations involve the generation, handling, treatment, storage, disposal, permitting, abatement or reporting of Hazardous Materials, Tenant shall prepare and retain any and all records, permits, reports and other documentation necessary or advisable to document and evidence all such Hazardous Materials were handled in compliance with applicable Law.

(e) The cost of any and all Alterations shall be promptly paid by Tenant so that the Demised Property at all times shall be free of any and all liens for labor and/or materials supplied for any Alterations subject to the next succeeding sentence. In the event any such lien shall be filed, Tenant shall, within ten (10) days after receipt of notice of such lien, deliver written notice to Landlord thereof, and Tenant shall, within forty-five (45) days after Tenant's receipt of notice of such lien, discharge the same by bond or payment of the amount due the lien claimant. Tenant may in good faith contest any such lien provided that within such forty-five (45) day period Tenant provides Landlord with a surety bond or other form of security reasonably acceptable to Landlord, protecting against said lien. Tenant shall provide Landlord promptly with evidence satisfactory to Landlord that all contractors, subcontractors or materialmen have been paid in full with respect to such Alterations and that their lien rights have been waived or released. In the event Tenant fails to either discharge such lien or protect against such lien in accordance with the foregoing, then Landlord shall have the option (but not the obligation) upon not less than fifteen (15) days' prior notice, and Tenant's failure to either discharge such lien or protect against such lien in accordance with the foregoing, to pay such lien or post a bond to protect against such lien and pass through such costs to Tenant as Additional Rent.

(f) The interest of Landlord in the Demised Property shall not be subject in any way to any liens for improvements to or other work performed to the Demised Property by or on behalf of Tenant. Tenant shall have no power or authority to create any lien or permit any lien to attach to the present estate, reversion, or other interest of Landlord in the Demised Property. All mechanics, materialmen, contractors, laborers, artisans, suppliers, and other parties contracting with Tenant, its representatives or contractors with respect to the Demised Property are hereby given notice that they must look solely to Tenant to secure payment for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Demised Property through or under Tenant during the term of this Lease. Tenant shall notify every contractor making improvements to the Demised Property that the interest of Landlord in the Demised Property shall not be subject to liens for improvements to or other work performed with respect to the Demised Property by or on behalf of Tenant. Notwithstanding anything to the contrary set forth in this Lease, no restrictions contained in this Lease as to liens shall apply to Permitted Liens.

(g) Tenant shall discharge any lien filed against the Demised Property, the Building or the Land, or any part thereof, for work done or materials furnished at Tenant's request with respect to the Demised Property as provided above in subsection (e) of this Article 6. If Tenant fails to keep this covenant, in addition to any other remedies available to Landlord under this Lease, Tenant agrees to pay Landlord, as Additional Rent, the sum equal to the amount of the lien thus discharged by Landlord, plus all actual and reasonable costs and expenses, including without limitation third party attorney's and paralegal's fees and court costs, incurred by Landlord in discharging such lien.

Notwithstanding anything contained in Section 4.01, so long as Tenant is diligently pursuing completion of an Alteration permitted under this Lease, Tenant may cease operations at the Demised Property, as reasonably required to complete such Alteration, and only to the extent and for a time period reasonably necessary to complete such Alteration, and any such cessation of operations without diligent pursuit of completion of such Alteration or extending beyond such reasonable scope and time to complete such Alteration shall constitute a default under Section 4.01 (subject to the terms thereof).

ARTICLE 7 REPAIRS AND MAINTENANCE

Except as otherwise provided in this Article, Tenant, at its sole cost and expense, shall maintain the Demised Property and each part thereof, structural and non-structural, in good order and condition, including all areas outside of any buildings (including all sidewalks, driveways, landscaping, trash enclosures, and trash compacting and loading areas on the Demised Property), and including any roof on any buildings, in a neat and clean condition, and ensuring that debris from the operation of each grocery store or other Permitted Use on the Demised Property is cleaned and removed on a regular basis) and, subject to the terms and conditions of Article 6, shall make any necessary Repairs thereto, interior and exterior, whether extraordinary, foreseen or unforeseen, but subject to Article 11 and Article 12. Without limitation, (a) no Repairs shall result in any structural damage to the Demised Property or any injury to any persons, (b) Tenant shall ensure that the quality of materials and workmanship of any Repairs meets or exceeds the quality of materials and workmanship of the Improvements prior to the need for such Repairs; (c) all Repairs shall fully comply with applicable Law, the requirements of any covenants, conditions, restrictions or other permitted encumbrances that are of record regarding the Demised Property, and any applicable repair standards and requirements promulgated by Tenant for its (or its subsidiaries' or Affiliates' or franchisees') properties. Tenant promptly shall abate mold in the Demised Property if such mold creates a material unsanitary or unsightly condition. Landlord shall have no duty whatsoever to maintain, replace, upgrade, or repair any portion of the Demised Property, including any structural items, roof or roofing materials, or any aboveground or underground storage

tanks, and Tenant hereby expressly waives the right to make Repairs at the expense of Landlord, which right may be provided for in any applicable Law now or hereinafter in effect. In addition to Landlord's rights under Section 15.05, if Tenant fails or neglects to commence and diligently proceed with all Repairs or fulfill its other obligations as set forth above within fifteen (15) days after receipt of written notice of the need therefor describing the applicable Repair or other obligation, then Landlord or its agents may, subject to the terms of Article 18 below, enter the Demised Property for the purpose of making such Repairs or fulfilling those obligations; provided, however, without limiting Landlord's rights pursuant to Article 18 below, in the event that Tenant reasonably disputes Tenant's obligation to make such Repairs or other obligations set forth above, then Landlord's right to enter the Demised Property for the purpose of making such Repairs or fulfilling those obligations shall be postponed pending a determination of such dispute (however, if in Landlord's reasonable determination such Repairs or performance of such obligations is necessary to avoid an imminent threat of injury or harm to persons or material damage or loss of value to property, then Landlord may, whether or not such dispute has been resolved, with or without notice (provided, however, that Landlord shall endeavor to give such notice as is practical under the circumstances, if any, which notice may be oral and need not be in writing), and without regard to whether or not any applicable cure period expressly provided herein has expired, elect to perform such Repairs or obligations). All actual and reasonable costs and expenses incurred by Landlord as a consequence of such Landlord's actions, plus an administrative charge of five percent (5%) of such costs and expenses, shall be due to Landlord from Tenant within ten (10) days after written demand from Landlord, which written demand shall include reasonably detailed evidence of such costs and expenses.

ARTICLE 8 COMPLIANCE WITH LAW

Tenant shall, throughout the Lease Term, at its sole cost and expense, comply with, and cause any subtenants or other occupants at the Demised Property to comply with, applicable Law. Without limiting the foregoing, and as a condition to being permitted hereunder to sell alcoholic beverages at the Demised Property, Tenant shall maintain, or cause to be maintained, all licenses or permits required by applicable Law in order to sell alcoholic beverages at the Demised Property and shall deliver to Landlord any information regarding such licenses or permits that Landlord may reasonably request from time to time.

ARTICLE 9 DISCLAIMER AND INDEMNITIES

Section 9.01 To the extent not prohibited by applicable Law, none of the Landlord Parties shall be liable for, under any circumstances, and Tenant hereby releases all Landlord Parties from, any loss, injury, death or damage to person or property (including any business or any loss of income or profit therefrom) of Tenant, Tenant's members, officers, directors, shareholders, agents, employees, contractors, customers, invitees, or any other Person in or about the Demised Property, whether the same are caused by (a) fire, explosion, falling plaster, steam, dampness, electricity, gas (including methane gas), water, rain; (b) breakage, leakage or other defects of Tenant Equipment, Building Equipment, sprinklers, wires, appliances, plumbing fixtures, water or gas pipes, roof, air conditioning, lighting fixtures, street improvements, or subsurface improvements; (c) theft, acts of God, acts of the public enemy, riot, strike, insurrection, civil unrest, war, court order, requisition or order of governmental body or authority; (d) any act or omission of any other occupant of the Demised Property; (e) operations in construction of any private, public or quasi-public work; (f) Landlord's reentering and taking possession of the Demised Property in accordance with the provisions of this Lease or removing and storing the property of Tenant as herein provided; or (g) any other cause, including damage or injury that arises from the condition of the Demised Property, from occupants of adjacent property, from the public, or from any other sources or

places, and regardless of whether the cause of such damage or injury or the means of repairing the same are inaccessible to Tenant, or that may arise through repair, alteration or maintenance of any part of the Demised Property or failure to make any such repair, from any condition or defect in, on or about the Demised Property including any Environmental Conditions or the presence of any mold or any other Hazardous Materials, or from any other condition or cause whatsoever; provided, however, that the foregoing release set forth in this Section 9.01 shall not be applicable to any claim against a Landlord Party to the extent, and only to the extent, that such claim is directly attributable to the gross negligence or willful misconduct of such Landlord Party (provided, however, that the term “gross negligence” shall not include gross negligence imputed as a matter of law to Landlord solely by reason of its interest in the Demised Property or the failure to act by Landlord or anyone acting under its direction or control or on its behalf, in respect of matters that are or were the obligation of Tenant under this Lease).

Section 9.02 In addition to any and all other obligations of Tenant under this Lease (including under any indemnity or similar provision set forth herein), to the extent permitted by applicable Law, Tenant hereby agrees to fully and forever indemnify, protect, defend (with counsel selected by Landlord) and hold all Landlord Parties free and harmless of, from and against any and all Losses (including, subject to the terms of this Section, diminution in the value of the Demised Property, normal wear and tear excepted and including any Losses resulting from third party claims): (a) arising out of or in any way related to or resulting directly or indirectly from: (i) the use, occupancy, or activities of Tenant, its subtenants, agents, employees, contractors or invitees in or about the Demised Property; (ii) any failure on the part of Tenant to comply with any applicable Law, including any Environmental Laws; (iii) any Default or Event of Default under this Lease or any breach or default by Tenant or any other party (other than Landlord) under any other Transaction Document (including as a result of any termination by Landlord, following an Event of Default, of any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Demised Property pursuant to Section 15.08), and including any additional fees and costs, or any increased interest rate or other charges imposed by any Landlord’s Lender by reason of such Default or Event of Default (whether or not such Default or Event of Default is a default under any agreements with any Landlord’s Lender); (iv) any other loss, injury or damage described in Section 9.01 above; (v) in connection with mold at the Demised Property; (vi) work or labor performed, materials or supplies furnished to or at the request of Tenant or in connection with obligations incurred by or performance of any work done for the account of Tenant in, on or about the Demised Property; and (b) whether heretofore now existing or hereafter arising out of or in any way related to or resulting directly or indirectly from the presence or Release at, on, under, to or from the Demised Property of Hazardous Materials. Without limiting the foregoing, (x) Tenant shall pay on demand all actual and reasonable fees and costs of Landlord (including attorneys’ fees and costs) in connection with any enforcement by Landlord of the terms of this Lease, and (y) all of the personal or any other property of Tenant kept or stored at, on or about the Demised Property shall be kept or stored at the sole risk of Tenant. Notwithstanding the foregoing, the indemnity set forth in this Section 9.02 shall not be applicable to any claim against any Landlord Party to the extent, and only to the extent, such claim is directly attributable to the gross negligence or willful misconduct of such Landlord Party (provided, however, that the term “gross negligence” shall not include gross negligence imputed as a matter of law to Landlord solely by reason of its interest in the Demised Property or the failure to act by Landlord or anyone acting under its direction or control or on its behalf, in respect of matters that are or were the obligation of Tenant under this Lease).

Section 9.03 The provisions of this Article 9 shall survive the expiration or sooner termination of this Lease as to breaches or matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article 9 shall also apply to any breaches or matters occurring, or arising from or relating to

circumstances or events occurring during any holdover tenancy by Tenant). Tenant hereby waives the provisions of any applicable Law restricting the release of claims, or extent of release of claims, that Tenant does not know or suspect to exist at the time of release, that, if known, would have materially affected Tenant's decision to agree to the release contained in this Article 9. In this regard, Tenant hereby agrees, represents, and warrants to Landlord that Tenant realizes and acknowledges that factual matters now unknown to Tenant may hereafter give rise to Losses that are presently unknown, unanticipated and unsuspected, and Tenant further agrees, represents and warrants that the release provided hereunder has been negotiated and agreed upon in light of that realization and that Tenant nevertheless hereby intends to release, discharge and acquit the parties set forth herein above from any such unknown Losses that are in any manner set forth in or related to this Lease, the Demised Property and all dealings in connection therewith.

ARTICLE 10 INSURANCE

Section 10.01 As of the Commencement Date and throughout the Lease Term, Tenant shall, at its sole expense, obtain, pay for and maintain (or cause to be obtained, paid for and maintained), with financially sound and reputable insurers (as further described in Section 10.03), (a) comprehensive "all risk" insurance covering loss or damage to the Demised Property (including Improvements now existing or hereafter erected thereon) together with all equipment, inventory, contents, personal property, furniture and any fixtures located thereon, caused by fire, lightning, hail, windstorm, hurricane, tidal surge, explosion, vandalism, malicious mischief, leakage of sprinkler systems, and such other losses, hazards, casualties, liabilities and contingencies as are normally and usually covered by "all risk" or special property policies in effect where the Demised Property is located, endorsed to include all of the extended coverage perils and other broad form perils, including the standard "all risks" or special clauses, including building ordinance or law coverage sufficient to provide coverage for costs to comply with building and zoning codes and ordinances including demolition costs and increased cost of construction, (b) business income and interruption insurance to include loss of business at limits sufficient to cover 100% of the annual revenues at the Demised Property minus any non-fixed expenses payable by Tenant to Landlord with a period of indemnity not less than twelve (12) months from time of loss (such amount being adjusted annually) and an extended period of indemnity of three hundred sixty-five (365) days, (c) flood insurance for the Demised Property and separately for contents/equipment in amounts acceptable to Landlord and Landlord's Lender (and if the Demised Property is located in a special flood hazard area (as identified by FEMA) Tenant must maintain at a minimum insurance through the National Flood Insurance Program (unless such special hazard area is covered under a blanket policy reasonably acceptable to Landlord) in addition to Tenant's blanket property policy with a deductible acceptable to Landlord and Landlord's Lender in their sole discretion, and (d) terrorism insurance for the Demised Property. The policy(ies) referred to in clauses (a) and (d) above shall be in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements and the Building Equipment, together with all equipment, inventory, contents, personal property, furniture and any fixtures located on the Demised Property (without any deduction for depreciation), and the policy(ies) referred to in clauses (a), (b), (c) and (d) above shall contain a replacement cost endorsement and an agreed amount or waiver of co-insurance provisions endorsement, provided, however, that with respect to the policy(ies) referred to in clause (c), so long as the Demised Property is not located in whole or in part in a special flood hazard area (as identified by FEMA), in no event shall Tenant be required to maintain policy(ies) for flood insurance relating to the Demised Property and separately for contents/equipment in an amount exceeding \$1,000,000. The deductible under the policies referred to in clauses (a), (b), (c) and (d) above shall not exceed an amount customarily required by institutional lenders for similar properties in the general vicinity of the Demised Property, but in no event in excess of \$200,000 or such greater amount as is approved by Landlord from time to time (and without limiting the parenthetical contained in clause (c)

above). A separate named storm wind deductible of up to 1% of the total insurable value for the Demised Property will be accepted for any location considered by Landlord to be in a "1st tier" hurricane county. If the Demised Property is located in area prone to geological phenomena, including sinkholes, mine subsidence, earthquakes, the insurance policies referred to in clause (a) and (b), above shall cover such risks and in such amounts (not less than the PML for the Demised Property), in form and substance, as Landlord shall reasonably determine with deductibles not greater than the greater of (i) \$250,000 or (ii) five percent (5%) of the total insurable value for the Demised Property. Maximum allowed deductibles in connection with insurance provided for in this Article 10 shall be adjusted annually in proportion to increases in the CPI.

Section 10.02 As of the Commencement Date and throughout the Lease Term, Tenant shall maintain, with financially sound and reputable insurers (as further described in Section 10.03), public liability and other types of insurance with respect to its business and the Demised Property (including all Improvements now existing or hereafter erected thereon) against all losses, hazards, casualties, liabilities and contingencies as customarily carried or maintained by persons of established reputation engaged in similar businesses. Without limiting of the foregoing, Tenant shall maintain or cause to be maintained policies of insurance with respect to the Demised Property in the following amounts and covering the following risks:

(a) Broad form boiler and machinery or breakdown insurance in an amount equal to the full replacement cost of the Improvements at the Demised Property (without any deduction for depreciation) in which the boiler or similar vessel is located, and including replacement cost coverage against loss or damage from (1) leakage of sprinkler systems and (2) damage, breakdown or explosion of steam boilers, electrical machinery and equipment, air conditioning, refrigeration, pressure vessels or similar apparatus and mechanical objects now or hereafter installed at the Demised Property, including loss of inventory, stock and other contents due to spoilage, and (3) business interruption.

(b) During any period of construction, reconstruction, renovation or alteration at the Demised Property, a complete value, "All Risks" Builders Risk form or "Course of Construction" insurance policy in non-reporting form and in an amount reasonably satisfactory to Landlord.

(c) Commercial General Liability insurance covering claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Demised Property on an occurrence form and in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and shall provide coverage for premises and operations, products and completed operations and contractual liability with a deductible in an amount customarily required by institutional owners or institutional lenders (whichever is lower) for similar properties in the general vicinity of the Demised Property, but in no event in excess of \$200,000, and an umbrella liability policy in the amount of \$50,000,000. Liquor Liability insurance, in amounts and subject to terms reasonably approved by Landlord, shall also be maintained by Tenant if alcohol is sold or served at the Demised Property.

(d) Worker's compensation with statutory limits and employer's liability insurance in an amount of \$1,000,000 per accident, per employee and in the aggregate.

(e) Such other insurance (including increased amounts of insurance) and endorsements, if any, with respect to the Demised Property, including, without limitation, any equipment, inventory, contents, personal property, furniture or any fixtures and the operation thereof as Landlord may reasonably require from time to time and similar to that required for similarly situated properties.

Section 10.03 Each carrier providing any insurance, or portion thereof, required by this Article shall have the legal right to conduct its business in the jurisdiction in which the Demised Property is located, and shall have a claims paying ability rating by S&P of not less than “A-” and an A.M. Best Company, Inc. rating of not less than A and financial size category of not less than IX. Tenant shall cause all insurance that it is required to maintain hereunder to contain a mortgagee clause and loss payee clause in favor of Landlord’s Lender in accordance with this Section to be payable to Landlord’s Lender as a mortgagee and not as a co-insured, as its interest may appear.

Section 10.04 All insurance policies required to be maintained by Tenant hereunder and renewals thereof (a) shall be in a form reasonably acceptable to Landlord, (b) shall provide for a term of not less than one year, (c) if the same are insurance policies covering any property (i) shall include a standard non-contributory mortgagee endorsement or its equivalent in favor of and in form acceptable to Landlord’s Lender, (ii) shall contain an agreed value clause updated annually (if the amount of coverage under such policy is based upon the replacement cost of the Demised Property) and (iii) shall designate Landlord’s Lender as “mortgagee and loss payee.” In addition, all property insurance policies (except for flood and earthquake limits) must automatically reinstate after each loss, and the commercial general liability and umbrella policies shall contain an insured endorsement in favor of Landlord and Landlord’s Lender, as their interests may appear.

Section 10.05 Any insurance provided for in this Article may be effected by a blanket policy or policies of insurance, or under so-called “all-risk” or “multi-peril” insurance policies, provided that the amount of the total insurance available with respect to the Demised Property shall provide coverage and indemnity at least equivalent to separate policies in the amounts herein required, and provided further that in other respects, any such policy or policies shall comply with the provisions of this Article. Any increased coverage provided by individual or blanket policies shall be satisfactory, provided the aggregate liability limits covering the Demised Property under such policies shall otherwise comply with the provisions of this Article.

Section 10.06 Every insurance policy carried or required to be carried by any party with respect to the Demised Property, equipment, contents, inventory, personal property or fixtures shall include provisions waiving the insurer’s subrogation rights against the other party prior to the occurrence of damage or loss. Subject to the above, each party hereby waives any rights of recovery against the other party for any direct damage or consequential loss covered by said policies (or by policies required to be carried hereunder by such party) whether or not such damage or loss shall have been caused by any acts or omissions of the other party, but such waiver shall operate only to the extent such waiving party is so protected by such insurance coverage (or would have been protected by maintaining all policies required to be carried hereunder by such party).

Section 10.07 The policies of insurance required to be maintained by Tenant under this Article 10 shall name Tenant as the insured and Landlord as additional insured and Landlord’s Lenders as additional insureds as their interests may appear, with primary coverage in favor of Landlord and all additional insureds (and with provisions that any other insurance carried by any additional insured or Landlord shall be non-contributing and that naming Landlord and the additional parties listed above in this Section as insureds or additional insureds shall not negate any right Landlord or such parties would have had as claimants under the policy if not so designated). The business interruption insurance required pursuant to Section 10.01 shall name Landlord and Landlord’s Lenders as loss payees. All insurance policies required under this Article 10 also shall provide that the beneficial interest of Landlord in such policies shall be fully transferable. In the event Tenant fails to procure or maintain any policy of

insurance required under Article 10, or if the insurance company or coverages provided fail meet the requirements contained in this Article 10, Landlord may, at its option, purchase such insurance and charge Tenant all costs and expenses incurred in procuring and maintaining such insurance.

Section 10.08 Tenant shall provide to Landlord, beginning on the Commencement Date and continuing annually thereafter with certificates (or other evidence reasonably requested by Landlord) from all applicable insurance carriers evidencing the payment of premiums or accompanied by other evidence of such payment (e.g., receipts, canceled checks) in form reasonably satisfactory to Landlord. Each insurance policy required to be carried by Tenant hereunder shall include a provision requiring the insurer to provide Landlord with not less than thirty (30) days' prior written notice of cancellation. Upon the occurrence of both of the following events, Tenant shall pay insurance premiums to Landlord no later than thirty (30) days prior to the date such premiums are due in lieu of payment directly to the applicable the insurance carriers: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) the occurrence and continuance of any Default under this Section 10.08 by Tenant, or any occurrence and the continuance of any Event of Default under any provision in this Lease. Any insurance premiums timely paid by Tenant to Landlord pursuant to this Section shall be applied towards payment of the insurance premium next coming due when such premiums are due and payable.

Section 10.09 Tenant may request from time to time changes to the insurance required pursuant to this Article 10 and Landlord shall review such requested changes and may approve or disapprove such changes in its reasonable discretion. Any such changes shall be documented as an amendment to this Lease. Tenant agrees to pay Landlord upon receipt of written notice from Landlord for all reasonable costs and expenses (including reasonable attorneys' fees and costs) incurred by Landlord in connection with any such requested change or amendment.

ARTICLE 11 DAMAGE OR DESTRUCTION

Section 11.01 If at any time during the Lease Term, the Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature, Tenant shall promptly apply for and diligently pursue all necessary permits, and, upon issuance of such permits, thereafter diligently proceed to repair, replace or rebuild the Demised Property as nearly as possible to its condition and character immediately prior to such damage with such variations and Alterations as may be permitted under (and subject to the provisions of) Article 6 (the "**Restoration Work**").

Section 11.02 All property and casualty insurance proceeds payable to Landlord or Tenant (except (a) insurance proceeds payable to Tenant on account of the Tenant Equipment or Tenant's inventory; and (b) insurance proceeds payable from comprehensive general public liability insurance, or any other liability insurance) at any time as a result of casualty to the Demised Property shall be paid jointly to Landlord and Tenant for purposes of payment for the cost of the Restoration Work, except as may be otherwise expressly set forth herein. Landlord and Tenant shall cooperate in order to obtain the largest possible insurance award lawfully obtainable and shall execute any and all consents and other instruments and take all other actions necessary or desirable in order to effectuate same and to cause such proceeds to be paid as hereinbefore provided. The proceeds of any such insurance in the case of loss shall, to the extent necessary, be used first for the Restoration Work with the balance, if any, payable to Tenant (provided, however, that if an Event of Default is continuing, the balance, if any, shall be payable to Landlord). If insurance proceeds as a result of a casualty to the Demised Property are insufficient to complete the Restoration Work necessary by reason of such casualty, then Tenant shall be responsible for the payment of such amounts necessary to complete such work; provided, however, in the event of a casualty (i) that is not required to be insured against by Tenant under this Lease and (ii) the uninsured cost

to complete the Restoration Work at the Demised Property is in excess of thirty-five percent (35%) of the replacement cost of the Demised Property (an “**Uninsured Casualty**”), then Tenant may deliver a notice to Landlord within thirty (30) days after concluding that the uninsured cost to complete the Restoration Work at the Demised Property is in excess of thirty-five percent (35%) of the replacement cost of the Demised Property, stating Tenant’s desire to terminate this Lease and Tenant’s estimated cost to complete such Restoration Work and estimated replacement cost of the Demised Property, and this Lease shall terminate thirty (30) days following Landlord’s receipt of such notice, provided, however, that if Landlord disputes any part of Tenant’s estimate, Landlord may deliver notice of such dispute to Tenant within thirty (30) days after receipt of Tenant’s notice and such dispute shall be submitted by Landlord and Tenant to the arbitration process set forth in Schedule 4b attached hereto (“**Casualty Termination Arbitration**”) (and if Landlord prevails in such Casualty Termination Arbitration, this Lease shall not terminate). In connection with any such termination of this Lease, any insurance proceeds in connection with such casualty, and if such insurance proceeds amount to less than thirty-five percent (35%) of the replacement cost of the Demised Property, such additional amounts necessary to equal the uninsured cost to complete the Restoration Work up to thirty-five percent (35%) of the replacement cost of the Demised Property, shall be paid by Tenant to Landlord within thirty (30) days after Landlord’s receipt of Tenant’s termination notice. In the event that a casualty occurs in the last eighteen (18) months of the Lease Term, Tenant may deliver a notice to Landlord within forty-five (45) days after concluding that the cost to complete the Restoration Work at the Demised Property is in excess of twenty percent (20%) of the replacement cost of the Demised Property (a “**End of Term Casualty**”), stating Tenant’s desire to terminate this Lease and Tenant’s estimated cost to complete such Restoration Work and estimated replacement cost of the Demised Property, and this Lease shall terminate thirty (30) days following Landlord’s receipt of such notice, provided, however, that if Landlord disputes Tenant’s estimate, Landlord may deliver notice of such dispute to Tenant within thirty (30) days after receipt of Tenant’s notice and such dispute shall be settled by Casualty Termination Arbitration (and if Landlord prevails in such Casualty Termination Arbitration, this Lease shall not terminate). If this Lease does not terminate in connection with an Uninsured Casualty or an End of Term Casualty, then Tenant shall complete the Restoration Work in accordance with Section 11.01, and, if insurance proceeds as a result of such casualty to the Demised Property are insufficient to complete the Restoration Work, then Tenant shall be responsible for the payment of such amounts necessary to complete such Restoration Work.

Section 11.03 Subject to the terms hereof, this Lease shall not be affected in any manner by reason of the total or partial destruction to the Demised Property or any part thereof and Tenant, notwithstanding any applicable Law, present or future, waives all rights to quit or surrender the Demised Property or any portion thereof because of the total or partial destruction of the Demised Property (prior to the expiration of this Lease). Without limiting the foregoing, no Rent shall abate as a result of any casualty, and the proceeds of all business income and interruption insurance carried by Tenant shall be payable to Tenant.

ARTICLE 12 EMINENT DOMAIN

Section 12.01 Landlord and Tenant hereby agree that in no event shall any taking of the Demised Property for any public or quasi-public use under any statute or by right of eminent domain, or by purchase in lieu thereof, in any way relieve Tenant of any obligations under this Lease (as to the Demised Property or otherwise) except as explicitly provided in this Article.

Section 12.02 If any portion of the Demised Property, or existing access to or from the Demised Property, is taken for any public or quasi-public use under any statute or by right of eminent domain, or by purchase in lieu thereof, and such taking (a) reduces the value of the Demised Property by

fifty percent (50%) or more, or (b) prevents, and would prevent after reasonable repair and reconstruction efforts by Tenant, use of the Demised Property for its current permitted use under applicable zoning or other use regulations (including with respect to required parking and access), then this Lease shall terminate as of the date that title to the Demised Property, or portion thereof, actually transfers to the applicable authority.

Section 12.03 Tenant agrees that Landlord has the right in its sole discretion, and at Tenant's sole cost and expense, to oppose any proposed taking regarding the Demised Property. The parties hereto agree to cooperate in applying for and in prosecuting any claim for any taking regarding the Demised Property and further agree that the aggregate net award shall be distributed as follows:

(a) Landlord shall be entitled to the entire award for the condemned Demised Property, except as expressly described in paragraph (b), below.

(b) Tenant shall be entitled to receive fifty percent (50%) of its leasehold value (the excess (if any) of the present value of the fair market rental for the condemned Demised Property (without regard to the Condemnation) for the remainder of the Lease Term over the present value as of the Condemnation Date of the Base Rent payable for the remainder of the Lease Term). Tenant shall also be entitled to (i) the present value of any capital improvement to the extent paid for by Tenant during the Lease Term, multiplied by (ii) the percentage of the remaining useful life of such improvement falling within the Lease Term.

(c) Tenant shall be entitled to any award that may be made exclusively for the taking of Tenant's inventory and personal property, or costs related to the removal and relocation of Tenant's inventory and personal property.

Section 12.04 Except in the case of a removal of the Demised Property from this Lease as described in Section 12.02, in case of a taking of any portion of the Demised Property, (i) Tenant at its own expense shall proceed with diligence (subject to reasonable time periods for purposes of adjustment of any award and unavoidable delays) to repair or reconstruct (or cause to be repaired and reconstructed) the affected Improvements to a complete architectural unit, and all such repair or reconstruction work shall be performed in accordance with the standards and requirements for Alterations set forth in Article 6 and (ii) Landlord shall reasonably make available to Tenant any award due to Landlord in connection with any such taking, to the extent necessary, to be used for such repair or reconstruction work, provided, however, that if such award is insufficient to complete such repair or reconstruction work, Tenant shall nevertheless proceed to complete such repair or reconstruction work at its own expense as provided in (i).

Section 12.05 In the case of a taking of any portion of the Demised Property, if this Lease shall not have been terminated pursuant to Section 12.02, the Base Rent payable hereunder shall be reduced by an amount equal to the monthly fair market rental attributable to the applicable portion of the Demised Property immediately prior to such condemnation as reasonably agreed to by Landlord and Tenant, provided that should Landlord and Tenant fail to reasonably agree within ten (10) Business Days after such taking, then Landlord and Tenant shall submit the issue to Base Rent Reduction Arbitration.

Section 12.06 Notwithstanding any other provision of this Article, any compensation for a temporary taking shall be payable to Tenant without participation by Landlord, except to the proportionate extent such temporary taking extends beyond the end of the Lease Term, and there shall be no abatement of Rent as a result of any temporary taking affecting the Demised Property.

ARTICLE 13 FINANCIAL AND REPORTING COVENANTS

Section 13.01 Confidentiality. Subject to the terms of this Article 13, Landlord shall maintain as confidential any and all information obtained in connection with this Article 13, and accordingly, Landlord agrees not to disclose all or any portion of such information to any third party, except that Landlord may disclose such information:

(a) to those principals, directors, partners, members, employees, representatives, consultants, counsel, accountants and other professional advisors of Landlord who have a legitimate need to review or know such information;

(b) to lenders (including Landlord's Lenders), prospective lenders, purchasers, prospective purchasers, or otherwise in connection with any sale or financing of the Demised Property or any direct or indirect interest therein;

(c) to any government or self-regulatory agency whose supervision or oversight of Landlord or any of its affiliates may be subject to the extent required by applicable Law, any Governmental Authority or a court of competent jurisdiction, in each case to the extent reasonably necessary to comply with any legal or regulatory requirements to which Landlord or its affiliates may be subject; and

(d) to a court of competent jurisdiction in connection with any enforcement action regarding this Lease or the transactions contemplated hereby.

Except any disclosure pursuant to clause (d) of the immediately preceding sentence, upon disclosing such information to any Person to the extent permitted hereunder, Landlord shall advise such Person of the confidential nature thereof, and shall take all reasonable precautions to prevent the unauthorized disclosure of such information by such Person.

Section 13.02 Books and Records. Tenant shall keep accurate books and records of account of all of the Demised Property sufficient to permit the preparation of financial statements in accordance with GAAP. So long as neither Landlord nor any Person directly or indirectly controlling, controlled by, or under common control with Landlord (for purposes of this Section 13.02, "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with") means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise) engages in the business of operating a grocery store, upon Landlord's request, no more than once per calendar year, Tenant shall provide, or cause to be provided, to Landlord in addition to any other financial statements required under this Lease, the following financial statements and information:

(a) promptly and in any event within the earlier of (i) one hundred twenty (120) days after the end of each fiscal year of the Tenant (Tenant's fiscal year constitutes a twelve-month period ending on February 28 of each calendar year) and (ii) within five (5) Business Days of when delivered to any senior lender of Tenant, audited statements of the financial position of Tenant as of the end of each such fiscal year, consisting of a balance sheet and income statement, which statements shall be duly certified by an officer of Tenant to fairly represent the financial condition of Tenant, as of the date thereof, prepared by Tenant in accordance with GAAP; and

(b) promptly and in any event within one hundred twenty (120) days after the end of each calendar year, total retail sales figures in respect of the Demised Property for the applicable calendar year, certified by an officer of Tenant to be true, correct and complete in all material respects.

ARTICLE 14 INTENTIONALLY OMITTED

ARTICLE 15 EVENTS OF DEFAULT

Section 15.01 Events Of Default. Subject to the terms of this Article, the occurrence of any of the following shall constitute an event of default by Tenant under this Lease ("**Event of Default**"):

(a) **Nonpayment of Base Rent.** Failure to pay any installment of Base Rent on or before the date when due under this Lease. Notwithstanding the foregoing, the first failure to pay any installment of Base Rent on or before the date when due under this Lease in any twelve (12) month period during the Lease Term shall not constitute an Event of Default under this Lease until the third (3rd) Business Day following Landlord's delivery of written notice to Tenant regarding the same.

(b) **Nonpayment of Additional Rent.** Failure to pay any amount of Additional Rent on or before the date when due. Notwithstanding the foregoing, the first failure to pay any Additional Rent on or before the date when due under this Lease in any twelve (12) month period during the Lease Term shall not constitute an Event of Default under this Lease until the fifth (5th) Business Day following Landlord's delivery of written notice to Tenant regarding the same.

(c) **Bankruptcy and Insolvency.** If at any time during the Lease Term, (i) Tenant files a Petition, (ii) any creditor or other Person that is an Affiliate of Tenant files against Tenant any Petition, or any creditor or other Person (whether or not an Affiliate of Tenant) files against Tenant any Petition where Tenant or an Affiliate of Tenant, cooperates or colludes with such creditor or other Person in connection with such Petition or the filing thereof, (iii) any creditor or other Person that is not an Affiliate of Tenant files a Petition against Tenant, where none of Tenant or an Affiliate of Tenant cooperates or colludes with such creditor or other Person in connection with such Petition or the filing thereof, and such Petition is not vacated or withdrawn within ninety (90) days after the filing thereof, (iv) a trustee or receiver is appointed to take possession of the Demised Property, or of all or substantially all of the business or assets of Tenant, and such appointment is not vacated or withdrawn and possession restored to Tenant within ninety (90) days thereafter, (v) a general assignment or arrangement is made by Tenant for the benefit of creditors, (vi) any sheriff, marshal, constable or other duly-constituted public official takes possession of the Demised Property, or of all or substantially all of the business or assets of Tenant by authority of any attachment, execution, or other judicial seizure proceedings, and if such attachment or other seizure remains undismissed or undischarged for a period of ninety (90) days after the levy thereof, (vii) Tenant admits in writing its inability to pay its debts as they become due; or (viii) Tenant files an answer admitting or failing timely to contest a material allegation of any Petition filed against Tenant.

(d) **Misrepresentation.** The discovery by Landlord that any representation, warranty or financial statement given to Landlord by Tenant, or any Affiliate of Tenant, was fraudulently false or misleading when given, including as set forth in any Transaction Document.

(e) [Third-Party Option]; Insurance; Reporting; Transfers; Other Covenants. (i) Any default by Tenant under Section 4.03², Article 10, Article 13 or Article 40, provided such default shall not constitute an Event of Default under this Lease unless Tenant fails to cure such default on or before the thirtieth (30th) day following Landlord's delivery of written notice to Tenant regarding such default and (ii) any default by Tenant under Article 22 or Article 39, unless the same is cured within thirty (30) days thereafter; provided, however, that with respect to (x) any default by Tenant under Section 4.03, any cure must be evidenced by a waiver of the applicable purchase right, termination right, recapture right or option regarding the Demised Property by the applicable holder(s) of such right in form and substance reasonably satisfactory to Landlord and (y) any material default by Tenant under Article 10 occurring during the Lease Term (including a default that results in, or with the passage of time will result in, Tenant failing to carry any material insurance required under Article 10), such material default shall not constitute an Event of Default under this Lease unless Tenant fails to cure such material default on or before the second (2nd) Business Day following Landlord's delivery of written notice to Tenant regarding such material default (for the avoidance of doubt the cure periods specified in (x) and (y) are in lieu of, and not in addition to, the thirty (30) day cure periods specified in clause (i) above).

(f) Delivery of Notices and Other Documents. The failure by Tenant to deliver any of the notices or other documents required to be delivered to Landlord under this Lease within the time periods required herein (other than any such notices or other documents specifically addressed in another clause of this Section 15.01, for which Tenant will have the grace periods (if any) and notice rights (if any) set forth in such other clause), within the time period stated in this Lease for the delivery by Tenant of any notice or other document to Landlord (or if no time period is so stated then within fifteen (15) days after request), then the failure of Tenant to deliver such notice or document within ten (10) Business Days after written notice to Tenant of such failure.

(g) Liens. Any claim of lien is recorded against the Demised Property and such claim of lien continues for forty-five (45) days after Tenant receives notice thereof without discharge (by bonding or other means available pursuant to applicable Law), or satisfaction being made by or on behalf of Tenant.

(h) Material Judgments. Any final judgment (after any applicable appeals) against Tenant is entered for the payment of uninsured amounts in excess of \$5,000,000 or insured amounts in excess of \$10,000,000, and such judgment remains unsatisfied within sixty (60) days after the rendering of such judgment, unless Tenant enters into an agreement with all applicable claimants in connection with such judgment regarding payment of same, and Tenant does not breach or default under such agreement beyond applicable notice and cure periods during the term thereof. Any such final judgment amount shall be considered insured only if Tenant delivers to Landlord within fifteen (15) days after such final judgment (after any applicable appeals) written evidence both of the applicable Tenant insurance and coverage thereunder regarding such judgment. If Landlord receives actual (not merely constructive) written notice of any judgment, then any default by Tenant under this subsection (h) in connection with such judgment during the Lease Term shall not constitute an Event of Default under this Lease unless Tenant fails to cure such default on or before the tenth (10th) Business Day following Landlord's delivery of written notice to Tenant regarding such default.

(i) Wrongful Denial of Lease. Tenant wrongfully denies that it has any or further liability or obligation under this Lease, or wrongfully purports to revoke, terminate or rescind same

² For applicable properties

(provided that the foregoing shall not limit Tenant's right to assert a good faith defense to any claim by Landlord that an Event of Default has occurred hereunder or that Tenant is liable to Landlord hereunder pursuant to one or more specific provisions hereunder).

(j) Environmental. Any default under Article 29 or any Holdback Agreement if Tenant fails to cure such default as soon as reasonably practicable, and in any event within thirty (30) days after notice or knowledge of such default; provided, however, that if the default involves an imminent or substantial endangerment, or other worker or public health or safety hazard, the cure shall be effected as soon as possible (and failure to do so shall constitute an Event of Default); provided, further, that if the condition or circumstance is not reasonably susceptible to a cure within thirty (30) days, then Tenant shall have commenced such cure within thirty (30) days and thereafter diligently pursue the cure to completion (and failure to do so shall constitute an Event of Default).

(k) Other Obligations. The failure by Tenant to timely perform any obligation, agreement or covenant under this Lease, other than those matters specified in Sections 15.01(a)-(j) above, and such failure continuing for a period of thirty (30) days after written notice of such failure is delivered to Tenant by Landlord, or such longer period, up to but not exceeding an additional one hundred fifty (150) days (for the avoidance of doubt, in any event, subject to Article 16 regarding force majeure), as is reasonably necessary to remedy such default.

As used in this Lease, "**Default**" means any breach or default under this Lease, whether or not the same is an Event of Default, and also any breach or default under this Lease, that after notice or lapse of time or both, would constitute an Event of Default if that breach or default were not cured within any applicable grace or cure period.

Section 15.02 Remedies Upon Event of Default. If an Event of Default by Tenant occurs, then, in addition to any other remedies available to Landlord at law or in equity or elsewhere hereunder, Landlord shall have the following remedies:

(a) Termination. Landlord shall have the right, with or without notice or demand, immediately upon expiration of any applicable grace period specified herein, to terminate this Lease (or Tenant's possession of the Demised Property), and at any time thereafter recover possession of all or any portion of the Demised Property or any part thereof and expel and remove therefrom Tenant and any other Person occupying the same by any lawful means, and repossess and enjoy all or any portion of the Demised Property without prejudice to any of the remedies that Landlord may have under this Lease. If Landlord elects to terminate this Lease (or to terminate Tenant's right of possession), Landlord shall also have the right to reenter the Demised Property and take possession of and remove all personal property of Tenant, if any, in the Demised Property. If Landlord elects to terminate this Lease and/or Tenant's right to possession, or if Tenant's right to possession is otherwise terminated by operation of law, Landlord may recover as damages from Tenant the following: (i) all Rent then due under this Lease through the date of termination; (ii) the Rent due for the remainder of the Lease Term in excess of the fair market rental value of the Demised Property for the remainder of the Lease Term, including any and all Additional Rent (each discounted by the discount rate of the Federal Reserve Bank of San Francisco plus one percent (1%)); (iii) the cost of reletting the Demised Property, including the anticipated period of vacancy until the Demised Property can be re-let at their fair market rental values; and (iv) any other costs and expenses that Landlord may reasonably incur in connection with the Event of Default. Efforts by Landlord to mitigate the damages caused by the Event of Default (or Tenant's Default under this Lease) shall not waive Landlord's right to recover damages under the foregoing provisions. Landlord agrees to

use commercially reasonable efforts to mitigate damages, if, and to the extent, required by applicable Law.

(b) Continuation after Event of Default. If Landlord does not elect to terminate this Lease, then this Lease shall continue in effect, and Landlord may enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, and Landlord, without terminating this Lease, may exercise all of the rights and remedies of a landlord at law or in equity, subject to Article 26 hereof. Landlord shall not be deemed to have terminated this Lease except by an express statement in writing. Acts of maintenance or preservation, efforts to relet the Demised Property, or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease shall not constitute an election to terminate Tenant's right to possession unless such election is expressly stated in writing by Landlord. Notwithstanding any such reletting without such termination, Landlord may at any time thereafter elect to terminate Tenant's right to possession and this Lease. If Landlord elects to relet the Demised Property for the account of Tenant, the rent received by Landlord from such reletting shall be applied as follows: first, to the payment of any and all costs of such reletting (including attorneys' fees, brokers' fees, alterations and repairs to the Demised Property, and tenant improvement costs); second, to the payment of any and all indebtedness other than Rent due hereunder from Tenant to Landlord; third, to the payment of any and all Rent due and unpaid hereunder; and the balance, if any, shall be held by Landlord and applied in payment of future Rent as it becomes due. If the rent received from the reletting is less than the sum of the costs of reletting, other indebtedness due by Tenant, and the Rent due by Tenant, then Tenant shall pay the deficiency to Landlord promptly upon demand by Landlord. Such deficiency shall be calculated and paid monthly.

(c) State-Specific Remedy. Landlord may pursue any other remedy now or hereafter available to Landlord under the Laws of the state in which the Demised Property is located in addition to and not as an alternative remedy to those provided hereunder.

(d) Damages. Without limiting Tenant's indemnifications of Landlord and the other Landlord Parties under this Lease (including under Article 9 and Article 29 of this Lease) in connection with claims and other actions by third parties against Landlord or other Landlord Parties (which indemnifications include consequential, indirect and punitive damages, if any, payable to third parties making claims being indemnified against), Landlord hereby waives any right to any consequential, indirect or punitive damages against Tenant. Tenant hereby waives any right to any consequential, indirect or punitive damages against Landlord.

Section 15.03 No Cure Rights Following Events of Default. Upon the occurrence of an Event of Default, Landlord shall have all rights and remedies hereunder and under applicable Law. Except only as may be required by applicable Law that cannot be waived lawfully (a) Landlord shall have no obligation to give any notice after an Event of Default as a condition to Landlord's pursuit of any right or remedy; and (b) Landlord shall have no obligation to accept the attempted or purported cure of, or to waive, any Event of Default, regardless of tender of delinquent payments or other performance by Tenant, or any other event or condition whatsoever; and Tenant shall not have any right to cure any Event of Default, and no right to cure shall be implied. Without limiting the foregoing, after the occurrence of any Event of Default (irrespective of whether or not the same consists of an ongoing condition, a one-time occurrence, or otherwise), the same shall be deemed to continue at all times thereafter; unless Landlord executes and delivers a written agreement in which Landlord expressly states that such Event of Default has ceased to continue (and Landlord shall not be obligated under any circumstances whatsoever to execute and deliver any such agreement). Without limitation, this Section shall govern in any case where reference is made in this Lease or otherwise to (x) any "cure" (whether by use of such word or otherwise)

of any Event of Default, (y) “during an Event of Default” or “the continuance of an Event of Default” (in each case, whether by use of such words or otherwise), or (z) any condition or event that continues beyond the time when the same becomes an Event of Default.

Section 15.04 Indemnification. Nothing in this Article shall be deemed to affect or limit Tenant’s obligation to indemnify, defend, protect and hold harmless Landlord and the other Landlord Parties under this Lease (including under Article 9 and Article 29), and such obligation shall survive the termination or expiration of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, such obligations shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

Section 15.05 Performance by Landlord. Notwithstanding any other provision herein, in addition to any other rights of Landlord under this Lease, if Tenant has failed to satisfy any obligation of Tenant set forth herein, whether or not the same constitutes an Event of Default, and in Landlord’s reasonable determination such failure by Tenant constitutes an imminent threat of injury or harm to persons, or a material damage or loss of value to property, then Landlord may, with or without notice (provided, however, that Landlord shall endeavor to give such notice as is practical under the circumstances, if any, which notice may be oral and need not be in writing), and without regard to whether or not any applicable cure period expressly provided herein has expired, elect to perform such obligation for the account and at the expense of Tenant. If Landlord pays any sums of money or incurs any expense in connection with performing any such obligation (including attorneys’ fees, consultant fees, testing and investigation fees, expert fees and court costs), such sums so paid or expenses so incurred by Landlord, plus an administrative charge of five percent (5%) of such sums or expenses, shall be due to Landlord from Tenant within ten (10) days after written demand therefor from Landlord, in addition to any other amounts to be paid by Tenant to Landlord under this Lease, which written demand shall include reasonably detailed evidence of such costs and expenses.

Section 15.06 Late Fee. In addition to any interest charged to Tenant under Section 15.07, if any payment of Base Rent or Additional Rent is not received by Landlord from Tenant when such payment is due to Landlord hereunder, such payment shall be deemed delinquent and cause Tenant to incur a late fee of five percent (5%) of each such delinquent payment (the “**Late Fee**”), due and payable immediately with the delinquent Base Rent or delinquent Additional Rent, as the case may be; provided, however, that the first such delinquent payment in any twelve (12) month period shall not be subject to a Late Fee.

Section 15.07 Interest. Tenant hereby acknowledges that late payment by Tenant of Base Rent or Additional Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, in addition to any Late Fee due from Tenant hereunder, any sum due by Tenant under this Lease that is not paid when due shall bear interest at the lesser of five percent (5%) per annum of such sums, or the maximum rate allowed under applicable Law, from the date such sum becomes due and payable by Tenant hereunder until paid, unless otherwise expressly provided in this Lease, provided, however, that the first such late payment in any twelve (12) month period shall not be subject to such interest until the fifth (5th) Business Day following Landlord’s delivery of written notice to Tenant regarding the same.

Section 15.08 Tenant’s Subleases. If Landlord elects to terminate this Lease on account of any Event of Default, then Landlord may terminate any sublease and any license, concession, or other

consensual arrangement for possession entered into by Tenant and affecting the Demised Property (subject to the terms of any applicable nondisturbance agreement executed by Landlord and subject to the terms of any sublease in existence as of the Commencement Date), or choose to succeed to Tenant's interest in any such arrangement. Absent a nondisturbance agreement between Landlord and any such subtenant, no payment by a subtenant with respect to a sublease shall entitle such subtenant to possession of the Demised Property after termination of this Lease and Landlord's election to terminate the sublease. If Landlord elects to succeed to Tenant's interest in such arrangement, then Tenant shall, as of the date of notice given by Landlord to Tenant of such election, have no further right to, or interest in, any rent or other consideration due under that arrangement.

Section 15.09 Form of Payment After Default. Without limiting any other obligation of Tenant under this Lease, if Tenant fails, on two or more occasions, to pay any amount due to Landlord under this Lease within the applicable notice and cure periods set forth in this Lease, or if Tenant attempts to pay any such amount by drawing a check on an account with insufficient funds, then Landlord shall have the right to require that any and all subsequent amounts paid by Tenant to Landlord under this Lease (to cure a default or otherwise) be paid in the form of cashier's or certified check drawn on an institution acceptable to Landlord, by wire transfer or any other form approved by Landlord in its sole and absolute discretion, notwithstanding that Landlord may have previously accepted payments from Tenant in a different form.

Section 15.10 Acceptance of Rent Without Waiving Rights. No endorsement or statement by Tenant on any check or any letter accompanying any payment by Tenant to Landlord will be deemed an accord and satisfaction of any amount in dispute between Tenant and Landlord or otherwise. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord, may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement. Landlord may accept any and all of Tenant's payments without waiving any right or remedy under this Lease, including the right to commence and pursue an action to enforce rights and remedies under a previously served notice of default, without giving Tenant any further notice or demand.

Section 15.11 Licenses and Permits. In connection with any repossession of the Demised Property by Landlord or its designee, Tenant and its Affiliates shall reasonably cooperate with Landlord in transferring to Landlord or its designee any entitlements, certificates, emissions credits, licenses or permits then held or maintained by Tenant or its Affiliates and required by applicable Law in order to operate the Demised Property as a grocery store or other applicable Permitted Use, including any such licenses or permits required in order to serve alcoholic beverages at the Demised Property.

Section 15.12 Remedies Cumulative. All rights, privileges, elections, and remedies of Landlord are cumulative and not alternative with all other rights and remedies hereunder, at law or in equity to the fullest extent permitted by applicable Law. The exercise of one or more rights or remedies by Landlord shall not impair Landlord's rights to exercise any other right or remedy to the fullest extent permitted by applicable Law.

Section 15.13 Affirmance of Lease. In the event that, following of the filing of any Petition regarding Tenant, under applicable Law, the trustee in bankruptcy or Tenant has the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant shall, within such time period as may be permitted by the bankruptcy court having jurisdiction, so affirm this Lease, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease, and

provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations under this Lease.

Section 15.14 Survival. The remedies available to Landlord pursuant to this Article shall survive expiration or termination of this Lease.

ARTICLE 16 FORCE MAJEURE

If either party is prevented or delayed from timely performance of any obligation or satisfying any condition under this Lease by any event or circumstance beyond the reasonable control of such party, exclusive of financial inability of a party, but including any of the following if beyond the reasonable control of such party: casualty or condemnation, strike, lockout, labor dispute, civil unrest, inability to obtain labor, materials or reasonable substitutes thereof, acts of God, present or future governmental restrictions, regulations or control, insurrection, and sabotage, then the time to perform such obligation or satisfy such condition shall be extended on a day for day basis for each day of delay caused by such event or circumstance, but only for a reasonable period of time not to exceed, in any event, one hundred twenty (120) days. The provisions of this Article shall in no event operate to delay the Commencement Date or to excuse Tenant from the payment of all Rent as and when due under this Lease. For the avoidance of doubt, the inclusion of casualty and condemnation in this Article 16 does not supersede or limit the requirements of Article 10, Article 11 or Article 12 with respect thereto or lengthen any time periods with respect to Tenant's obligations thereunder (unless a new casualty or condemnation occurs which new casualty or condemnation, however, shall be subject to the requirements of Article 10, Article 11 or Article 12, as applicable).

ARTICLE 17 NOTICES

(a) Any notice, demand or other communication to be given under the provisions of this Lease by either party hereto to the other party hereto shall be effective only if in writing and (i) personally served, (ii) mailed by United States registered or certified mail, return receipt requested, postage prepaid, (iii) sent by a nationally recognized courier service (such as Federal Express) for next-day delivery, to be confirmed in writing by such courier, or (iv) sent by facsimile (with answer back acknowledged), addressed as follows:

To Tenant: c/o The Yucaipa Companies, LLC
9130 West Sunset Boulevard
Los Angeles, California 90069
Attention: Legal Dept.
Facsimile: 310-789-1791

with a copy to: Pircher, Nichols & Meeks
1925 Century Park East
Suite 1700
Los Angeles, California 90067-2512
Attention: Real Estate Notices (SAH #5602.3)
Facsimile: 310-201-8922

To Landlord:

[]
[]

with a copy to:

[]
[]
[]
[]

and a copy to:

[]
[]
[]

(b) Subject to the terms of this subsection (b), all notices, demands and other communications sent in the foregoing manner shall be deemed delivered when actually received or refused by the party to whom sent, unless (i) mailed, in which event the same shall be deemed delivered on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of the third (3rd) Business Day after the date of mailing, whichever first occurs, or (ii) sent by facsimile, in which event the same shall be deemed delivered only if a duplicate notice sent pursuant to a method described in subsection (a)(i), (a)(ii) or (a)(iii) of this Article 17 is delivered within two (2) Business Days after such facsimile is received by the recipient. Notwithstanding the foregoing, if any notice, demand or other communication is not received during business hours on a Business Day, such notice, demand or other communication shall be deemed to have been delivered at the opening of business on the next Business Day.

(c) Either Landlord or Tenant may from time to time change its address for receiving notices under this Lease by providing written notice to the other party in accordance with this Article 17.

ARTICLE 18 ACCESS

Landlord and its designees shall have the right upon not less than twenty-four (24) hours' prior written notice to Tenant (except in the event of an emergency that poses an immediate and material danger to persons or property within the Demised Property, where no prior notice shall be required) to enter upon the Demised Property at reasonable hours to inspect the Demised Property or, during the period commencing one year prior to the end of the Lease Term, for the purpose of exhibiting same to prospective tenants and posting "for lease" or similar signage at the Demised Property, all in Landlord's discretion. Any such entry and/or inspection by Landlord shall not unreasonably interfere with Tenant's ability to conduct its business operations at the Demised Property. Tenant may elect to have a representative of Tenant accompany Landlord during all such entries (but in no event shall the availability of a representative to accompany Landlord or Tenant's election or failure to inform Landlord of its election to have a representative accompany Landlord be a condition to Landlord's rights under this Article 18).

ARTICLE 19 SIGNS

Tenant may, at Tenant's sole cost and expense, install or erect, at or on the Demised Property, signs of any height or dimensions and bearing such inscriptions as Tenant shall reasonably determine; provided, however, that no sign shall be installed or erected by Tenant at or on the Demised Property until all governmental approvals and permits required therefor have been obtained, all fees

pertaining thereto have been paid by Tenant, and Tenant has delivered written evidence of such approvals, permits and payment to Landlord. Landlord shall use commercially reasonable efforts to assist Tenant, upon Tenant's request, in obtaining all necessary governmental permits and approvals for such signs. Upon the termination of this Lease following an Event of Default or upon a rejection of this Lease in any bankruptcy or similar proceeding, Landlord shall have the right, at its sole option, to retain and use the signage structures (but not the signs) in the future operation of the Demised Property without payment of any compensation to Tenant, or to require Tenant to remove such signage structures at Tenant's sole cost and expense (and, if such removal is not accomplished by Tenant promptly after notice from Landlord, Landlord may undertake such removal at Tenant's sole cost and expense). This Article shall survive termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 20 IMPROVEMENTS, BUILDING EQUIPMENT AND TENANT EQUIPMENT

Section 20.01 Any Building Equipment and other Improvements at the Demised Property on the Commencement Date shall be the property of Landlord. In the event that Tenant installs or erects any fixtures or other Improvements to the Demised Property after the Commencement Date, such fixtures or other Improvements shall be the property of Landlord and remain upon and be surrendered with the Demised Property; provided, however, that Tenant shall be required to remove any underground storage tanks or otherwise close such tanks in accordance with applicable Law, unless Landlord expressly consents in writing to the continued presence of any such underground storage tanks. Notwithstanding the foregoing provisions, Tenant shall be liable for all property taxes, assessments, and similar charges assessed against or allocable to any property at the Demised Property (irrespective of whether such property is Building Equipment owned by Landlord or Tenant Equipment or other personal property owned by Tenant) and that are attributable to any period of time during the Lease Term.

Section 20.02 During the Lease Term, Tenant shall be entitled to use the Building Equipment in Tenant's operations at the Demised Property. Tenant shall keep the Building Equipment in good working order and repair, shall not remove the Building Equipment from the Demised Property (subject to the terms of this Section) and shall not permit any lien or other encumbrance to attach to any Building Equipment except as may be caused by Landlord, and except any such liens that are being contested by Tenant in good faith by appropriate proceedings and that have been bonded over by Tenant to the reasonable satisfaction of Landlord or for which Tenant provides alternative security to the reasonable satisfaction of Landlord. Tenant shall keep (or cause to be kept) the Building Equipment insured and shall be responsible for any casualty or other loss to Building Equipment or occasioned by Building Equipment. Tenant shall at all times have a system in place to identify the Building Equipment from the Tenant Equipment or any of Tenant's personal property, and any items of equipment not so identified shall conclusively be presumed to be Building Equipment and shall be the property of Landlord. Tenant may, from time to time, retire or replace Building Equipment with new items of equipment of equal or greater value purchased by Tenant, in which event such replaced equipment shall constitute Building Equipment; provided, however that Tenant shall provide Landlord prompt written notice after any such replacement together with reasonable evidence as to the value and quality of the new Building Equipment. Promptly after Landlord's receipt of such written notice in connection with any such replacement (or written notice of any Capital Alterations) made during the final twelve (12) months of the Lease Term (or the final twelve (12) months of the applicable Option Period if an Option shall have been exercised), the useful life of which extends beyond the Lease Term, Landlord shall pay to Tenant an amount equal to (i) the quotient of (x) the portion of the useful life of such replacement or Capital

Alteration not falling within the Lease Term divided by (y) the total useful life of such replacement or Capital Alteration, multiplied by (ii) the value of such replacement or Capital Alteration, provided, that, should the Lease Term thereafter be extended, the amount shall be recalculated so that the applicable Option Period is included within the Lease Term and any amounts due Landlord pursuant to such recalculation shall be paid by Tenant to Landlord promptly after such recalculation. All Building Equipment shall be the property of Landlord, and Tenant shall execute such instruments and documents as Landlord may require to evidence such ownership by Landlord.

Section 20.03 In the event of any replacement of any Tenant Equipment with new items of equipment, such new items of equipment shall thereafter constitute Tenant Equipment. Tenant shall keep the Tenant Equipment fully insured and shall be responsible for any casualty or other loss to any Tenant Equipment or occasioned by any Tenant Equipment.

ARTICLE 21 END OF TERM; HOLDING OVER

Section 21.01 Upon the expiration or earlier termination of this Lease, Tenant shall peaceably and quietly quit and surrender the Demised Property, and all Alterations that are then part of the Demised Property, broom clean and in good order and condition. Tenant shall within thirty (30) days prior to the expiration of this Lease (or within thirty (30) days after written notice from Landlord upon any earlier termination of this Lease) transfer to Landlord all plans, drawings, other Alteration Information, and technical descriptions of the Demised Property in Tenant's possession or control, and shall assign to Landlord, without warranty or representation, all assignable permits, licenses, authorizations and warranties necessary for the operation of the Demised Property (in each case to the extent not previously transferred or assigned to Landlord). Upon the expiration or earlier termination of this Lease, Tenant shall have the obligation to remove all Tenant Equipment, trade fixtures and personal property from the Demised Property, except that, with the prior written consent of Landlord (which consent Landlord may withhold in its sole discretion), Tenant may elect to abandon any such Tenant Equipment, trade fixtures and personal property. Any Tenant Equipment, trade fixtures or personal property that is not removed upon the expiration or earlier termination of this Lease within the time periods set forth above in this Section 21.01 shall be deemed abandoned and may be removed, stored, disposed of or used by Landlord without payment of any compensation to Tenant (and any costs incurred by Landlord in connection with any such removal, storage or disposal shall be paid by Tenant to Landlord immediately upon demand). Tenant agrees to deliver, within three (3) Business Days after the date of this Lease, written notice of the covenant in the immediately preceding sentence to any lender with a security interest in any of the Tenant Equipment and any equipment lessor that owns any of the Tenant Equipment, which notice shall specifically state that any Tenant Equipment, trade fixtures or personal property remaining on the Demised Property at the time of termination or expiration of this Lease shall be deemed abandoned and the property of Landlord, subject to any direct agreements between Landlord and any lender or owner with an interest in such Tenant Equipment, trade fixtures and personal property. Tenant shall deliver a copy of such notice to Landlord contemporaneously with its delivery to such lender or equipment lessor.

Section 21.02 If Tenant holds over in possession after the expiration of the Lease Term, then such holding over shall not be deemed to extend the Lease Term or renew this Lease, but rather the tenancy thereafter shall continue as a tenancy at sufferance pursuant to the terms and conditions contained in this Lease, at one hundred fifty percent (150%) of the Base Rent otherwise then applicable (in addition to all Additional Rent); and Tenant shall be responsible for the consequences of any unauthorized holdover and shall indemnify, defend, protect (with counsel selected by Landlord) and hold Landlord Parties wholly free and harmless from any and all Losses arising therefrom. If Tenant is obligated under

Article 29 to undertake Remedial Activities, Tenant shall be permitted to access the Demised Property to conduct the Remedial Activities and such access shall not be deemed holding over in possession unless the Remedial Activities materially interfere with surface uses, or materially compromise the quiet enjoyment of the Demised Property, in which case Tenant shall be deemed to be holding over until such time as surface uses may resume without undue impairment.

Section 21.03 This Article 21 shall survive the expiration or termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article 21 shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 22 TENANT ASSIGNMENT AND SUBLETTING

Section 22.01

(a) Except as otherwise explicitly provided in this Article 22 and Article 23, neither Tenant, nor Tenant's successors or assigns, shall assign or transfer, in whole or in part, by operation of law or otherwise, this Lease, or sublet the Demised Property, in whole or in part, or permit the Demised Property or any portion thereof to be used or occupied by third parties, or enter into a management contract or other arrangement whereby the Demised Property shall be managed or operated by anyone other than the owner of the Tenant's leasehold estate (other than customary property-level agreements for landscaping, maintenance and other similar services), without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall request Landlord's consent to a proposed assignment or sublease in writing, and Landlord will endeavor to respond to such request within ten (10) Business Days following receipt thereof. In the event that Landlord fails to so respond to Tenant's request within such ten (10) Business Day period, then Tenant may deliver a second written request for Landlord's consent to such proposed assignment or sublease containing a sentence in the header of the first page of the request set in at least 14-point bold font, all capital letters, stating "**LANDLORD'S FAILURE TO RESPOND TO THIS NOTICE WITHIN TEN (10) BUSINESS DAYS AFTER LANDLORD'S RECEIPT HEREOF SHALL CONSTITUTE LANDLORD'S CONSENT TO THE ASSIGNMENT OR SUBLEASE PROPOSED HEREIN,**" and Landlord shall endeavor to respond to such second request within ten (10) Business Days following Landlord's receipt of such request. In the event that Landlord fails to so respond to Tenant's second request within such ten (10) Business Day period, then Landlord shall be deemed to have consented to the proposed assignment or sublease set forth in Tenant's written request. Any response by Landlord that withholds consent to any proposed assignment or sublease and does not contain a reasonably detailed explanation of the reasonable grounds for Landlord's withholding of its consent shall be deemed a failure to respond. No assignment or transfer of any direct or indirect ownership interest in Tenant, in whole or in part, by operation of law or otherwise, privately or publicly, regardless of the number of tiers of ownership, and regardless of whether there is a change of control, shall be deemed an assignment hereunder or otherwise require Landlord's consent. No assignment to any entity with which Tenant may merge, consolidate or to an entity that purchases (i) all the assets of Tenant or (ii) at least ninety percent (90%) of the value of all of the assets of Tenant shall require Landlord's consent. The sale or assignment of assets other than Tenant's leasehold interest in the Demised Property shall not be deemed an assignment or otherwise require Landlord's consent. No encumbrance, pledge or hypothecation, in whole or in part, by operation of law or otherwise, of this Lease or any interest in the leasehold estate created by this Lease, or of any direct or indirect ownership interest in Tenant, regardless of the number of tiers of ownership, shall be deemed an assignment or otherwise require Landlord's consent, nor shall the

foreclosure or transfer in lieu of foreclosure thereof. Any such encumbrance, pledge or hypothecation of this Lease or any interest in the leasehold estate created by this Lease shall be subject to the provisions of Section 23.03.

(b) After any assignment or sublease permitted by Landlord hereunder (including any assignment or sublease described in Sections 22.02, 22.03, 22.04 and 22.05), and except as expressly provided herein, (i) Tenant (unless it is no longer in existence in connection with a merger, consolidation or sale of all of its assets) shall remain liable for all its obligations under this Lease, and Tenant shall, promptly after request, execute and deliver to Landlord a guaranty in form and substance reasonably acceptable to both Landlord and Tenant, whereby Tenant explicitly guarantees all of the assignee's obligations under this Lease, and (ii) Landlord may condition its consent to any sublease regarding the Demised Property upon the sublease containing the following provisions (or the subtenant separately agreeing), in form and substance reasonably acceptable to Landlord and Landlord's Lender (collectively, the "**Subordination and Attornment Provisions**"): (A) that the sublease is subordinate in all respects to this Lease provided that Landlord and Landlord's Lender agree to accept the attornment described in the immediately succeeding clause (B) and agree not to disturb the rights of the subtenant pursuant to a commercially reasonable non-disturbance agreement; (B) that in the event of the cancellation or termination of this Lease for any reason whatsoever or of the surrender of this Lease by operation of law prior to the expiration date of the sublease, the subtenant shall make full and complete attornment to Landlord under the terms of the sublease for the balance of the term of the sublease; (C) that subtenant waives the provisions of any Law then or thereafter in effect that may give subtenant any right of election to terminate the sublease or to surrender possession of the Demised Property in the event any proceeding is brought by Landlord to terminate this Lease; and (D) that all of the foregoing provisions in (A) through (C) are for the benefit of both Tenant and Landlord and Landlord is a third party beneficiary thereof. Notwithstanding the foregoing, upon the reasonable request of Landlord or Landlord's Lender, Landlord, Tenant and the subtenant shall execute and deliver to each other a separate subordination and attornment agreement regarding the sublease, in form and substance reasonably acceptable to Landlord and Landlord's Lender. Tenant shall submit current financial statements of any proposed assignee or sublessee together with Tenant's request for Landlord's approval of any proposed assignment or sublease. Tenant shall reimburse Landlord for all reasonable costs and expenses actually paid by Landlord in connection with any requested consent to an assignment or sublease; including reasonable legal fees and costs in reviewing sublease or assignment documents and in preparing or reviewing consents. Without in any way limiting Landlord's right to reasonably withhold consent to any proposed assignment or sublease by Tenant, Tenant shall deliver to Landlord written notice of any assignment or sublease of this Lease promptly after the effective date of any such assignment or sublease.

(c) If this Lease is assigned or transferred, or if all or any part of the Demised Property is sublet or occupied by any party other than Tenant, Landlord may collect rent from the assignee, transferee, or, after the occurrence of an Event of Default, subtenant or similar occupant, and apply the net amount collected to the Rent reserved in this Lease, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any covenant or condition of this Lease, or the acceptance of the assignee, transferee, subtenant or occupant as tenant, or a release of Tenant from the performance or further performance by Tenant of its obligations under this Lease. Without limiting the generality of the foregoing, Tenant expressly acknowledges and agrees that, in the event of any assignment of this Lease, Tenant shall (if it remains liable pursuant to the provisions of this Article 22) remain jointly and severally liable with the assignee for all of the obligations under this Lease, and in all other cases of any transfer of Tenant's interest under this Lease, Tenant shall remain primarily liable for such obligations. Subject to the foregoing, the consent by Landlord to an assignment, transfer, management contract or subletting shall not in any way be construed to relieve Tenant from obtaining the express

written consent of Landlord in each instance to any subsequent similar action that Tenant may desire to take.

Section 22.02 Notwithstanding anything contained in Section 22.01, Tenant may sublease the entire Demised Property, at any time, in the ordinary course of business hereunder without Landlord's prior written consent, provided all of the following conditions are satisfied: (a) the subtenant is commercially and financially sound; (b) the permitted use under the sublease is limited to the operation of a Permitted Use (and with any change in use to a use which is not a Permitted Use subject to the prior written consent of each of Landlord and Tenant, which approval each may withhold in its reasonable discretion), in compliance with all applicable Laws and the covenants set forth in Section 4.02, (c) the sublease contains the Subordination and Attornment Provisions (provided, however, that such provisions shall subordinate the sublease in all respects to the Lease without any condition that Landlord or Landlord's Lender agree to accept the subtenant's attornment or agree not to disturb the rights of the subtenant pursuant to a commercially reasonable subordination, non-disturbance and attornment agreement, or otherwise, unless Landlord consents in writing to the sublease), if required by Landlord in its sole and absolute discretion; (d) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term, and (e) the subtenant has not refused to deliver to Landlord and any Landlord's Lender, promptly after request, a subordination, non-disturbance and attornment agreement in form and substance described in Section 22.01(b).

Section 22.03 Notwithstanding anything contained in Section 22.01, Tenant may sublease space within the Demised Property hereunder subject to Landlord's consent not to be unreasonably withheld (provided, however, that Landlord's consent shall not be required for such subleases of less than twenty percent (20%) of the useable square feet of the Demised Property, but Landlord's consent (not to be unreasonably withheld) shall be required for any such sublease if twenty percent (20%) or more in the aggregate of the useable square feet of the portion of the Demised Property is already subject to such subleases or would be subject to such subleases with the inclusion of any additional such sublease[, it being agreed that any usable space at the Demised Property not being occupied by Tenant on the Commencement Date (as set forth on Schedule 22.05) shall not be included in any of the foregoing calculations, regardless of whether any such space is later sublet]³, provided all of the following conditions are satisfied: (a) the subtenant is commercially and financially sound; (b) the permitted use under the sublease is limited to the operation of customary in-store, grocery store (which may include, but which shall not be limited to, the operation of a pharmacy, bank or coffee kiosk) or other customary in-store Permitted Uses (and with any change in use to a use which is not a Permitted Use subject to the prior written consent of each of Landlord and Tenant, which approval each may withhold in its reasonable discretion) and the covenants set forth in Section 4.02 are included in the sublease as obligations of the subtenant (although the covenants set forth in Section 4.01 may be expressly excluded from the sublease), (c) the applicable sublease contains the Subordination and Attornment Provisions and prohibits the subtenant from effecting or permitting any Alterations other than a Subtenant Minor Project without the prior written consent of Tenant and Landlord; (d) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term, and (e) the subtenant has not refused to deliver to Landlord and any Landlord's Lender, promptly after request, a subordination, non-disturbance and attornment agreement in form and substance described in Section 22.01(b).

Section 22.04 Notwithstanding anything to the contrary contained in Section 22.01, Tenant may assign the Lease in its entirety without Landlord's prior written consent, but with prior written notice

³ Only in an assignment lease with unoccupied space

to Landlord, and provided an Event of Default does not exist as of the delivery of Tenant's notice to Landlord and as of the effective date of the applicable assignment, if such assignment or sublease is to the following (a "**Permitted Assignee**"): an entity that along with any guarantor of such entity's obligations under the Lease (pursuant to a guaranty in form and substance acceptable to Landlord) has a net worth at the time of such assignment equal to or greater than the greater of (x) the net worth of Tenant immediately before the assignment (but in no event shall such assignee and guarantor be required to have a combined net worth greater than \$150,000,000) and (y) \$10,000,000. In addition, Tenant may assign its rights to the entire Lease without consent to any entity, including any Tenant Affiliate, so long as Tenant remains liable pursuant to a guaranty in form and substance acceptable to Landlord. In the event of any assignment to a Permitted Assignee, Tenant shall be released from any liability accruing under this Lease after the date of such assignment. Any Permitted Assignee or other assignee permitted under this Section 22.04 shall be subject to all of the provisions of this Lease, including the operation requirements set forth in Article 4. For the avoidance of doubt, in no event shall Tenant be permitted to assign less than all of its interest in this Lease.

Section 22.05 [Notwithstanding anything contained in Section 22.01, Tenant shall use commercially reasonable efforts to sublease the unoccupied portions of the Demised Property described in Schedule 22.05 pursuant to subleases in form and substance reasonably acceptable to Landlord, and agrees that all of the following conditions shall be satisfied with regard to any such subleases: (a) the subtenant is commercially and financially sound; (b) the sublease contains the Subordination and Attornment Provisions and prohibits the subtenant from effecting or permitting any Alterations other than Subtenant Minor Projects without the prior written consent of Tenant and Landlord; (c) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term, and (d) the subtenant has not refused to deliver to Landlord and any Landlord's Lender, promptly after request, a subordination, non-disturbance and attornment agreement in form and substance described in Section 22.01(b). Landlord and Tenant shall reasonably cooperate in locating appropriate subtenants in connection with each such unoccupied portion of the Demised Property.]⁴

Section 22.06 Upon any sublease or assignment permitted as provided in this Article 22 Tenant shall deliver to Landlord copies of such sublease or assignment agreement in form and substance reasonably satisfactory to Landlord (including assumption language reasonably satisfactory to Landlord in any assignment agreement) promptly after the execution thereof by Tenant. Tenant shall provide Landlord with at least ten (10) Business Days written notice of its intent to assign or sublet this Lease with Landlord's consent or as otherwise permitted hereunder and shall deliver such assignment or sublease containing, if an assignment, an agreement, in recordable form, executed by the assignor and the assignee, in which the assignee assumes the performance of the obligations of the assignor under this Lease throughout the Lease Term within ten (10) Business Days of such assignment. Tenant shall be entitled to redact any confidential business terms (other than the terms Landlord is otherwise entitled to see under this Lease) not applicable to Landlord. In no event shall Tenant be entitled to amend, extend or otherwise modify any sublease or assignment agreement (except with respect to such redacted material) without the prior written consent of Landlord, which consent Landlord may withhold in its reasonable discretion. Landlord agrees to enter into a commercially reasonable subordination, non-disturbance and attornment agreement with any subtenant under any sublease approved by Landlord in writing hereunder and any sublease for less than twenty percent (20%) of the useable square feet at a Demised Property, as

⁴ Only in a lease that has unoccupied space

described in Section 22.03, but shall not have any obligation to deliver a subordination, non-disturbance and attornment agreement to any other subtenant.

Section 22.07 Subject to the terms of this Lease, this Lease shall be binding upon, enforceable by, and inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns. Without limiting Landlord's rights to reimbursement for fees and costs payable to third parties contained in this Lease, including in connection with its review of any Tenant request for Landlord's consent in connection with an assignment or sublet pursuant to this Article 22, Landlord agrees not to charge Tenant any additional amount as a condition to its consent to any assignment or sublease hereunder.

ARTICLE 23 FINANCINGS

Section 23.01 This Lease shall be subject and subordinate to all present and future ground or underlying leases of the Demised Property and to the lien of any mortgages or trust deeds, now or hereafter in force against the Demised Property, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages or trust deeds, or the lessors under such ground or underlying leases, require in writing that this Lease be superior thereto; and Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any mortgage or deed of trust to which this Lease is subordinate, or in the event of any termination of any ground or underlying lease to which this Lease is subordinate, to attorn to the purchaser upon any such foreclosure sale, if so requested to do so by such purchaser, and to the ground or underlying lease lessor, if so requested to do so by such ground or underlying lease lessor, and to recognize such purchaser, or ground or underlying lessor, as the case may be, as the lessor under this Lease; provided, however, that the foregoing subordination to present and future ground or underlying leases of the Demised Property and to the lien of any future mortgages or trust deeds in force against the Demised Property shall be conditioned upon Landlord providing Tenant with a subordination, non-disturbance and attornment agreement in favor of Tenant in the form attached hereto as Exhibit B, or other commercially reasonable, mutually reasonably acceptable form requested by Landlord that provides, without limitation, that this Lease and the rights of Tenant hereunder shall control over any contrary provisions in such mortgage, deed of trust or ground lease and shall survive any foreclosure proceeding brought under such mortgage or deed of trust, or termination of such ground or underlying lease (as applicable), provided an Event of Default is not continuing under this Lease (either, an "SNDA"). Without limiting the foregoing, (a) as of the Commencement Date, each of Landlord, Landlord's Lender, and Tenant shall execute and deliver to each other a subordination, non-disturbance and attornment agreement in the form attached hereto as Exhibit B, or a substantially similar form proposed by Landlord, and (b) Tenant shall, and shall use commercially reasonable efforts to cause any subtenant, other than an existing subtenant, from time to time, within seven (7) days after any request by Landlord, to execute and deliver such other instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or superiority of this Lease (at Landlord's election) to any such mortgages, trust deeds, ground or underlying leases (including, at Landlord's election, one or more additional SNDAs requested by Landlord's Lender).

Section 23.02 Tenant shall cooperate with Landlord and execute, subject to Tenant's reasonable approval which shall not be unreasonably withheld, any and all instruments reasonably requested by Landlord (including, if necessary, the execution of a reasonable amendment to this Lease), in the establishment and maintenance of cash management procedures reasonably requested by any Landlord's Lender with respect to payment of Base Rent and other amounts payable by Tenant directly to Landlord as and when the same are due and payable hereunder; provided, however, that Tenant shall not

be obligated to agree to any requested action or execute any requested instrument if the same would have a material adverse effect upon Tenant, unless Tenant is reasonably compensated therefor by Landlord. In addition, Tenant agrees to cooperate in good faith with Landlord, any Landlord's Lender and any Landlord's Mortgagee, in connection with any sale or transfer of the Demised Property by Landlord or any transfer, participation, syndication and/or securitization of any loan secured by the Demised Property, or any or all servicing rights with respect thereto, including (a) by providing such documents, financial and other data, and other information and materials (the "**Disclosures**") that would typically be required with respect to a similarly situated tenant (and typically acceptable to a significant tenant) by a purchaser of the Demised Property and/or a purchaser, transferee, assignee, servicer, participant, co-lender, investor or Rating Agency involved with respect to any transfer, participation, syndication and/or securitization of any loan secured by the Demised Property, as applicable (collectively, the "**Transfer Parties**" and each, a "**Transfer Party**"); and (b) by amending the terms of this Lease, subject to Tenant's reasonable approval which shall not be unreasonably withheld, to the extent reasonably necessary so as to satisfy the requirements of the Transfer Parties involved in any such transfer, participation, syndication or securitization; provided, however, that Tenant shall not be obligated to agree to any requested action, or execute any requested amendment, if the same would have a material adverse effect upon Tenant, unless Tenant is reasonably compensated therefor by Landlord

Section 23.03 Notwithstanding Section 22.01 above, but subject to the terms of this Article, Landlord agrees that Tenant shall have the right to encumber, pledge or hypothecate Tenant's interest in the leasehold estate created by this Lease. All proceeds from any Leasehold Mortgage shall remain the property of Tenant. Landlord shall not be obligated to subordinate any or all of Landlord's right, title or interest in and to the Demised Property and this Lease to the lien of any Leasehold Mortgage. A Leasehold Mortgage shall encumber only Tenant's leasehold interest in the Demised Property, and shall not encumber Landlord's right, title or interest in the Demised Property. Landlord shall have no liability whatsoever for the payment of any obligation secured by any Leasehold Mortgage or related obligations. A Leasehold Mortgage shall be, and hereafter shall continue at all times to be, subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and junior, subject and subordinate, in each and every respect, to all rights and interests of any Landlord's Mortgagee now or hereafter affecting the Demised Property. Should there be any conflict between the provisions of this Lease and the provisions of any Leasehold Mortgage, the provisions of this Lease shall control. No Leasehold Mortgage shall be for a term longer than the Original Lease Term. Either prior to or concurrently with the recordation of any Leasehold Mortgage, Tenant shall cause a fully conformed copy thereof and of the financing agreement secured thereby to be delivered to Landlord and Landlord's Mortgagee, together with a written notice containing the name and post office address of Tenant's Lender. Upon written request from Tenant, Landlord agrees to deliver an estoppel certificate in favor of Tenant's Lender regarding this Lease, in form and substance reasonably acceptable to Landlord and Tenant's Lender. Tenant agrees that a condition precedent to its granting a Leasehold Mortgage to any Tenant's Lender shall be the execution and delivery by such Tenant's Lender to Landlord and Landlord's Lender of a subordination, non-disturbance and attornment agreement, in form and substance reasonably acceptable to Landlord and Landlord's Lender, that shall provide, without limitation, that upon a default under the Leasehold Mortgages, Tenant's Lender may foreclose only on this Lease as an entirety, applicable to all, but not less than all (even if otherwise possible under applicable Law) of the Demised Property. Tenant hereby acknowledges and agrees (a) that it is Landlord's intent to pledge the Demised Property to Landlord's Lender on or about the Commencement Date, (b) that any instruments effecting or evidencing such pledge shall at all times be prior in interest to any Leasehold Mortgage and (c) if requested by Landlord's Lender, Tenant shall cause Tenant's Lender to enter into an agreement in form and substance reasonably acceptable to Landlord's Lender confirming that Tenant's Lender has no interest in the Demised Property other than in Tenant's interest under this Lease and that any Leasehold Mortgage is

subject and subordinate to any such instruments effecting or evidencing such pledge. In addition, in the event that any Landlord's Lender requires that the Leasehold Mortgage be terminated of record and re-recorded in order to ensure priority of any such instrument effecting or evidencing such pledge, Tenant shall cause the same to occur promptly after written request, and at Landlord's expense. Tenant hereby agrees not to grant any Leasehold Mortgages against the Demised Property unless and until instruments securing or evidencing Landlord's pledge of the Demised Property to Landlord's Lender are recorded against the Demised Property. If Landlord delivers to Tenant a Default notice under this Lease, Landlord shall notify any Tenant's Lender (without any liability for failure to provide such notification) that has delivered to Landlord a prior written request for such notice, and Landlord shall recognize and accept the performance of any obligation of Tenant hereunder by Tenant's Lender (provided said performance occurs within the same cure periods as provided to Tenant under this Lease); provided, however that nothing contained herein shall obligate Tenant's Lender to take any such actions. Any act by Tenant or Tenant's Lender in violation of this Section 23.03 shall be null and void and of no force or effect. Tenant shall, without charge, at any time and from time to time, within ten (10) days after any request by Landlord, obtain from Tenant's Lender and deliver to Landlord or any other Person specified by Landlord, duly executed and acknowledged, an estoppel certificate certifying (x) copies of the documents creating, evidencing and securing the debt secured by any Leasehold Mortgage, (y) whether, to the knowledge of Tenant's Lender, any default exists under such Leasehold Mortgage and (z) such other matters relating to such Leasehold Mortgage as Landlord may reasonably request (and any Leasehold Mortgage shall contain an express obligation by Tenant's Lender to deliver such an estoppel certificate upon request from time to time). Landlord also hereby agrees, upon request by Tenant or Tenant's Lender, to enter into a commercially reasonable agreement with Tenant's Lender that may provide, without limitation (a) without limiting any express rights of Landlord under this Lease, Landlord's waiver of any Landlord's lien against any property of Tenant, (b) that Landlord shall not amend the Lease without the prior written consent of Tenant's Lender, (c) that Tenant's Lender shall have the right, but not the obligation, to pay and perform all obligations of Tenant under this Lease subject to any additional cure periods reasonably agreed to by Landlord and Tenant's Lender, (d) that upon any termination of the Lease, Tenant's Lender shall have the right to a new lease with Landlord, for the remainder of the Lease Term, and otherwise with the same covenants, conditions and agreements as are contained in the Lease subject to such reasonable conditions as Landlord may impose, and (e) that Tenant's Lender shall have rights upon written notice to Landlord to enter upon the Demised Property to remove Tenant's personal property following any default under the Leasehold Mortgage, provided, however that Tenant's Lender shall maintain adequate insurance (and deliver written evidence of the same to Landlord) and satisfy Tenant's obligation to pay Base Rent during such period of possession, not to exceed thirty (30) days, which thirty (30)-day period will be tolled in the event of an applicable bankruptcy proceeding. For the avoidance of doubt, the rights afforded Tenant pursuant to Section 34.01 shall be available to Tenant's Lender becoming Tenant under this Lease (itself or through a wholly-owned subsidiary) through foreclosure, deed-in-lieu or other similar process. This Section shall survive termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this section shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 24 ESTOPPEL CERTIFICATES

Tenant shall, without charge, at any time and from time to time, within ten (10) days after any request by Landlord, deliver to Landlord or any other Person specified by Landlord, duly executed and acknowledged, a completed Estoppel Certificate in substantially the form as set forth on Exhibit C attached hereto, or other commercially reasonable estoppel certificate confirming such information

regarding this Lease and Tenant as Landlord may request (either, an “**Estoppel Certificate**”). Landlord shall, without charge, at any time and from time to time, within ten (10) days after any request by Tenant, deliver to Tenant or any other Person specified by Tenant, duly executed and acknowledged, a commercially reasonable estoppel certificate confirming such information regarding this Lease and Landlord as Tenant may reasonably request.

ARTICLE 25 RECORDING

Neither Landlord nor Tenant shall record this Lease; however, upon the request of either party hereto, the other party shall join in the execution and recordation of a memorandum of lease (or similar instrument) in a form substantially similar to the form attached hereto as **Exhibit D**. If the recordation of such memorandum of lease (or similar instrument) is requested by Tenant, Tenant shall pay all costs charged by the applicable local recorder in connection therewith.

ARTICLE 26 APPLICABLE LAW; WAIVER OF JURY TRIAL

This Lease shall be construed in accordance with, and this Lease and all matters arising out of or relating to this Lease (whether in contract, tort or otherwise) shall be governed by, the law of the State where the Demised Property is located without regard to conflicts of law principles. If any provision of this Lease or the application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by applicable Law.

TENANT AND LANDLORD, EACH HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF [____], STATE OF [____], AND EACH IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LEASE SHALL BE LITIGATED IN SUCH COURTS (EXCEPT FOR FORCIBLE ENTRY AND DETAINER ACTIONS, OR SIMILAR PROCEEDINGS, WHICH SHALL BE LITIGATED IN COURTS LOCATED WITHIN THE COUNTY AND STATE IN WHICH THE DEMISED PROPERTY IS LOCATED). TENANT AND LANDLORD EACH ACCEPTS, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS (EXCEPT AS PROVIDED ABOVE IN THIS PARAGRAPH) AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS LEASE.

EACH OF TENANT AND LANDLORD, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS LEASE.

TENANT AND LANDLORD EACH ACKNOWLEDGES THAT THE PROVISIONS OF THIS ARTICLE ARE A MATERIAL INDUCEMENT TO THE OTHER PARTY’S ENTERING INTO THIS LEASE.

ARTICLE 27 LIABILITY OF PARTIES

Section 27.01 The obligations of Landlord under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord. Tenant shall look solely to the Demised Property for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Landlord. Whenever Landlord transfers its interest in the Demised Property, Landlord shall be automatically released from further performance under this Lease with respect to the Demised Property and from all further liabilities and expenses hereunder related to the Demised Property whether occurring prior to or after any such assignment provided the applicable assignee assumes all obligations under this Lease whether occurring prior to or after any such assignment.

Section 27.02 The obligations of Tenant under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant. Landlord shall not seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant.

ARTICLE 28 ATTORNEYS' FEES; EXPENSES

Without limiting any other obligation of Tenant to timely indemnify or reimburse Landlord hereunder (including under Article 9 and Article 29):

(a) If any party to this Lease shall bring any action or proceeding for any relief against the other, declaratory or otherwise, arising out of this Lease, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs incurred in bringing or defending such action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs, separate from the judgment, incurred in enforcing such judgment. The prevailing party shall be determined by the trier of fact based upon an assessment of which party's major arguments or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues. For the purposes of this clause, attorneys' fees shall include fees incurred in the following: (i) post-judgment motions; (ii) contempt proceedings; (iii) garnishment, levy, and debtor and third party examinations; (iv) discovery; and (v) bankruptcy litigation. This clause is intended to be expressly severable from the other provisions of this Agreement, is intended to survive any judgment and is not to be deemed merged into the judgment.

(b) Tenant agrees to pay or, if Tenant fails to pay, to reimburse, Landlord upon receipt of written notice from Landlord for all reasonable costs and expenses (including reasonable attorneys' fees and costs) incurred by Landlord in connection with (i) any request by Tenant to Landlord (including any amendment to this Lease requested by Tenant), including Landlord's actions in response thereto, provided, however, the foregoing shall not include costs and expenses incurred by Landlord in connection with any request by Tenant to Landlord under Article 29, or Schedule 29.08, or any Holdback Agreement⁵, Article 4 (unless Landlord reasonably determines that it needs to engage an attorney in

⁵ Only in Lease for applicable Demised Property

connection therewith), or Section 34.02 (except to the extent any of the foregoing requests is in connection with an amendment to this Lease) (for the avoidance of doubt, the cost of arbitration under Section 31.01 shall be apportioned as provided in clause (6) of Section 31.01 and expenses paid or incurred by Landlord pursuant to Section 31.01 shall be paid as set forth in the final paragraph of Section 31.01); (ii) securing Tenant's compliance with any requests made pursuant to the provisions of this Lease or other Transaction Documents; and (iii) enforcing any obligations of or collecting any payments due from Tenant under this Lease, the other Transaction Documents or with respect to the Demised Property.

ARTICLE 29 ENVIRONMENTAL

Section 29.01 Tenant acknowledges that Landlord makes no warranties or representations of any kind, or in any manner or in any form whatsoever, as to the status of Environmental Conditions or Hazardous Materials at the Demised Property. Tenant shall conduct at its own expense any and all investigations regarding Environmental Conditions of the Demised Property and will satisfy itself as to the absence or existence of Hazardous Materials contamination of the Demised Property and the suitability of the Demised Property for Tenant's operations. Tenant's entry into this Lease shall be made at its sole risk. [Pursuant to California Health & Safety Code § 25359.7, Landlord has provided written notice to Tenant prior to the date hereof that a release of "Hazardous Substances," as that term is defined pursuant to the California Health & Safety Code § 25339.7, has come to be located on or beneath the Demised Property.]⁶

Section 29.02 Tenant shall comply with all Environmental Laws and cause and ensure the Demised Property and all operations thereon comply with all applicable Environmental Laws. Tenant shall not suffer or permit any loss, on, at, under or affecting the Demised Property of any source if the same pose a health or safety risk to invitees or employees. From and after the Commencement Date, Tenant shall not be entitled to the Use of any Hazardous Materials at the Demised Property other than De Minimis Amounts, which shall be performed in full compliance with all Environmental Laws and any other applicable Laws. Tenant shall be prohibited from conducting or allowing the Release of Hazardous Materials onto, on, about, under or from the Demised Property, the exception being sewer or other permitted discharges or Releases or other De Minimis Amounts, in full compliance with all Environmental Laws and any other applicable Laws. From and after the date of this Lease, Tenant covenants to, and shall, undertake all Remedial Activities necessary to comply with Environmental Laws and, additionally, to address any Use or Release of Hazardous Materials after the date of this Lease, by Tenant or its agents, employees, representatives, invitees, licensees, subtenants, customers or contractors ("**Other Parties**"), or a Release by any third party, adversely affecting the Demised Property at Tenant's sole cost and expense. A Use or Release of Hazardous Materials shall be deemed to adversely affect the Demised Property if such conditions or circumstances require Remedial Activities under Environmental Laws or Environmental Guidance Standards. Tenant shall give immediate written notice to Landlord of any Remedial Activities, including the abatement of any mold or fungi that constitute Hazardous Materials, even if no applicable Law compels such abatement. If any Remedial Activities are required to be performed at any location other than the Demised Property, Tenant shall use its commercially reasonable efforts to obtain any required access agreements from third parties.

Section 29.03 In addition to any other obligation herein, during the Lease Term Tenant shall be liable for or responsible for: (a) the violation of any Environmental Law by Tenant or due to any fact,

⁶ Only applicable to CA properties

condition, circumstance, operation or activity at the Demised Property, including any Existing Environmental Conditions, or any new Environmental Conditions caused or permitted by Tenant during the Lease Term, including Releases by Tenant or by third parties; and (b) Hazardous Materials or Environmental Conditions at, on, under, about or from the Demised Property during the Lease Term (and in the event of any holding over by Tenant, during any period that Tenant occupies the Demised Property) whether or not the same constitute a violation of any Environmental Law, provided the same require Remedial Activities under any Environmental Guidance Standards. If Tenant voluntarily conducts, or is required under this Lease to conduct, any Repairs, Alterations or Restoration Work, Tenant shall be responsible for handling all disturbed Hazardous Materials (including lead-based paint or asbestos) in accordance with Environmental Laws and Environmental Guidance Standards. Tenant shall not be obligated under this Lease to undertake Remedial Activities unless during the Lease Term any Environmental Conditions (including Existing Environmental Conditions) constitute or create a violation of Environmental Laws, or create or constitute a public or worker health or safety risk, or a threat to the indoor or outdoor environment, under Environmental Guidance Standards. All Remedial Activities undertaken shall be to achieve unrestricted use standards; provided, however, Tenant may petition for closure under a commercial use standard with the applicable Governmental Authority, but if such Governmental Authority requires achievement of an unrestricted use standard then Tenant shall achieve that standard. If case closure under a commercial use standard is pursued, Landlord shall be entitled to review prior to final approval any activity and use limitations and/or any proposed deed restrictions. Landlord may refuse to consent to any activity and use limitations or deed notices which impose operations and maintenance obligations unacceptable to Landlord on current or future surface users of the Demised Property, or which raise repair, operating or maintenance costs. Landlord agrees that a prohibition on use of ground water underlying a Demised Property is an acceptable onsite activity and use restriction. The definition of the term “commercial use standards,” or “unrestricted use standards” (also known as “residential use standards”) shall be the most stringent of the applicable definitions used in Environmental Guidance Standards in use in the State of the Demised Property, including Maximum Contaminant Levels for ground water, if the Remedial Activities are self-directed. If a Governmental Authority is exercising jurisdiction over the Remedial Activities, the Environmental Guidance Standards actually selected by the Governmental Authority shall be the applicable standards for that project. The foregoing sentence does not determine whether commercial use standards or unrestricted use standards apply at a Demised Property, but only how the standards, once selected and determined to be applicable, are to be defined.

Section 29.04 Tenant shall promptly inform Landlord in writing of (a) any and all enforcement actions, initiation of Remedial Activities where no Remedial Activities are currently being conducted upon receipt of such notification, or other Governmental Authority or regulatory actions (excluding routine actions such as permit renewals) instituted, completed (including “case closure” or “no further action” determinations) or threatened by any Person pursuant to any Environmental Laws affecting the Demised Property; (b) all claims made or threatened by any Person against Tenant or the Demised Property relating in any way whatsoever to Hazardous Materials or Environmental Conditions (the matters set forth in clauses (a) and (b) are hereinafter referred to as “**Environmental Claims**”); (c) Tenant’s knowledge of any material Release of Hazardous Materials at, on, in, under to or from the Demised Property or on, in or under any adjoining property, including any previously undetected Existing Environmental Conditions. Tenant shall also supply to Landlord within ten (10) Business Days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, asserted violations or other material communications relating to the matters described in this Section.

Section 29.05 (1) In addition to any other obligations herein, Tenant shall be solely responsible for and shall indemnify, protect, save, defend, and hold harmless all Landlord Parties from

and against any and all Losses directly or indirectly arising out of or associated in any manner whatsoever with any actual or alleged violation of Environmental Law, and/or with Tenant's Use, or the presence of Hazardous Materials, or the Release by any Person of Hazardous Materials at, on, under, about or from the Demised Property during the Lease Term (and in the event of any holding over by Tenant, during any period that Tenant occupies the Demised Property) or any Environmental Conditions, including Existing Environmental Conditions. The indemnities and releases contained in this Article 29 include: (a) the costs associated with Remedial Activities, including all necessary plans and reports, incurred by the U.S. Environmental Protection Agency, or any other federal, state or local governmental agency or entity or by any other Person, incurred pursuant to the CERCLA, RCRA, or any other applicable Environmental Laws; (b) any oversight charges, fines, damages or penalties arising from the presence or Release of Hazardous Materials, and any related Remedial Activities, incurred pursuant to the provisions of CERCLA, RCRA, or any other applicable Environmental Laws; (c) any liability to third parties arising out of the presence or Release of Hazardous Materials for personal injury, bodily injury, or property damage arising under any statutory or common law theory, including damages assessed for the maintenance of a public or private nuisance, the costs of Remedial Activities, or for the carrying on of an abnormally dangerous activity; (d) all damages arising out of any claim based on the presence or Release of Hazardous Materials or damage or threatened damage to Environmental Conditions; (e) any and all reasonable costs, fees and expenses of attorneys, consultants and experts incurred or sustained in making any investigation on account of any claim, in prosecuting or defending any action brought in connection therewith, in obtaining or seeking to obtain a release therefrom, or in enforcing any of the agreements herein contained; (f) Rent during any period of Remedial Activities if such Remedial Activities substantially interfere with the surface use of the Demised Property and then only to the portion of the surface use substantially interfered with and such Rent shall be based on the Base Rent then in effect, or if this Lease has terminated, the Base Rent that was in effect on the Termination Date; and (g) any action or omission or use of the Demised Property by any subtenant. (A subtenant shall not be deemed an offsite third party hereunder with respect to the Demised Property.) The foregoing indemnity shall apply to Tenant's Use of Hazardous Materials irrespective of whether any of Tenant's activities were or will be undertaken in accordance with Environmental Laws or other applicable Laws. This indemnity is intended to be operable under 42 U.S.C. 9607(e)(1). Tenant specifically agrees that it shall not seek contribution from any Landlord Party in any matter relating to any Hazardous Material liability. All costs and expenses paid or incurred by Landlord for which Tenant is obligated to indemnify Landlord under this Section shall be paid promptly by Tenant to Landlord.

(2) This Section shall survive termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this section shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant), and Tenant's obligations shall not terminate with respect to any Environmental Conditions caused or permitted by Tenant, or by any other Person, which first arose during the Lease Term.

(3) Notwithstanding the foregoing, Tenant's obligations under this Section 29.05 shall terminate two (2) years after the end of the Lease Term exclusively as to Losses arising from or related to Existing Environmental Conditions and Environmental Conditions created by an offsite third party, unless Tenant has commenced Remedial Activities, or is obligated hereunder to have done so, in which case Tenant shall diligently pursue those specific Remedial Activities to achieve "case closure" or a "no further action" determination or, if applicable to the Demised Property, Tenant exhausted the monetary cap set forth in Section 29.07. At Tenant's option, in lieu of termination two (2) years from the end of the Lease Term, the termination date shall be at the termination of the Lease Term (excepting ongoing Remedial Activities being diligently pursued, as described above) if Tenant has prepared and

submitted a Phase I in accordance with then-current ASTM standards, within six (6) months prior to the end of the Lease Term (but no later than three (3) months prior to the end of the Lease Term), and if necessary also completes Phase II work, using only experienced and reputable consultants, and submitted a completion report for the Phase II work prior to one (1) month before the Lease Term termination. Landlord shall have the right to disapprove the first recommended consultant in its sole discretion, in which case Tenant shall suggest a second consultant. If Landlord disapproves the second consultant it shall set forth good cause for doing so, in which case Tenant shall recommend a third consultant, subject again to Landlord's disapproval only for good cause shown. Landlord shall have fifteen (15) Business Days to review and approve or comment on the submittals, Landlord's approval not to be unreasonably withheld. If Landlord's approval is not tendered, the parties shall meet and confer to develop a resolution of the identified issues within thirty (30) calendar days. All indemnity obligations under this Article 29 shall continue until Landlord shall approve the Phase I and/or Phase II reports, such approval not to be unreasonably withheld. Upon Landlord's approval, the subject indemnity obligations shall terminate as to Losses arising from or related to Existing Environmental Conditions and Environmental Conditions created by an offsite third party, but not as to other Losses covered under this Section 29.05. For the sake of clarity, the parties acknowledge that the subset of Tenant's indemnification obligations under this Section 29.05 concerning the costs of Remedial Activities to address Existing Environmental Conditions and Environmental Conditions created by an offsite third party may have terminated previously pursuant to the provisions of 29.07 below, if Tenant previously reached the monetary cap on such expenditures applicable to the Demised Property.

Section 29.06 Without limiting the foregoing or anything contained in Article 8, Tenant acknowledges that Governmental Authorities have imposed, and from time to time may impose, obligations affecting some or all of the Demised Property, or operations thereon, in response to climate change including energy efficiency mandates, water conservation mandates, restrictions on sales or use of certain fuels, mandates for alternative fuels, permitting obligations, restrictions on or a duty to inventory and report green house gas emissions, requirements to purchase carbon credits, construction, operational or other measures to mitigate risks of drought, fire, flood, rising sea levels, storm surge risks, so-called "extreme weather" risks and other legal obligations, whether adopted pursuant to Environmental Laws or other Laws. Tenant at its sole cost and expense shall ensure the Demised Property, and operations thereon, comply with any such applicable Laws, permits, and requirements of all Governmental Authorities having jurisdiction over the Demised Property during the term of the Lease. Moreover, Tenant agrees that the cost or disruption to operations imposed by any such applicable Laws, permits, and requirements of all Governmental Authorities having jurisdiction over the Demised Property shall not excuse full performance of this Lease by Tenant. Tenant shall not be obligated by this Lease to undertake the energy efficiency and similar measures set forth in this Section 29.06 unless compelled by applicable Law.

Section 29.07 (1) Notwithstanding anything contained herein to the contrary [excepting the Santa Barbara Demised Property], with respect to Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term, Tenant's liability under this Article 29 and Schedule 29.08 for the cost of Remedial Activities to address such Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term shall be limited to a maximum amount of [\$210,000 for the Demised Property] [and \$500,000 for the Eagle Rock Demised Property] [The Santa Barbara Demised Property has no cap.]⁷

⁷ Only for applicable Demised Property

(2) Tenant shall advise Landlord in writing as soon as Tenant knows, or reasonably should have known, such monetary cap for the Demised Property is likely to be met or exceeded. Without limiting Section 36.02, time is of the essence for this covenant. The parties then shall meet and confer at the earliest practicable time (not to exceed fifteen (15) Business Days after Tenant's notice) to develop a plan to manage such costs for Remedial Activities to address Existing Environmental Conditions and/or Environmental Conditions created by an offsite third party during the Lease Term, which are projected to exceed the monetary cap. Tenant shall advise Landlord on the date that the monetary cap is reached for the Demised Property, and on that date the obligations in Section 29.02, Section 29.03, Section 29.05, Section 29.06 and Schedule 29.08 (if applicable) shall terminate as to Existing Environmental Conditions and as to Environmental Conditions created by an offsite third party during the Lease Term; provided, however, that although the contractual indemnification obligations in Section 29.05 shall have terminated, thereafter the parties shall bear the costs of their respective obligations regarding such Existing Environmental Conditions and as to Environmental Conditions created by an offsite third party during the Lease Term, if any, as determined under applicable Law. If the monetary cap is reached as to the costs of Remedial Activities to address Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term, then as between Landlord and Tenant, Tenant shall not be liable for sums exceeding the applicable cap at the Demised Property for the costs of Remedial Activities to address Existing Environmental Conditions and Environmental Conditions created by an offsite third party during the Lease Term.

Section 29.08 [Tenant hereby agrees to undertake and perform those obligations set forth in the SB Environmental Covenant at Schedule 29.08 attached hereto and the parties hereby incorporate the terms of the SB Environmental Covenant as though set forth in full herein. The obligations in Schedule 29.08 are subject to the terms of this Article 29; provided, however, in the event of a conflict between the general terms of Article 29 and the specific terms and covenants in the SB Environmental Covenant, the specific terms and covenants in the SB Environmental Covenant shall prevail.]

ARTICLE 30 LANDLORD ASSIGNMENT

Section 30.01 This Lease shall be fully assignable by Landlord or its successors and assigns, subject to the terms of Article 27 and this Article.

Section 30.02 Landlord and Tenant agree that this Lease constitutes a true lease and not a financing or other form of transaction (including for federal income tax purposes). In furtherance of the foregoing, Landlord and Tenant each irrevocably waives any claim or defense based upon the characterization of this Lease as anything other than a true lease and irrevocably waives any claim or defense that asserts that this Lease is anything other than a true lease. Landlord and Tenant covenant and agree that they will not assert that this Lease is anything but a true lease. Landlord and Tenant each stipulate and agree not to challenge the validity, enforceability or characterization of this Lease of the Demised Property as a true lease and further stipulate and agree that nothing contained in this Lease creates or is intended to create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like. Landlord and Tenant each shall support the intent of the parties that the lease of the Demised Property pursuant to this Lease is a true lease and does not create a joint venture, partnership (either de jure or de facto), equitable mortgage, trust, financing device or arrangement, security interest or the like, if, and to the extent that, any challenge occurs. Landlord and Tenant agree to treat this Lease as an operating lease (rather than a capital lease) for federal, state and local income tax purposes, unless required to do otherwise pursuant to a final resolution as determined by an applicable taxing authority that this Lease is not properly classified as an operating lease. Landlord shall claim all depreciation for United States federal, state and local income tax purposes

with respect to the Demised Property, other than the costs for Alterations, replacements, Remedial Activities and other capital expenditures in connection with the Demised Property as permitted or required under this Lease that are incurred by the Tenant after the Commencement Date but during the term of this Lease, which costs may be deducted, amortized, or depreciated by Tenant for United States federal, state and local income tax purposes to the extent permitted under the Code and the Treasury Regulations promulgated thereunder (and corresponding provisions of state and local tax law), and which costs of Alterations, replacements, Remedial Activities and other capital expenditures (or the value thereof) are not intended to be in substitution for additional rent payable to Landlord; provided, however, that notwithstanding the foregoing, any such Alterations, replacements, benefits of Remedial Activities and other capital expenditures shall immediately become the property of the Landlord for all purposes other than to the extent set forth herein for United States federal, state, and local income tax purposes. Upon any Lease assignment pursuant to Section 30.01, Landlord shall endeavor to reasonably cooperate with Tenant in any attempt by Tenant to obtain from Tenant's auditors a written acknowledgment that, after giving effect to such assignment, the Lease as so modified qualifies for operating lease treatment for accounting and tax purposes. In no event shall failure of Tenant to obtain any such written acknowledgment affect Landlord's right to assign pursuant to Section 30.01 or constitute a breach of this Lease by Landlord.

ARTICLE 31 REPLACEMENTS

Section 31.01 Property Replacements. Tenant, at its election, may substitute the Demised Property (the "**Replaced Property**") with a tract of similar real property on which Tenant operates another [grocery store or other Permitted Use][DC ALTERNATIVE: distribution center] (the "**Replacement Property**"). Tenant shall submit for Landlord's review at least thirty (30) days prior to any substitution (such period, the "**Consideration Period**"), evidence of the fair market value of the proposed Replacement Property reasonably satisfactory to Landlord and any Landlord's Lender and compliant with Landlord's Lender's regulatory requirements, as well as current survey, current environmental report, records of any administrative proceedings or environmental claims involving the proposed Replacement Property, current title report [and profit/loss statements for the previous two years of the Replacement Property and similar data with respect thereto,][DC ALTERNATIVE: DELETE] as well as evidence of the fair market value of the proposed Replaced Property reasonably satisfactory to Landlord and any Landlord's Lender and compliant with Landlord's Lender's regulatory requirements, and other information with respect to the Replaced Property as Landlord and Landlord's Lender may reasonably request. Provided that (a) Landlord, in its reasonable discretion, and Landlord's Lenders and Landlord's Mortgagees, in their reasonable discretion acting in accordance with prudent institutional lender standards relating to transactions similar to the transactions contemplated by this Lease, approve the substitution (such approval rights encompassing, without limitation, Landlord's reasonable determination as to whether the substitution will qualify as a like-kind exchange in which no gain is recognized pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended), and (b) if any Landlord's Lender has transferred all or any portion of its loan to a "real estate mortgage investment conduit" ("**REMIC**") such substitution is in compliance with all the provisions of the federal income tax law relating to REMICs, which appear in Sections 860A through 860G of the Internal Revenue Code of 1986, as amended from time to time ("**Code**"), then such substitution of the Replacement Property for the Replaced Property shall be permitted hereunder. Without limiting the foregoing, upon the written request of Landlord or Landlord's Lenders or Landlord's Mortgagees, as the case may be, Tenant shall deliver to Landlord as a condition precedent to any approval of the substitution of the Replacement Property for the Replaced Property, a legal opinion, in form and substance acceptable to Landlord or Landlord's Lenders or Landlord's Mortgagees, as the case may be, in its reasonable discretion, to the effect that, with respect to any REMIC trust that holds any loan secured by a mortgage on the Demised Property, the release of the

Replaced Property and the substitution of the Replacement Property will not cause (x) such loan to fail to be a “qualified mortgage” within the meaning of Section 860G(a)(3) of the Code, (y) any failure of such REMIC trust to qualify as a “real estate mortgage investment conduit” within the meaning of Section 860D of the Code for federal income tax purposes, or (z) the imposition of any tax upon the REMIC trust or any of such REMIC trust’s assets, including, without limitation, any tax on “prohibited transactions” imposed under Section 860F(a)(2) of the Code. Subject to the foregoing, in the event that there is a failure to approve the proposed substitution, Landlord shall deliver to Tenant a written notice within ten (10) days following the expiration of the Consideration Period, disapproving the proposed substitution and describing which of Landlord’s and/or Landlord’s Lenders’ or Landlord’s Mortgagees’ conditions have not been satisfied. In the event of any such disapproval, Tenant shall have an additional fifteen (15) day period from and after the date Landlord’s disapproval notice is delivered to Tenant to submit any additional information or documentation to Landlord regarding satisfaction of the foregoing conditions. In the event all the foregoing conditions are still not satisfied, then Landlord shall deliver to Tenant a second written notice within ten (10) days following the expiration of such fifteen (15) day period disapproving the proposed substitution and describing which of said conditions have not been satisfied. If all other reasonable conditions of Landlord, Landlord’s Lenders and Landlord’s Mortgagees regarding the proposed substitution have been satisfied except that Landlord believes that the Replacement Property does not have equivalent or greater fair market value to the Replaced Property, then Tenant may, by written notice delivered to Landlord within twenty (20) days after Landlord delivers to Tenant Landlord’s second written notice of Landlord’s disapproval of the proposed substitution, invoke the following arbitration procedure to determine whether the Replacement Property has an equivalent or greater fair market value to the Replaced Property (in which event the proposed substitution shall be deemed approved), or a fair market value less than the Replaced Property (in which event the proposed substitution shall remain disapproved). The date when such Tenant’s notice invoking the arbitration is delivered to Landlord is referred to in this Section as the “**Notice Date**”). For the avoidance of doubt Landlord will reasonably cooperate with Tenant in the event a substitution is required by judicial or other governmental requirement applicable to Tenant.

(1) Submission of Proposed Value. Within five (5) days after the Notice Date, (a) Landlord shall deliver to Tenant an MAI fair market value appraisal for each of the Replacement Property and the Replaced Property supporting its assertion that the fair market value of the Replacement Property is less than the fair market value of the Replaced Property, and (b) Tenant shall deliver to Landlord an MAI fair market value appraisal for each of the Replacement Property and the Replaced Property supporting its assertion that the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property. If either party (as referred to this Section, a “**Failing Party**”) fails to deliver its appraisals to the other party on or before the last day of such five (5)-day period, but the other party delivers its appraisals to the Failing Party on or before the last day of such five (5)-day period, the assertion supported by such other party’s appraisals delivered pursuant to subsection (1), above (i.e. that the fair market value of the Replacement Property is less than, or equal to or greater than (as the case may be), the fair market value of the Replaced Property) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such five (5)-day period.

(2) Appointment and Qualifications of Arbitrator. If the arbitration is not deemed concluded pursuant to subsection (1), above, then within fifteen (15) days after the Notice Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous ten-year (10-year) period in the appraisal of [grocery stores or other applicable Permitted Uses] [DC ALTERNATIVE: distribution centers] within the county in

which the applicable Replacement Property is located (each such appraiser chosen pursuant to this subsection (2), an “**Arbitrator**”). Each of Landlord and Tenant shall notify the other party, in writing, of its Arbitrator (and the business address thereof) within two Business Days after the appointment thereof (collectively, the “**Arbitrator Appointment Notices**”). Each of Landlord and Tenant agrees that any Arbitrator may be (but is not required to be) an appraiser who prepared one or both of the fair market value appraisals delivered by Landlord and Tenant pursuant to subsection (1), above.

(3) **Appointment of Third Arbitrator.** If each party appoints an Arbitrator and notifies the other party in accordance with subsection (2), above, then the two Arbitrators shall, within ten (10) days after delivery of the later of the two Arbitrator Appointment Notices, agree on and appoint a third Arbitrator (whom shall be a licensed real estate appraiser with all other qualifications for the initial two Arbitrators chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Arbitrator and the business address thereof. If the two Arbitrators fail to agree on and appoint a third Arbitrator within such ten (10) day period, then either Landlord or Tenant may elect to have the third Arbitrator selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Arbitrator and the parties shall cooperate reasonably with each other and the AAA (including by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Arbitrator. If any fees of the third Arbitrator or the AAA are required to be paid in advance (prior to the completion of the arbitration procedure described in this Section) in order for such Arbitrator, or the AAA, as the case may be, to commence or continue its work in connection with the arbitration described in this Section, each party shall promptly pay one-half of such fees as and when due, and if either Landlord or Tenant fails to pay its one-half share of any such fees as and when due (such party is referred to in this Section as the “**Delinquent Party**”), and the other party does pay its one-half share of any such fees as and when due, then if the Delinquent Party fails to pay its one-half share of all such fees within ten (10) days after written notice from the other party, the assertion supported by such other party’s appraisals delivered pursuant to subsection (1) (i.e. that the fair market value of the Replacement Property is less than, or equal to or greater than (as the case may be), the fair market value of the Replaced Property) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such ten (10)-day period.

(4) **Arbitrators’ Decision.** If the arbitration is not previously deemed concluded pursuant to subsection (3), above, then within thirty (30) days after the appointment of the third Arbitrator, the three Arbitrators shall decide whether the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property and shall notify Landlord and Tenant in writing of each Arbitrator’s decision. The determination of each Arbitrator shall be limited to the sole issue of, and each Arbitrator shall have neither the right nor the power to determine any issue other than, whether the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property, as determined by such Arbitrator. The decision of the majority of the three Arbitrators shall be binding on Landlord and Tenant (subject to subsection (5), below), and the arbitration shall be deemed concluded upon delivery to Landlord and Tenant of such notifications of the Arbitrators’ decisions.

(5) If Only One Arbitrator Is Appointed. If the arbitration is not previously deemed concluded pursuant to subsection (1), and if either Landlord or Tenant fails to appoint an Arbitrator within fifteen (15) days after the Notice Date or fails to deliver an Arbitrator Appointment Notice in accordance with subsection (2), above, and the other party does appoint an Arbitrator within such fifteen (15) day period and delivers an Arbitrator Appointment Notice in accordance with subsection (2), above, then the Arbitrator timely appointed by such other party shall reach a decision regarding whether the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property, as determined by such Arbitrator, and notify Landlord and Tenant of that decision within thirty (30) days after such Arbitrator's appointment. Such decision of the Arbitrator shall be binding on Landlord and Tenant, and the arbitration shall be deemed concluded upon delivery of such notification of the Arbitrator's decision.

(6) Cost of Arbitration. If the Arbitrators (or Arbitrator, pursuant to subsection (5), above) determine that the fair market value of the Replacement Property is equal to or greater than the fair market value of the Replaced Property, then Tenant shall be deemed the "**Winning Party**" under this subsection (6) and Landlord shall be deemed the "**Losing Party**" under this subsection (6). If the Arbitrators (or Arbitrator, pursuant to subsection (5), above) determine that the fair market value of the Replacement Property is less than the fair market value of the Replaced Property, then Landlord shall be deemed the "**Winning Party**" under this subsection (6) and Tenant shall be deemed the "**Losing Party**" under this subsection (6). In addition, in the event the arbitration is deemed concluded due to a Failing Party not timely delivering its appraisals as described in subsection (1), or a Delinquent Party failing to pay its share of fees after written notice as described in subsection (3), such Failing Party or Delinquent Party (as the case may be) shall be deemed the "**Losing Party**" under this subsection (6), and the party that is not the Failing Party or Delinquent Party (as the case may be) shall be deemed the "**Winning Party**" under this subsection (6). Each party shall initially pay the fees and expenses of its legal counsel, appointed arbitrator, any written reports prepared by any appraiser in connection with its duties under this Section, one-half of the fees of the third arbitrator, and one-half the fees of the AAA (if applicable), provided, however, that the Losing Party shall be obligated to reimburse the Winning Party for all such fees and expenses of the arbitration paid by the Winning Party promptly upon the completion of the arbitration procedure described in this Section.

In the event Landlord approves the substitution of the Replacement Property for the Replaced Property, Tenant shall execute and deliver to Landlord such instruments and documents as Landlord shall reasonably require in connection therewith, including a special warranty or similar deed, an amendment to this Lease, and an amended or new memorandum of lease (or similar instrument) covering the Replacement Property, and Landlord shall convey the Replaced Property to Tenant (or Tenant's designee) as is, with all faults, without any express or implied warranties. Any substitution of a Replacement Property for a Replaced Property shall not alter any of the other obligations of Landlord or Tenant under this Lease, including the Base Rent due from Tenant hereunder. Without limitation, Tenant shall be responsible for all Additional Rent (including real property taxes) regarding the Replaced Property up to the date of transfer. Tenant shall pay all reasonable out-of-pocket expenses paid or incurred by Landlord pursuant to this Section, including, (i) Landlord's, Affiliates of Landlord's and Landlord's Lenders' legal fees and expenses, the costs of any title policies (owner's and/or lender's) on the Replacement Property, recording costs, and, without limiting any of Tenant's obligations set forth in Article 3 of this Lease, any sales, transfer, and other taxes and recording fees, and any taxes required to be withheld, which may be payable in connection with the conveyance of Replacement Property by Tenant or Replaced Property to

Tenant (including any interest or penalties imposed with respect to the late payment of any such taxes), and (ii) such amount, which, when added to such payment, shall yield to Landlord (after deduction of all expenses payable by Landlord with respect to all such payments) a net amount which Landlord would have realized from such payment had no such expenses been incurred; provided, however, that so long as no Event of Default has occurred and is continuing, if an arbitration has been completed under subsections (1) through (6) of this Section, and if Tenant was the Winning Party (as defined above in subsection (6)), then Tenant shall not be obligated to reimburse Landlord for fees and expenses incurred by Landlord in connection with such arbitration, and Landlord shall be obligated to reimburse Tenant for fees and expenses incurred by Tenant in connection with such arbitration.

ARTICLE 32 INTENTIONALLY OMITTED

ARTICLE 33 LANDLORD'S RIGHTS UNDER LEASE

Any and all rights of Landlord under this Lease shall inure to the benefit of Landlord's successors and assigns, as well as Landlord's Lenders and/or any Landlord's Mortgagees and their respective successors and assigns as third party beneficiaries.

ARTICLE 34 INTENTIONALLY OMITTED⁸

ARTICLE 35 LIQUOR

Landlord may require Tenant to obtain Commercial General Liability insurance regarding liquor liability (in amounts and otherwise consistent with the requirements set forth in Article 10) for any sites that serve liquor or other alcoholic beverages, and in connection with any repossession of the Demised Property pursuant to Article 15, Tenant (on behalf of itself and any Tenant's Affiliate holding liquor licenses with respect to the Demised Property) shall provide reasonable cooperation to Landlord in transferring any liquor licenses to Landlord, or in assisting Landlord in obtaining a liquor license, where necessary or advisable in Landlord's reasonable discretion. This Article shall survive any termination of this Lease as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, this Article shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant).

ARTICLE 36 INTERPRETATION; MISCELLANEOUS

Section 36.01 For purposes of this Lease, (a) the words "include", "includes" and "including" shall be deemed to be followed by the words "without limitation" (unless already expressly followed by such phrase), and (b) the words "herein", "hereof", "hereby", "hereto" and "hereunder" refer to this Lease as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Exhibits, and Schedules mean the Articles and Sections of, and the Exhibits and Schedules attached to, this Lease; (y) to a lease, instrument or other document means such lease, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Lease; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The

⁸ Tenant shall maintain its right of first offer under Section 34.01 of the Master Lease after a Landlord assignment in connection with which assignment the rights of Tenant under Section 34.01 do not apply.

Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Lease to the same extent as if they were set forth verbatim herein. Titles to Articles and headings of Sections are inserted for convenience of reference only and shall not be deemed a part of or to affect the meaning or interpretation of this Lease. Any defined term used in the plural shall refer to all members of the relevant class, and any defined term used in the singular shall refer to any one or more of the members of the relevant class. All references in this Lease to sums denominated in dollars or with the symbol "\$" refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. Where a provision of this Lease requires that that consent of a party shall not be unreasonably withheld, or that such consent is in such party's reasonable discretion, such provision shall be deemed to require that such consent not be unreasonably withheld, conditioned, or delayed, and unless a party is expressly given hereunder the right to consent in its sole discretion, any consent required hereunder shall not be unreasonably withheld, conditioned or delayed.

Section 36.02 This Lease may be executed in counterparts and shall be binding on all the parties hereto as if one document had been signed. The delivery of an executed copy of this Lease by facsimile transmission shall have the same force and effect as the delivery of the original, signed copy of this Lease. Time is of the essence of every provision of this Lease. Any provision of this Lease explicitly providing for the performance by Tenant of obligations upon or after the expiration or termination of this Lease shall survive any such expiration or termination as to matters occurring, or arising from or relating to circumstances or events occurring, prior to such expiration or sooner termination of this Lease (provided, however, such obligations shall also survive as to matters occurring, or arising from or relating to circumstances or events occurring during any holdover tenancy by Tenant), unless otherwise provided. This Lease and the Exhibits attached hereto, all of which form a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Demised Property, and there are no covenants, promises, agreements, conditions or understandings heretofore made, either oral or written, between them other than as herein set forth. No modification, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party. The captions, section numbers, and index 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 nor in any way affect this Lease. Nothing contained in this Lease shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of landlord and tenant. Except as explicitly set forth in this Lease, there shall be no third party beneficiaries of this Lease or any of the agreements contained herein. The failure of Landlord or Tenant to insist upon strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any rights or remedies that party or any other such party may have, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

ARTICLE 37 QUIET ENJOYMENT SUBJECT TO DILIGENCE MATTERS

From and after the Commencement Date until the expiration or termination of the Lease Term, and provided no Event of Default has occurred, Landlord covenants that Tenant shall have quiet enjoyment of the Demised Property, subject however, to all Diligence Matters.

ARTICLE 38 NO MERGER OF TITLE

There shall be no merger of this Lease with any of the leasehold estates created hereunder with any fee estate or other leasehold interest in the Demised Property, whether by reason of the fact that the same Person may acquire, hold or own, directly or indirectly more than one or all of such legal

interests in the Demised Property unless and until (a) under applicable Law such estates may be merged, and (b) all Persons having any leasehold interest or fee estate in the Demised Property, or any part thereof sought to be merged, shall enter into a written agreement effecting such a merger under applicable Law and shall duly record same; provided, however, no such merger shall occur unless in each instance Landlord (if Landlord is a party to such estates) and any Landlord's Lender (if Landlord is a party to such estates) shall be a party to such agreement.

ARTICLE 39 ADDITIONAL CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES

(a) Tenant hereby represents, warrants and certifies to Landlord as follows: Tenant is not a "foreign person" within the meaning of Section 1445(f) of the Internal Revenue Code and, after making due inquiry, no person who owns a controlling interest in or otherwise controls Tenant is, (a) listed on the Specially Designated Nationals and Blocked Persons List (the "SDN List") maintained by the Office of Foreign Assets Control ("OFAC"), Department of the Treasury, and/or on any other similar list ("Other Lists" and, collectively with the SDN List, the "Lists") maintained by the OFAC pursuant to any authorizing statute, Executive Order or regulation (collectively, "OFAC Laws and Regulations"); or (b) a person (a "Designated Person") either (i) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (ii) designated under Sections 1(a), 1(b), 1(c) or 1(d) of Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) or similarly designated under any related enabling legislation or any other similar Executive Orders (collectively, the "Executive Orders"). Neither Tenant nor any person or entity who owns a controlling interest in or otherwise controls Tenant (x) is a person or entity with which Landlord is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law or (y) is a person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Orders or (z) is affiliated or associated with a person or entity listed in the preceding clause (x) or clause (y). To Tenant's knowledge, Tenant does not (I) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders or (II) engage in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. As used herein, "Anti-Terrorism Law" means the OFAC Laws and Regulations, the Executive Orders and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001), as amended.

(b) Landlord hereby represents, warrants and certifies to Tenant as follows: Landlord is not a "foreign person" within the meaning of Section 1445(f) of the Internal Revenue Code and, after making due inquiry, no person who owns a controlling interest in or otherwise controls Landlord is (a) listed on any of the Lists; or (b) a Designated Person. Neither Landlord nor any person who owns a controlling interest in or otherwise controls Landlord is (x) a person or entity with which Tenant is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law or (y) a person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Orders or (z) is affiliated or associated with a person or entity listed in the preceding clause (x) or clause (y). To Landlord's knowledge, Landlord does not (I) deal in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Orders or (II) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(c) Tenant hereby represents that, as of the Commencement Date, the organizational chart of Tenant attached hereto as Exhibit G is a true, correct and complete depiction of all direct and indirect equity interests in Tenant and its subsidiaries.

(d) Each of Tenant and Landlord hereby represents that it does not intend to apply the constant rental accrual method (within the meaning of section 1.467-3(d) of the Treasury Regulations promulgated under the Internal Revenue Code of 1986) to any Rent paid by Tenant under this Lease, unless required to do so pursuant to a final resolution of liability for any tax as determined by an applicable taxing authority.

ARTICLE 40 NO PLAN ASSETS; NO GOVERNMENT PLAN

Tenant represents that it is not and shall not at any time during the Lease Term become (1) an employee benefit plan defined in Section 3(3) of ERISA which is subject to ERISA, (2) a plan as defined in Section 4975(e)(1) of the Code which is subject to Section 4975 of the Code, (3) a “governmental plan” within the meaning of Section 3(32) of ERISA or (4) an entity any of whose underlying assets constitute “plan assets” of any such employee benefit plan, plan or governmental plan for purposes of Title I or ERISA, Section 4975 of the Code or any state statutes applicable to Persons regulating investments of governmental plans.

ARTICLE 41 BROKERS

Landlord and Tenant each (a) represents to the other party that such representing party has dealt with no broker or brokers in connection with the negotiation, execution and delivery of this Lease and (b) agrees to indemnify, defend, protect (with counsel selected by the indemnified party, subject to the approval of the indemnifying party (unless the indemnifying party is the Tenant and an Event of Default has occurred)) and hold such other party free and harmless of, from and against any and all Losses arising from (including all brokerage commissions and/or finder’s fees due or alleged to be due as a result of) any agreement or purported agreement made by such indemnifying party.

ARTICLE 42 INDEMNITIES NOT LIMITED

In no event shall any indemnification by Tenant of Landlord or any Landlord Party under this Lease or any other Transaction Document be limited by the existence or policy limits of any insurance carried by Tenant. In no event shall any indemnification by Landlord of Tenant under this Lease or any other Transaction Document be limited by the existence or policy limits of any insurance carried by Landlord (for the avoidance of doubt, Landlord is not required to carry any insurance pursuant to this Lease).

ARTICLE 43 STATE SPECIFIC PROVISIONS⁹

Section 43.01 California. Without limiting the choice of law provision set forth in Article 26, the following provisions shall apply to the extent that the laws of the State of California govern the interpretation or enforcement of this Lease with respect to the Demised Property located in the State of California:

⁹ Only included in assignment lease if property is in applicable state

(a) Effect of Waivers. Each of Landlord and Tenant hereby waives the benefits of California Civil Code Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

(b) Eminent Domain. The provisions of this Lease, including those in Article 12, constitute an express agreement between Landlord and Tenant that applies in the event there is any taking of any part of the Demised Property for any public or quasi-public use under any statute or by right of eminent domain or by purchase in lieu thereof (collectively, "Condemnation"). Tenant and Landlord each hereby waives all rights it may have under California Code of Civil Procedure Section 1265.130, or otherwise, to terminate this Lease based on a total or partial Condemnation.

(c) Damage and Destruction. The provisions of this Lease, including those in Article 11, constitute an express agreement between Landlord and Tenant that applies in the event that the Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature. Landlord and Tenant, each therefore, fully waives the provisions of any statute or regulation, including California Civil Code Sections 1932(2) and 1933(4), relating to any rights or obligations concerning any such fire or other casualty.

(d) Notices. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by California Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Article 17 shall replace and satisfy the statutory service-of-notice procedures, including those required by California Code of Civil Procedure Section 1162 or any similar or successor statute.

(e) Remedies. It is intended that Landlord shall have the remedy described in California Civil Code Section 1951.4, which provides that, when a tenant has the right to sublet or assign, the landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all rent as it becomes due.

Section 43.02 Nevada. With respect to the Demised Property located in the State of Nevada:

(a) Prior to commencing any Alterations, Tenant shall (a) provide five Business Days prior written notice to Landlord, so that Landlord may post notices on and about the Demised Property with respect to Landlord's non-responsibility for mechanics' liens (which Tenant shall not permit to be defaced or removed) and (b) at its expense either: (1) obtain and record with the Office of the County Recorder of the county in which the Demised Property is located a surety bond that satisfies the requirements Nevada Revised Statutes ("NRS") §108.2403(2) or (2) establish a construction disbursement account as required by NRS §108.2403(1), and do each of the following: (i) notify each person who gives Tenant a notice of right to lien of the recording of the surety bond or establishment of the construction disbursement account as required by NRS §108.2403(2)(f); (ii) record a notice of posted security satisfying the requirements of NRS §104.2403; (iii) serve the notice of posted security upon persons in accordance with NRS §108.2403(2)(f); (iv) otherwise comply with all requirements of Chapter 108 of the

NRS applicable to the construction of any such Alterations; and (v) provide evidence satisfactory to Landlord that Tenant has complied with the foregoing requirements.

(b) PURSUANT TO NRS §108.234(3)(e), LANDLORD HEREBY NOTIFIES TENANT THAT TENANT IS REQUIRED TO COMPLY WITH THE PROVISIONS OF NRS CHAPTER 108 APPLICABLE TO A LESSEE, WHICH PROVISIONS INCLUDE, AMONG OTHERS, OBTAINING SECURITY FOR MECHANICS' AND MATERIALMEN'S LIENS AND RECORDING A NOTICE OF POSTED SECURITY BEFORE CAUSING A WORK OF IMPROVEMENT TO BE CONSTRUCTED, ALTERED OR REPAIRED UPON PROPERTY THE LESSEE IS LEASING IN ACCORDANCE WITH NRS §108.2403. TENANT ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THE EFFECT OF THIS PROVISION AND NRS §108.2403.

Section 43.03 Arizona. Without limiting the choice of law provision set forth in Article 26, the following provisions shall apply to the extent that the laws of the State of Arizona govern the interpretation or enforcement of this Lease with respect to the Demised Property located in the State of Arizona:

(a) Waiver. The provisions of this Lease, including those in Article 11, constitute an express agreement between Landlord and Tenant that applies in the event that the Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature. Each of Landlord and Tenant, therefore, fully waives the provisions of any statute or regulation, including Arizona Revised Statutes (“A.R.S.”) Section 33-343, relating to any rights or obligations concerning any such fire or other casualty.

(b) Indemnity. In any instance in this Lease where the phrase “harmless of, from and against” or the phrase “harmless from and against” appears, such phrase is amended to read in its entirety as follows: “harmless of, for, from and against”.

(c) Effective Rate of Interest. Tenant agrees to pay an effective rate of interest equal to the rate stated in this Lease and in any other documents evidencing the obligations of Tenant to Landlord, plus any additional rate, if any, resulting from any charge or fee in the nature of interest paid or to be paid by Tenant in connection therewith, or any benefit received or to be received by Landlord in connection therewith.

(d) Environmental Laws. The definition of “**Environmental Laws**” shall include, without limitation, the Arizona Hazardous Waste Management Act, A.R.S. Section 49-921 *et seq.*; and the Arizona Environmental Quality Act, A.R.S. Section 49-1001 *et seq.*

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the date first above written.

LANDLORD:

_____,
a _____

First Witness

By: _____
Name: _____
Title: _____

Printed Name of First Witness

Second Witness

Printed Name of Second Witness

TENANT:

_____,
a _____

First Witness

By: _____
Name: _____
Title: _____

Printed Name of First Witness

Second Witness

Printed Name of Second Witness

Signature Page

LAND AND BUILDING LEASE
(Individual Lease Form)

ACKNOWLEDGMENTS

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of , before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)

Notary Public

My commission expires:

[ACKNOWLEDGMENTS CONTINUE ON NEXT PAGE]

Acknowledgment

LAND AND BUILDING LEASE
(Individual Lease Form)

STATE OF _____)
) ss.
COUNTY OF _____)

On this ____ day of , before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)

Notary Public

My commission expires:

Acknowledgment

LAND AND BUILDING LEASE
(Individual Lease Form)

SCHEDULE 1

DEFINED TERMS

The following capitalized terms used in this Lease have the following meanings.

“**AAA**” means the American Arbitration Association or any successor thereto.

“**Additional Rent**” means any and all fees, expenses, taxes and charges of every kind and nature arising in connection with or relating to the Demised Property that Tenant is obligated to pay under the terms of this Lease (other than Base Rent), including (i) any and all taxes (including Real Estate Taxes), fees, utility service charges, insurance premiums, and other costs, and any amounts owed by Tenant under any indemnity to Landlord hereunder, including as set forth in Article 9 and Article 29; (ii) all fees and penalties that may accrue on any amounts due from Tenant hereunder if Tenant fails to pay such amounts in a timely manner; and (iii) all other Losses that Landlord may suffer or incur in enforcing this Lease (whether or not any formal action is brought by Landlord against Tenant) or in otherwise taking actions permitted under this Lease following a Default (as hereinafter defined) by Tenant (including making Repairs (as hereinafter defined) and fulfilling other obligations of Tenant as provided in Article 7, and purchasing insurance required to be maintained by Tenant under this Lease, as provided in Article 10), or as a result of, arising out of, or in connection with any notice, request or other action by Tenant, whether or not expressly permitted by the terms of this Lease. In addition, “Additional Rent” includes any rent or other income received by Tenant from any subtenant of the Demised Property to the extent applicable to periods after the expiration or termination of this Lease as to the Demised Property.

“**Adjustment Dates**” is defined in Section 3.02(a).

“**Affiliate**” means in relation to any Person, any other Person: (i) directly or indirectly controlling, controlled by, or under common control with, the first Person; (ii) directly or indirectly owning or holding five percent or more of any equity interest in the first Person; or (iii) five percent or more of whose voting stock or other equity interest is directly or indirectly owned or held by the first Person. For purposes of this definition, “control” (including with correlative meanings, the terms “controlling”, “controlled by” and “under common control with”) means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Without limiting the foregoing, the Affiliates of any Person that is an entity shall include all natural persons who are officers, agents, directors, members, partners, or employees of the entity Person.

“**Alteration Information**” is defined in Article 6.

“**Alterations**” is defined in Article 6.

“**Arbitrator**” is defined in Section 31.01.

“**Arbitrator Appointment Notices**” is defined in Section 31.01.

“**Base Date**” is defined in Section 3.02(a).

“**Base Rent**” is defined in Section 3.02(b).

“Base Rent Escalation” is defined in Section 3.02(a).

“Base Rent Reduction Arbitration” means the arbitration process set forth on Schedule 4a.

“Base Rent Reduction Arbitration Date” is defined in Schedule 4a.

“Base Rent Reduction Arbitrator” is defined in Schedule 4a.

“Base Rent Reduction Arbitrator Appointment Notices” is defined in Schedule 4a.

“Base Rent Reduction Delinquent Party” is defined in Schedule 4a.

“Beneficial Owner” is defined in Article 39.

“Building Equipment” is defined in the Recitals to this Lease.

“Business Day” means any day excluding (i) Saturday, (ii) Sunday, (iii) any day that is a legal holiday under the Laws of the State of New York or the State in which the Demised Property is located, and (iv) any day on which banking institutions located in the State of New York or the State in which the Demised Property is located are generally not open for the conduct of regular business.

“Capital Alteration” means an Alteration that consists of a capital repair and/or replacement to maintain or improve a Demised Property, including structural repairs, roof replacements, material HVAC repairs and replacements, material mechanical and plumbing repairs and replacements and material boiler repair and replacements.

“Casualty Termination Arbitration” is defined in Section 11.02.

“Casualty Termination Arbitration Date” is defined in Schedule 4b.

“Casualty Termination Arbitrator” is defined in Schedule 4b.

“Casualty Termination Arbitrator Appointment Notices” is defined in Schedule 4b.

“Casualty Termination Delinquent Party” is defined in Schedule 4b.

“Code” is defined in Section 31.01.

“Commencement Date” is defined in the first paragraph of this Lease.

“Condemnation Date” means, as to the Demised Property subject to condemnation, the earliest of (a) the date on which the applicable authority takes possession of the Demised Property, or portion thereof, or (b) the date on which title to the Demised Property, or portion thereof, is vested in the applicable authority.

“Consideration Period” is defined in Section 31.01.

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items (1982-84=100), published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI is not published for any month during the Lease Term, Landlord, in its reasonable discretion, shall substitute a comparable index published by the Bureau of Labor Statistics of the U.S. Department of

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Labor. If such an index is not published by the Bureau of Labor Statistics, Landlord, in its reasonable discretion, shall select a comparable index published by a nationally recognized responsible financial periodical.

“De Minimis Amounts” means, with respect to any given level of Hazardous Materials, that level or quantity of Hazardous Materials in any form or combination of forms, the use, storage or release of which does not constitute a violation of, or require regulation, remediation, reporting or monitoring under, any Environmental Laws and is customarily employed in the ordinary course of, or associated with, similar businesses located in the states in which the Demised Property is located.

“Default” is defined in Section 15.01.

“Delinquent Party” has the meaning set forth in Section 31.01.

“Demised Property” is defined in the Recitals to this Lease.

“Designated Person” is defined in Article 39.

“Diligence Matters” is defined in Article 5.

“Disclosures” is defined in Section 23.02.

“End of Term Casualty” has the meaning set forth in Section 11.02.

“Environmental Claims” is defined in Section 29.04.

“Environmental Conditions” means the conditions of Environmental Media and the conditions of any part of the Demised Property, including building or structural materials, that affect or may affect Environmental Media. Environmental Conditions include the Release of Hazardous Materials to Environmental Media.

“Environmental Guidance Standards” means guidance documents, health and safety screening standards, policy manuals, remedial action guidelines, public health goals, risk screening levels, vapor intrusion investigation and mitigation guidance, and similar policy or procedure documents which a Governmental Authority has published, made publicly available, and which a reputable, experienced and credentialed environmental professional likely would consult or employ in undertaking a voluntary project, or which a Governmental Authority likely would employ if overseeing an investigation, risk assessment, abatement, remediation, monitoring, or longer term “operations and maintenance” work at the Demised Property. Examples, without limitation, are US EPA Region IX Preliminary Remediation Goals, the LUFT Fuel Manual, California Regional Water Quality Control Board Risk Based Screening Levels and Cal EPA, DTSC’s Final Guidance for the Evaluation and Mitigation of Subsurface Vapor Intrusion into Indoor Air.

“Environmental Laws” means any federal, state or local law, statute, ordinance, permit condition, regulation or written policy pertaining to public or worker health or safety, natural resources, climate change, or the regulation or protection of the indoor or outdoor environment, the regulation or reporting of Hazardous Materials, including the following: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq. as amended (“CERCLA”), the Solid Waste Disposal Act, 42 U.S.C. §§ 6901, et seq. as amended (“RCRA”), the Federal Water Pollution

Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C. §§ 1251, et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601, et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001, et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 USC §§ 7401, et seq.; the National Environmental Policy Act of 1970, as amended, 42 USC §§ 4321, et seq.; the Rivers and Harbors Act of 1899, as amended, 33 USC §§ 401, et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. §§ 801, et seq. the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531, et seq.; the Occupational Safety and Health Act of 1970, as amended 29 U.S.C. §§ 651, et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300(f), et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq. as amended, and all regulations, published governmental policies, and administrative or judicial orders promulgated under or implementing or enforcing said laws; and (ii) all state or local laws which implement the foregoing federal laws or which pertain to public health and safety, occupational health and safety, natural resources or environmental protection, or the regulation or reporting of Hazardous Materials, all as amended from time to time, and all regulations, published governmental policies, and administrative or judicial orders promulgated under the foregoing laws; (iii) all federal and state common law, including the common law of public or private nuisance, trespass, negligence or strict liability, where such common law pertains to public health and safety, occupational health and safety, natural resources, and environmental protection.

“Environmental Media” means soil, fill material, or other geologic materials at all depths, groundwater at all depths, surface water including storm water and sewerage, indoor and outdoor air, and all living organisms, including all animals and plants, whether such Environmental Media are located on or off the Demised Property. For purposes of this Lease groundwater underlying the Demised Property shall be deemed part of the Demised Property even if such groundwater is owned by a third party.

“ER and SLO Environmental Covenant” is defined in Schedule 29.08.

“ERISA” means the Employee Retirement Income Security Act of 1974, and all rules and regulations promulgated thereunder.

“Estoppel Certificate” is defined in Article 24.

“Event of Default” is defined in Section 15.01.

“Excluded Personal Property” is defined in the Recitals to this Lease.

“Executive Orders” is defined in Article 39.

“Existing Environmental Conditions” means those Environmental Conditions which exist as of the Commencement Date, due to an act or omission by any person at any time prior to the Commencement Date, in, on, under at, about the Demised Property, or any Hazardous Materials migrating to or from the Demised Property. Existing Environmental Conditions include any “daughter” or “breakdown” Hazardous Materials for any original Release that pre-dates the Lease Term. Existing Environmental Conditions shall not include Environmental Conditions which are the subject of a final “case closure” or “no further action” determination by a Governmental Authority, unless during the Lease Term: (1) a Governmental Authority reopens the matter, or (2) Tenant or any person fails to comply with any applicable activity and use limitations respecting the Environmental Conditions, or (3) changes in Law, including Environmental Law, require the Existing Environmental Conditions be addressed.

“Extension Notice” is defined in Section 2.02(a).

“Failing Party” has the meaning set forth in Section 31.01.

“First Option Period” is defined in Section 2.02(a).

“GAAP” means generally accepted accounting principles as in effect in the United States of America from time to time.

“Governmental Authority” means (i) any international, foreign, federal, state, county or municipal government, or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (iii) any court, administrative tribunal or public utility.

“Hazardous Materials” means any ignitable, reactive, explosive, corrosive, carcinogenic, mutagenic, toxic or radioactive material, whether virgin material, secondary material, by-product, waste or recycled material, defined, regulated or designated as a contaminant, pollutant, hazardous or toxic substance, material, waste, contaminant or pollutant under any Environmental Laws or any other federal, state or local law, statute, regulation, ordinance, or governmental policy presently in effect or as amended or promulgated in the future, and shall specifically include: (i) those materials included within the definitions of “hazardous substances,” “extremely hazardous substances,” “hazardous materials,” “toxic substances” “toxic pollutants,” “hazardous air pollutants” “toxic air contaminants,” “solid waste,” “hazardous waste,” “pollutants,” contaminants,” “greenhouse gasses” or similar categories under any Environmental Laws; and (ii) specifically including any material, waste or substance that contains: (A) petroleum or petroleum derivatives byproducts, including crude oil and any fraction thereof and waste oil; (B) asbestos; (C) polychlorinated biphenyls; (D) formaldehyde; (E) radon; and (F) any methane. If not already defined as a Hazardous Material under any of the foregoing terms, mold and fungi of any type or concentration shall be deemed a Hazardous Material hereunder if present in any Improvements under such conditions or circumstance as to represent a condition hazardous to human health or safety. Hazardous Materials may be man-made or naturally occurring.

“Holdback Agreement” means [_____].

“Improvements” is defined in the Recitals to this Lease.

“Land” is defined in the Recitals to this Lease.

“Landlord” is defined in the first paragraph of this Lease.

“Landlord Award Amount” means the amount of the award actually received by Landlord for any taking of any portion of the Demised Property, less any and all costs and expenses incurred by Landlord in connection with such taking (including any and all costs and expenses incurred by Landlord in connection with obtaining such award).

“Landlord Parties” means, collectively, (i) Landlord, Affiliates of Landlord, Landlord’s Lenders and any Landlord’s Mortgagee, and (ii) any members, partners, shareholders, officers, directors, employees, agents, attorneys, contractors, affiliates, heirs, successors or assigns of any of Landlord, Affiliates of Landlord, Landlord’s Lenders, or any Landlord’s Mortgagee.

“Landlord’s Account” is defined in Section 3.01.

“Landlord’s Lenders” means any persons or entities providing financing to Landlord or Affiliates of Landlord.

“Landlord’s Mortgagee” means any Persons holding a mortgage, deed of trust, deed to secure debt or similar instrument encumbering Landlord’s interest in the Demised Property or portion thereof (whether or not any such Person is also a Landlord’s Lender).

“Late Fee” is defined in Section 15.06.

“Law” means all international, foreign, federal, state and local statutes, treaties, rules, regulations, ordinances, codes, directives, orders, or written policies issued pursuant thereto, and published administrative or judicial precedents.

“Lease” is defined in the first paragraph of this agreement.

“Lease Term” is defined in Section 2.01(a).

“Leasehold Mortgage” means any leasehold deed of trust, mortgage, deed to secure debt, assignment of leases and rents, assignment, security agreement, or other security document securing financing from a lender of Tenant and encumbering Tenant’s leasehold interest in the Demised Property.

“Licensed Equipment” is defined in the Recitals to this Lease.

“Liens” means liens, security interests, charges and encumbrances.

“Lists” is defined in Article 39.

“Losing Party” has the meaning set forth in Section 31.01.

“Losses” means all losses, claims, demands, actions, causes of action, settlements, obligations, duties, indebtedness, debts, controversies, remedies, choses in action, liabilities, costs, penalties, fines, damages, injuries, judgments, forfeitures, or expenses (including reasonable attorneys’, consultant, testing and investigation and expert fees and court costs), whether known or unknown, and whether liquidated or unliquidated.

“Minor Project” means (i) a non-structural minor maintenance or repair project or (ii) a “cosmetic refresh” project involving only painting, carpeting, floor covering and installation of moveable replacement Tenant Equipment and similar items, unless in either case (i) or (ii) the costs exceed, in the aggregate for any such project, for the Demised Property, \$500,000.

“Notice Date” has the meaning set forth in Section 31.01.

“OFAC” is defined in Article 39.

“OFAC Laws and Regulations” is defined in Article 39.

“Option Period” is defined in Section 2.02(a).

“Original Lease Term” is defined in Section 2.01(a).

“Other Lists” is defined in Article 39.

“Other Parties” is defined in Section 29.02.

“Permitted Assignee” is defined in Section 22.01(b).

“Permitted Liens” means (i) Liens to secure claims for labor, material or supplies in respect of obligations not overdue; (ii) Liens in respect of judgments or awards that have been in force for less than the applicable period for making an appeal so long as execution is not levied thereunder or in respect of which Tenant shall at the time in good faith be prosecuting an appeal or proceedings for review and in respect of which a stay of execution shall have been obtained pending such appeal or review; (iii) Liens of carriers, warehousemen, mechanics and materialmen and other like Liens that have been in existence less than 120 days after the date of creation thereof in respect of obligations not overdue; and (iv) purchase money Liens on Tenant Equipment to secure purchase money indebtedness incurred in connection with the acquisition of such Tenant Equipment, which Liens cover only the Tenant Equipment so acquired.

“Permitted Uses” means any lawful retail use other than the uses listed on Schedule 3.

“Person” means an individual, corporation, partnership, joint venture, association, joint-stock company, trust, estate, limited liability company, non-incorporated organization or association, or any other entity, any Government Authority or any agency or political subdivision thereof.

“Petition” means a petition in bankruptcy (including any such petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief) under the Bankruptcy Code of the United States of America, or under any other present or future federal or state statute, law or regulation of similar intent or application.

“Rating Agency” means any of the following: Standard & Poor’s Ratings Group; Moody’s Investors Service, Inc., Fitch Ratings, Inc.; and any other nationally-recognized statistical rating agency.

“Real Estate Taxes” means (i) all taxes and general and special assessments and other impositions in lieu thereof, or as a supplement thereto and any other tax measured by the value of real property and assessed on a uniform basis against the owners of real property, including any substitution in whole or in part therefor due to a future change in the method of taxation, and including any increase in any of the foregoing resulting from any sale, exchange, mortgage, encumbrance, or other disposition by Landlord, in each case assessed against, or allocable or attributable to, the Demised Property and accruing during or prior to the Lease Term, and (ii) all transfer taxes imposed in connection with this Lease, and any and all transfer taxes assessed against, or allocable or attributable to, the Demised Property and accruing during or prior to the Lease Term (except that the transferor or transferee, as applicable, shall pay all transfer taxes attributable to transfers to third parties during the Lease Term). For the avoidance of doubt, the term “Real Estate Taxes” shall include any interest or penalty, addition to tax or other additional amount imposed with respect to the foregoing clauses (i) and (ii).

“Reassessment” is defined in Section 3.03(c).

“Release” means any active or passive spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into any Environmental Media. For the purposes of this Lease, “Release” also includes any threatened Release.

“Remedial Activities” means any investigation, work plan preparation removal, repair, cleanup, abatement, remediation, monitored natural attenuation, natural resource damage assessment and restoration, closure, post-closure, detoxification or remedial activity of any kind whatsoever necessary to address Environmental Conditions.

“REMICs” is defined in Section 31.01.

“Rent” means Base Rent plus Additional Rent.

“Repairs” means all replacements (other than Restoration Work and restoration in connection with eminent domain), renewals, alterations, additions and betterments necessary for Tenant to properly maintain the Demised Property in good order and condition, safe and fit for its permitted use under this Lease.

“Replaced Property” is defined in Section 31.01.

“Replacement Property” is defined in Section 31.01.

“Restoration Work” is defined in Section 11.01.

[**“SB Environmental Covenant”** is defined in Schedule 29.08.]

“SDN List” is defined in Article 39.

“Second Option Period” is defined in Section 2.02(a).

“SNDA” is defined in Section 23.01.

“Subordination and Attornment Provisions” is defined in Section 22.01(b).

“Subtenant Minor Project” means (i) a non-structural minor maintenance or repair project or (ii) a “cosmetic refresh” project involving only painting, carpeting, floor covering and installation of moveable replacement Tenant Equipment and similar items, unless the costs exceed, in the aggregate for any such project, for the Demised Property, the percentage of the square footage of the Demised Property subject to subtenant’s sublease multiplied by \$500,000.

“Subtenant SNDA” is defined in Section 23.01.

“Tenant” is defined in the first paragraph of this Lease.

“Tenant Equipment” is defined in the Recitals to this Lease.

“Tenant’s Lender” means any lender of Tenant that holds a Leasehold Mortgage.

“Third Option Period” is defined in Section 2.02(a).

“Transaction Documents” means this Lease and any other agreements entered into by and between Landlord and Tenant regarding the Lease or the Demised Property.

“Transfer Parties” is defined in Section 23.02.

“Unreimbursed Costs” means any fees or other costs that are not reimbursed or subject to reimbursement pursuant to applicable Law or regulations, insurance, contractual indemnities or any other means.

“Use” means the receipt, handling, generation, storage, treatment, recycling, disposal, transfer, transportation, introduction, or incorporation into, on, about, under or from the Demised Property.

“Winning Party” has the meaning set forth in Section 31.01.

SCHEDULE 2

EXCLUDED PERSONAL PROPERTY

The following property shall be Tenant's Equipment, not Building Equipment:

- Refrigeration Equipment (Cases, Compressors, Racks – excluding HVAC and any walk-in coolers or freezers)

SCHEDULE 3

Permitted Use Exceptions

“Permitted Uses” shall not include:

- (1) any unlawful use;
- (2) any use which constitutes a public or private nuisance or produces objectionable noise, smell or vibration;
- (3) any noise or sound audible beyond the boundaries of a tenant’s space that is reasonably objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (4) tanning, bowling alley, karate center, skating rink, or other live sports facility other than a first class or nationally recognized gym, fitness center or spa;
- (5) any laundromat or commercial laundry or dry cleaning plant (other than shops serving as a drop-off and pick-up cleaning establishment which do no processing on their premises);
- (6) funeral parlor, crematorium, mortuary or similar service;
- (7) off track betting or bingo parlor, or other betting or gambling establishment;
- (8) any liquor store (a grocery store or similar establishment that sells liquor with such sales representing 20% or less of gross sales shall not be an excluded use) other than a first class wine boutique or nationally recognized chain such as BevMo;
- (9) any tavern or bar, billiard, pool room; provided, however, that first class restaurants with food service as a primary function that also serve liquor such as Applebee’s or Chili’s shall not be prohibited uses;
- (10) any cash for gold, or so called “second hand” or surplus store, pawn shop, flea market, swap meet, junk yard, or auction fire sale, liquidation, second hand or surplus store or flea market (excluding any store that is part of a recognized national or regional chain of first class stores selling second hand merchandise, including, but not limited to, Funcholand, Play It Again Sports and Once Upon A Child, and excluding quality antique stores);
- (11) massage parlor (excluding (a) facilities for therapeutic massage incidental to a permitted retail use such as a first class or nationally recognized day spa and (b) nationally recognized massage chains of comparable quality to Massage Envy);
- (12) living quarters (including, without limitation, drug rehabilitation or “halfway” house) or for residential purposes;
- (13) theater (movie or live), movie theater, auditorium or meeting hall, catering or banquet facility, night club, discotheque, dance hall or ballroom; provided, however, that use of electronic media incidental to another permitted use shall not be a prohibited use
- (14) church or other place of public assembly or religious worship, except that retail stores selling religious merchandise are expressly not prohibited;
- (15) any gun range or use which involves any unusual firing, explosive or other damaging or dangerous hazard (including the storage, display or sales of explosives or fireworks);
- (16) pornographic use (i.e., the exhibition, sale or display of sexually explicit printed materials, audio or video tapes, videocassettes, or film, or sexual devices or sexually oriented entertainment unless, (i) incidental to a permitted use, (ii) permitted by law, and (iii) commonly exhibited, sold, rented or displayed in first class shopping centers similar in the metropolitan area where the property is located), adult book or video tape store (i.e., stores a significant part of the inventory of which is not available for sale or rental to

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- children under 15 years old because such inventory explicitly deals with or depicts human sexuality);
- (17) hotel or motel;
 - (18) school (except training incidental to a retail use; provided same is conducted within the applicable retail premises), library, reading room, beauty school, barber college or house of worship;
 - (19) drug paraphernalia store or so called "head" shop;
 - (20) medical marijuana store;
 - (21) any car wash or the performance of any automobile or boat body and fender repair work or other business servicing boats or motor vehicles (including quick lube oil change service, tire center, gasoline or service station, dispensing of petroleum products);
 - (22) any trailer court, mobile home park, sales office or lot for sale, rental or leasing of new or used boats, automobiles, motorcycles, trucks, mobile homes, trailers or other vehicles, labor camp, junk yard, stock yard;
 - (23) off track betting, gambling, gaming or check cashing facility (other than a bona fide banking institution);
 - (24) Amusement park, carnival, circus, fair, disco, nightclub or other entertainment facility including video game room, pool hall, arcade, indoor children's recreational facility or other amusement center (provided, however, that incidental interactive kiosks, games and equipment related to the otherwise permitted primary use of an owner, occupant or tenant, will not be prohibited hereunder);
 - (25) any business operated primarily only on a seasonal or part time basis;
 - (26) any office use; provided that the foregoing shall not prohibit (i) office use which is incidental to a retail operation and which is conducted from within the applicable retail premises, and (ii) quasi-retail offices providing services to the general public and customarily found in first class retail shopping centers in the metropolitan area where the Demised Property is located (such as medical or dental services, travel agencies, insurance services, and real estate offices);
 - (27) animal raising or boarding (other than pet supply stores and veterinarian offices that are an incidental use in a national or regional pet store, provided the same does not sell animals raised in puppy mills);
 - (28) any assembling, manufacturing, distribution facility;
 - (29) any factory, processing or rendering plant, warehouse or storage facility (except reasonable storage of items incidental to another permitted use);
 - (30) any noxious, toxic, caustic or corrosive fuel or gas;
 - (31) any dust, dirt or fly-ash in excessive quantities;
 - (32) any heavy industrial use or for a purpose which causes strong or offensive odors, fumes, dust or vapors and/or untidiness; provided, however, that restaurants are not precluded hereby; any distilling, refining, smelting, agriculture or mining operation; or drilling for or removal of subsurface substances, dumping, disposal, incineration or reduction of garbage or refuse (other than handling or reducing such waste produced on the premises from otherwise authorized uses and, in such latter event, only if handled in a reasonably clean and sanitary manner), provided, however, that such activities will be permitted in connection with the construction of buildings and tenant improvements).

SCHEDULE 4a

Base Rent Reduction Arbitration

In the event that Landlord and Tenant fail agree on the monthly fair market rental for the applicable portion of the Demised Property in connection with the determination of a Base Rent reduction pursuant to Section 12.05 then:

(1) Submission of Proposed Base Rent. Within five (5) days after the date provided in Section 12.05, as applicable, that Landlord and Tenant shall submit to Base Rent Reduction Arbitration (the “**Base Rent Reduction Arbitration Date**”), (a) Landlord shall deliver to Tenant an appraisal setting forth an estimate of the monthly fair market rental attributable to the applicable portion of the Demised Property together with any supporting documentation for its assertion, and (b) Tenant shall deliver to Landlord an appraisal setting forth an estimate of the monthly fair market rental attributable to the applicable portion of the Demised Property together with any supporting documentation for its assertion. If either party fails to deliver its appraisal to the other party on or before the last day of such five (5)-day period, but the other party delivers its appraisal on or before the last day of such five (5)-day period, the assertion supported by such other party’s appraisal delivered pursuant to this subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such five (5)-day period.

(2) Appointment and Qualifications of Arbitrator. If the arbitration is not deemed concluded pursuant to subsection (1), above, then within fifteen (15) days after the Base Rent Reduction Arbitration Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous ten-year (10-year) period in the appraisal of net leased retail properties within the county in which the Demised Property is located (each such appraiser chosen pursuant to this subsection (2), a “**Base Rent Reduction Arbitrator**”). Each of Landlord and Tenant shall notify the other party, in writing, of its Arbitrator (and the business address thereof) within two (2) Business Days after the appointment thereof (collectively, the “**Base Rent Reduction Arbitrator Appointment Notices**”). Each of Landlord and Tenant agrees that any Arbitrator may be (but is not required to be) an appraiser who prepared one or both of the appraisals delivered by Landlord and Tenant pursuant to subsection (1), above.

(3) Appointment of Third Arbitrator. If each party appoints a Base Rent Reduction Arbitrator and notifies the other party in accordance with subsection (2), above, then the two Base Rent Reduction Arbitrators shall, within ten (10) days after delivery of the later of the two Base Rent Reduction Arbitrator Appointment Notices, agree on and appoint a third Base Rent Reduction Arbitrator (whom shall be a licensed real estate appraiser with all other qualifications for the initial two Base Rent Reduction Arbitrators chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Base Rent Reduction Arbitrator and the business address thereof. If the two Base Rent Reduction Arbitrators fail to agree on and appoint a third Base Rent Reduction Arbitrator within such ten (10) day period, then either Landlord or Tenant may elect to have the third Base Rent Reduction

Arbitrator selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Base Rent Reduction Arbitrator and the parties shall cooperate reasonably with each other and the AAA (including by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Base Rent Reduction Arbitrator. If any fees of the third Base Rent Reduction Arbitrator or the AAA are required to be paid in advance (prior to the completion of the arbitration procedure described in this Schedule) in order for such Base Rent Reduction Arbitrator, or the AAA, as the case may be, to commence or continue its work in connection with the arbitration described in this Schedule, each party shall promptly pay one-half of such fees as and when due, and if either Landlord or Tenant fails to pay its one-half share of any such fees as and when due (such party is referred to in this Schedule as the “**Base Rent Reduction Delinquent Party**”), and the other party does pay its one-half share of any such fees as and when due, then if the Base Rent Reduction Delinquent Party fails to pay its one-half share of all such fees within ten (10) days after written notice from the other party, the assertion supported by such other party’s appraisals delivered pursuant to subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such ten (10)-day period.

(4) Base Rent Reduction Arbitrators’ Decision. If the arbitration is not previously deemed concluded pursuant to subsection (3), above, then within thirty (30) days after the appointment of the third Base Rent Reduction Arbitrator, the three Base Rent Reduction Arbitrators shall decide the appraisal that best estimates the monthly fair market rental attributable to the applicable portion of the Demised Property and shall notify Landlord and Tenant in writing of each Base Rent Reduction Arbitrator’s decision. The determination of each Base Rent Reduction Arbitrator shall be limited to the sole issue of, and each Base Rent Reduction Arbitrator shall have neither the right nor the power to determine any issue other than, the monthly fair market rental attributable to the applicable portion of the Demised Property, as determined by such Base Rent Reduction Arbitrator. The decision of the majority of the three Base Rent Reduction Arbitrators shall be binding on Landlord and Tenant (subject to subsection (5), below), and the arbitration shall be deemed concluded upon delivery to Landlord and Tenant of such notifications of the Base Rent Reduction Arbitrators’ decisions.

(5) If Only One Base Rent Reduction Arbitrator Is Appointed. If the arbitration is not previously deemed concluded pursuant to subsection (1), and if either Landlord or Tenant fails to appoint a Base Rent Reduction Arbitrator within fifteen (15) days after the Base Rent Reduction Arbitration Date or fails to deliver a Base Rent Reduction Arbitrator Appointment Notice in accordance with subsection (2), above, and the other party does appoint a Base Rent Reduction Arbitrator within such fifteen (15) day period and delivers a Base Rent Reduction Arbitrator Appointment Notice in accordance with subsection (2), above, then the Base Rent Reduction Arbitrator timely appointed by such other party shall reach a decision regarding the applicable Base Rent reduction, as determined by such Base Rent Reduction Arbitrator, and notify Landlord and Tenant of that decision within thirty (30) days after such Base Rent Reduction Arbitrator’s appointment. Such decision of the Base Rent Reduction Arbitrator shall be binding on Landlord and Tenant, and the arbitration shall be deemed concluded upon delivery of such notification of the Base Rent Reduction Arbitrator’s decision.

(6) Cost of Base Rent Reduction Arbitration. If the Base Rent Reduction Arbitrators (or Base Rent Reduction Arbitrator, pursuant to subsection (5), above)

determine that the monthly fair market rental attributable to the applicable portion of the Demised Property is closer to Tenant's estimate of the applicable Base Rent reduction, then Tenant shall be deemed the "**Removal Base Rent Winning Party**" under this subsection (6) and Landlord shall be deemed the "**Removal Base Rent Losing Party**" under this subsection (6). If the Base Rent Reduction Arbitrators (or Base Rent Reduction Arbitrator, pursuant to subsection (5), above) determine that the monthly fair market rental attributable to the applicable portion of the Demised Property is closer to Landlord's estimate of the applicable Base Rent reduction, then Landlord shall be deemed the "**Removal Base Rent Winning Party**" under this subsection (6) and Tenant shall be deemed the "**Removal Base Rent Losing Party**" under this subsection (6). In addition, in the event the arbitration is deemed concluded due to a party not timely delivering its estimate as described in subsection (1), or a Base Rent Reduction Delinquent Party failing to pay its share of fees after written notice as described in subsection (3), such failing party or Base Rent Reduction Delinquent Party (as the case may be) shall be deemed the "**Removal Base Rent Losing Party**" under this subsection (6), and the party that is not such failing party or Base Rent Reduction Delinquent Party (as the case may be) shall be deemed the "**Removal Base Rent Winning Party**" under this subsection (6). Each party shall initially pay the fees and expenses of its legal counsel, appointed arbitrator, any written reports prepared by any appraiser in connection with its duties under this Schedule, one-half of the fees of the third arbitrator, and one-half the fees of the AAA (if applicable), provided, however, that the Removal Base Rent Losing Party shall be obligated to reimburse the Removal Base Rent Winning Party for all such fees and expenses of the arbitration paid by the Removal Base Rent Winning Party promptly upon the completion of the arbitration procedure described in this Schedule.

SCHEDULE 4b**Casualty Termination Arbitration**

In the event that Landlord and Tenant fail agree on whether the cost to complete the Restoration Work at the Demised Property is in excess of twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property pursuant to Section 11.02 then:

(1) Submission of Proposed Value. Within five (5) days after the date provided in Section 11.02 that Landlord and Tenant shall submit to Casualty Termination Arbitration (the “**Casualty Termination Arbitration Date**”), (a) Landlord shall deliver to Tenant its estimate of the cost to complete such Restoration Work together with an MAI fair market value appraisal for the replacement value of the Demised Property supporting its assertion that the cost to complete the Restoration Work at the Demised Property is less than or equal to twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property, and (b) Tenant shall deliver to Landlord its estimate of the cost to complete such Restoration Work together with an MAI fair market value appraisal for the replacement value of the Demised Property supporting its assertion that the cost to complete the Restoration Work at the Demised Property is greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property. If either party fails to deliver its estimate and appraisal to the other party on or before the last day of such five (5)-day period, but the other party delivers its estimate and appraisal to the failing party on or before the last day of such five (5)-day period, the assertion supported by such other party’s estimate and appraisal delivered pursuant to subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such five (5)-day period.

(2) Appointment and Qualifications of Arbitrator. If the arbitration is not deemed concluded pursuant to subsection (1), above, then within fifteen (15) days after the Casualty Termination Arbitration Date, Landlord and Tenant shall each appoint one licensed real estate appraiser who has been active over the previous ten-year (10-year) period in the appraisal of grocery stores or other applicable Permitted Uses within the county in which the Demised Property is located (each such appraiser chosen pursuant to this subsection (2), a “**Casualty Termination Arbitrator**”). Each of Landlord and Tenant shall notify the other party, in writing, of its Casualty Termination Arbitrator (and the business address thereof) within two Business Days after the appointment thereof (collectively, the “**Casualty Termination Arbitrator Appointment Notices**”). Each of Landlord and Tenant agrees that any Casualty Termination Arbitrator may be (but is not required to be) an appraiser who prepared one or both of the replacement value appraisals delivered by Landlord and Tenant pursuant to subsection (1), above.

(3) Appointment of Third Casualty Termination Arbitrator. If each party appoints a Casualty Termination Arbitrator and notifies the other party in accordance with subsection (2), above, then the two Casualty Termination Arbitrators shall, within ten (10) days after delivery of the later of the two Casualty Termination Arbitrator Appointment Notices, agree on and appoint a third Casualty Termination Arbitrator (whom shall be a licensed real estate appraiser with all other

qualifications for the initial two Casualty Termination Arbitrators chosen by the parties as set forth in subsection (2), above) and provide prompt written notice to Landlord and Tenant of such third Casualty Termination Arbitrator and the business address thereof. If the two Casualty Termination Arbitrators fail to agree on and appoint a third Casualty Termination Arbitrator within such ten (10) day period, then either Landlord or Tenant may elect to have the third Casualty Termination Arbitrator selected by the AAA by delivering written notice thereof to the other party. In such event, the electing party shall petition the AAA (with a copy to the other party) to so determine the third Casualty Termination Arbitrator and the parties shall cooperate reasonably with each other and the AAA (including by responding promptly to any requests for information made by the AAA) in connection with such determination. The decision of the AAA shall be final and conclusive as to the identity of the third Casualty Termination Arbitrator. If any fees of the third Casualty Termination Arbitrator or the AAA are required to be paid in advance (prior to the completion of the arbitration procedure described in this Schedule) in order for such Casualty Termination Arbitrator, or the AAA, as the case may be, to commence or continue its work in connection with the arbitration described in this Schedule, each party shall promptly pay one-half of such fees as and when due, and if either Landlord or Tenant fails to pay its one-half share of any such fees as and when due (such party is referred to in this Schedule as the **"Casualty Termination Delinquent Party"**), and the other party does pay its one-half share of any such fees as and when due, then if the Casualty Termination Delinquent Party fails to pay its one-half share of all such fees within ten (10) days after written notice from the other party, the assertion supported by such other party's estimate and appraisal delivered pursuant to subsection (1) shall be binding on both parties, and the arbitration shall be deemed concluded as of the first day following the expiration of such ten (10)-day period.

(4) Arbitrators' Decision. If the arbitration is not previously deemed concluded pursuant to subsection (3), above, then within thirty (30) days after the appointment of the third Casualty Termination Arbitrator, the three Casualty Termination Arbitrators shall decide whether the estimated cost to complete such Restoration Work is equal to or greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property and shall notify Landlord and Tenant in writing of each Casualty Termination Arbitrator's decision. The determination of each Casualty Termination Arbitrator shall be limited to the sole issue of, and each Casualty Termination Arbitrator shall have neither the right nor the power to determine any issue other than, whether the estimated cost to complete such Restoration Work is equal to or greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property, as determined by such Casualty Termination Arbitrator. The decision of the majority of the three Casualty Termination Arbitrators shall be binding on Landlord and Tenant (subject to subsection (5), below), and the arbitration shall be deemed concluded upon delivery to Landlord and Tenant of such notifications of the Casualty Termination Arbitrators' decisions.

(5) If Only One Casualty Termination Arbitrator Is Appointed. If the arbitration is not previously deemed concluded pursuant to subsection (1), and if either Landlord or Tenant fails to appoint a Casualty Termination Arbitrator within fifteen (15) days after the Casualty Termination Arbitration Date or fails to deliver a Casualty Termination Arbitrator Appointment Notice in accordance with subsection (2), above, and the other party does appoint a Casualty Termination Arbitrator within such fifteen (15) day period and delivers a Casualty Termination Arbitrator Appointment Notice in accordance with subsection (2), above, then the Casualty Termination Arbitrator timely appointed by such other party shall reach a decision regarding whether the

estimated cost to complete such Restoration Work is greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property, as determined by such Casualty Termination Arbitrator, and notify Landlord and Tenant of that decision within thirty (30) days after such Casualty Termination Arbitrator's appointment. Such decision of the Casualty Termination Arbitrator shall be binding on Landlord and Tenant, and the arbitration shall be deemed concluded upon delivery of such notification of the Casualty Termination Arbitrator's decision.

6. Cost of Casualty Termination Arbitration. If the Casualty Termination Arbitrators (or Casualty Termination Arbitrator, pursuant to subsection (5), above) determine that the estimated cost to complete such Restoration Work greater than twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property, then Tenant shall be deemed the "**Casualty Termination Winning Party**" under this subsection (6) and Landlord shall be deemed the "**Casualty Termination Losing Party**" under this subsection (6). If the Casualty Termination Arbitrators (or Casualty Termination Arbitrator, pursuant to subsection (5), above) determine that the estimated cost to complete such Restoration Work is less than or equal to twenty percent (20%) (in the event of a End of Term Casualty) or thirty-five percent (35%) (in the event of an Uninsured Casualty), as applicable, of the replacement value of the Demised Property, then Landlord shall be deemed the "**Casualty Termination Winning Party**" under this subsection (6) and Tenant shall be deemed the "**Casualty Termination Losing Party**" under this subsection (6). In addition, in the event the arbitration is deemed concluded due to a failing party not timely delivering its estimate and appraisal as described in subsection (1), or a Casualty Termination Delinquent Party failing to pay its share of fees after written notice as described in subsection (3), such failing party or Casualty Termination Delinquent Party (as the case may be) shall be deemed the "**Casualty Termination Losing Party**" under this subsection (6), and the party that is not the failing party or Casualty Termination Delinquent Party (as the case may be) shall be deemed the "**Casualty Termination Winning Party**" under this subsection (6). Each party shall initially pay the fees and expenses of its legal counsel, appointed arbitrator, any written reports prepared by any appraiser in connection with its duties under this Schedule, one-half of the fees of the third arbitrator, and one-half the fees of the AAA (if applicable), provided, however, that the Casualty Termination Losing Party shall be obligated to reimburse the Casualty Termination Winning Party for all such fees and expenses of the arbitration paid by the Casualty Termination Winning Party promptly upon the completion of the arbitration procedure described in this Schedule.

[SCHEDULE 4.03

Option Rights

1960 West Baseline Road, Phoenix, AZ (the “Property”)

That certain purchase option as disclosed in the Memorandum of Site Development Agreement dated May 29, 2007, by and between South Mountain Pavilion, LLC (“**Developer**”), as seller, and Fresh and Easy, as buyer, granting Developer the right to repurchase the Property under certain circumstances, as more fully disclosed in that certain Site Development Agreement between the parties.

Reverter Rights

691 3rd Ave, Chula Vista, CA

Those certain reverter rights as disclosed in that certain Deed recorded in Deed Book 919, Page 316, dated November 28, 1922, by Pacific Building Company (“**Pacific**”), as grantor, to Kate Schmelsel and Lulu C. Steen, as grantees, reserving to Pacific reverter rights in the Property under certain circumstances, as more fully disclosed in such Deed.

Those certain reverter rights as disclosed in that certain Deed recorded in Deed Book 908, Page 254, dated November 28, 1922, by Pacific Building Company (“**Pacific**”), as grantor, to E. Kelville, as grantee, reserving to Pacific reverter rights in the Property under certain circumstances, as more fully disclosed in such Deed.

685 E. Bonita Ave., San Dimas, CA

Those certain reverter rights as disclosed in that certain Indenture recorded in Deed Book 436, Page 293, dated April 28, 1888, by the San Jose Ranch Company (“Ranch Co.”), as grantor, to B.F. Chamberlain, as grantee, reserving to Ranch Co. reverter rights in the Property under certain circumstances, as more fully disclosed in the Indenture.

Those certain reverter rights as disclosed in that certain Indenture recorded in Deed Book 919, Page 170, dated January 15, 1894, by the San Jose Ranch Company (“Ranch Co.”), as grantor, to M.L. Torrey and A.A. Torrey, as grantees, reserving to Ranch Co. reverter rights in the Property under certain circumstances, as more fully disclosed in such Indenture.]

**[SCHEDULE 22.05
UNOCCUPIED SPACE**

Store	Mailing Address	City	State	Zip	Unoccupied Space (sf)
1058	1400 S. Boulder Hwy.	Henderson	NV	89015	3,300
1003	4211 Eagle Rock Blvd.	Los Angeles	CA	90065	17,142
1275	691 3 rd Avenue	Chula Vista	CA	91910	2,049] ¹⁰

¹⁰ Only in applicable lease

SCHEDULE 29.08

ENVIRONMENTAL COVENANTS

“SB Environmental Covenant”

Tenant specially represents and warrants that Remedial Activities at the Demised Property (the **“SB Remediation Property”**) are being undertaken pursuant to Clean-up and Abatement Order No. R3-2011-0017 issued in November 2011 (the **“CAO”**) by the Central Coast Regional Water Quality Control Board (**“RWQCB”**).

Tenant represents and warrants that to the best of its knowledge Fresh & Easy Neighborhood Market, Inc., a Delaware corporation and Fresh & Easy Property Co. LLC, a Delaware limited liability company (the **“F&E Sellers”**) are in compliance with the CAO.

As to the obligations of the F&E Sellers under the CAO, even if amended from time to time, or under any successor Clean-up and Abatement Order, Tenant shall diligently pursue to completion all work required, pay all RWQCB oversight costs when due (subject to any right to contest the accuracy of such invoices), and secure a “no further action” or “case closure” determination from the RWQCB at the earliest practicable time. Tenant may petition for closure under a commercial use standard, but if the RWQCB requires achievement of an unrestricted use standard then Tenant shall achieve that standard. If case closure under a commercial use standard is pursued, Landlord shall be entitled to review prior to final approval any activity and use limitations and/or any proposed deed restrictions. Landlord may in its sole discretion refuse to consent to any activity and use limitations or deed notices which imposes operations and maintenance obligations on current or future surface users of the SB Remediation Property, or which raises repair, operating or maintenance costs. Landlord agrees that a prohibition on use of ground water underlying the SB Remediation Property is an acceptable onsite activity and use restriction.

Tenant shall either produce from its files, or diligently pursue with an appropriate Governmental Authority, issuance of a “case closure” or “no further action” letter respecting the removal of an underground storage tank from the SB Remediation Property, such removal having taken place circa 2011 (the **“UST Closure Letter”**).

Within thirty (30) days of commencement of the Lease Term, Tenant shall notify the Regional Board in writing that Tenant shall be the successor responsible party to the F&E Sellers under the CAO. Tenant shall use its best efforts to ensure a seamless transition regarding performance under the CAO. If Landlord is named in any CAO respecting the same conditions which are the subject of the current CAO, Tenant shall diligently pursue performance of Landlord’s obligations.

Tenant agrees that Landlord (by and through its agents and consultants) may enter the SB Remediation Property to conduct such additional Remedial Activities as Landlord shall from time to time for good cause shown may need to conduct. Such Remedial Activities shall include Phase II work, including indoor air quality assessments. Good cause to conduct such Remedial Activities shall include, without limitation, investigations required by a Governmental Authority (whether under an order or styled as a letter request), investigations required in connection with pending or threatened litigation under Environmental Laws against Landlord, investigations to determine whether indoor air quality is affected by Hazardous Materials in excess of Environmental Guidance Standards, or an investigation of a public or worker health or safety threat which is not being addressed actively or directly under the CAO. Such Landlord Remedial Activities shall not materially interfere with Tenant’s quiet enjoyment and authorized use of the SB Remediation Property, nor shall such Remedial Activities materially interfere with Tenant’s (or any other party’s) orderly implementation of the CAO. Tenant shall cooperate in all reasonable respects to allow such Landlord Remedial Activities, but Tenant shall not be responsible for the cost (other than to the extent such cost is paid out of funds under the Holdback Agreement) of such Landlord Remedial Activities. Landlord may use funds under the Holdback Agreement respecting the SB

Remediation Property to fund this work, except that Landlord may not use Holdback Agreement funds to pay for due diligence investigations in connection with or in anticipation of a prospective purchaser or tenant, such as a Phase I report or a Phase II report in connection with the sale or lease of the SB Remediation Property.

Landlord also may elect to pursue such Remedial Activities which Tenant fails to diligently pursue, or to timely complete, as required under this Schedule 29.08, or if Tenant fails to pursue or achieve an unrestricted use standard for all or any portion of the SB Remediation Property when required by a Governmental Authority. Landlord may use funds under the Holdback Agreement respecting the SB Remediation Property to fund this work.

Tenant shall provide to Landlord periodic progress reports of Remedial Activities under the CAO, in connection with the UST Closure Letter, and any other material Remedial Activities. Tenant shall provide Landlord a copy of all submittals to the RWQCB documenting Remedial Activities under the CAO (excluding non-substantive or informal e-mails). Tenant shall advise Landlord in writing when Tenant assumes the obligations of the F&E Sellers under the CAO.

Tenant and its consultants shall comply with all applicable Laws, including Environmental Laws, and use due care in the conduct of the Remedial Activities. Tenant shall employ only experienced and reputable consultants. Landlord shall have the right to disapprove the first recommended consultant in its sole discretion, in which case Tenant shall suggest a second consultant. If Landlord disapproves the second consultant it shall set forth good cause for doing so, in which case Tenant shall recommend a third consultant, subject again to Landlord's disapproval only for good cause shown.

As between Landlord and Tenant, Tenant shall conduct all Remedial Activities at Tenant's sole cost and expense, excepting those Remedial Activities Landlord may conduct under this SB Environmental Covenant using funds pursuant to the applicable Holdback Agreement. Tenant hereby agrees to repair and restore, at Tenant's sole cost and expense, damage caused by Tenant or its consultants pursuant to the Remedial Activities at and near the SB Remediation Property.

Tenant shall take all necessary actions and implement all protections necessary to ensure that all actions taken in connection with the Remedial Activities performed by Tenant (including its consultants) with respect to the SB Remediation Property and all equipment, materials and substances generated, used or brought onto the SB Remediation Property pose no threat to the safety of persons or the environment and cause no (unrepaired) damage to the SB Remediation Property, or to the property of other persons.

The CAO includes both onsite and offsite Remedial Activities. The obligations herein apply to such offsite locations only to the extent Remedial Activities under the CAO or otherwise under Environmental Laws are or must be conducted by the F&E Sellers or by Tenant on the property of others. Ground water underlying the SB Remediation Property shall be deemed part of the SB Remediation Property for purposes of the obligations herein, even if such ground water is owned by a third party.

Tenant shall be the generator of record for all wastes generated as a result of any Remedial Activities, and liable and responsible for all costs, fees, permits, taxes, oversight charges, associated with the Remedial Activities including, if necessary, payment of sums to access third party property to conduct or complete the Remedial Activities.

At the completion of any Remedial Activity, Tenant shall cause its consultants to remove such equipment, wells, materials and wastes (if any) for proper offsite disposal and shall restore any affected portion of the SB Remediation Property (and the property of others, if applicable) to the condition it was in prior to initiation of the Remedial Activities.

Tenant shall not permit any mechanic's or materialmen's liens or any other liens to attach to the SB Remediation Property by reason of the performance of any Remedial Activities. The provisions of this paragraph

shall survive the termination of this SB Environmental Covenant for a period of one year.

Tenant shall maintain, at its expense, and shall cause the approved consultant to maintain, at their expense, insurance coverages in the following amounts:

- (i) Worker's Compensation – Coverage A: statutory amount
Coverage B: Employer's Liability insurance:
\$500,000 Each Accident
- (ii) Commercial General Liability including contractual liability coverage, on an occurrence basis, including Bodily Injury and Property Damage Liability for the following limits:
General Aggregate \$ 2,000,000
Each Occurrence \$ 1,000,000
- (iii) Owned, Hired and Non-Owned Business Automobile liability insurance in an amount no less than \$1,000,000 per accident Combined Single Limit for bodily injury and property damage
- (iv) Umbrella Policy (Occurrence form with defense costs outside the limits): \$1,000,000 Each Occurrence/\$1,000,000 Aggregate Excess of the Employer's Liability, Commercial General Liability and Automobile Liability coverages on a following form basis, including coverage for Additional Insureds.

Within ten (10) days after the Effective Date, Tenant shall furnish Landlord with Certificates of Insurance. The insurance shall remain in effect until completion of all Remedial Activities required under this SB Environmental Covenant.

This SB Environmental Covenant shall remain in effect during the Lease Term.

Tenant and Landlord shall cooperate with each other in all reasonable respects so as to effectuate the implementation of this SB Environmental Covenant.

These obligations under this SB Environmental Covenant shall be governed by the laws of the State of California, including the applicable California Environmental Laws, and including Environmental Guidance Standards. The definition of the term "commercial use standards," or "unrestricted use standards" (also known as "residential use standards") shall be the most stringent of the applicable definitions used in Environmental Guidance Standards in use in the State of the Demised Property, including Maximum Contaminant Levels for ground water, if the Remedial Activities are self-directed. If a Governmental Authority is exercising jurisdiction over the Remedial Activities, the Environmental Guidance Standards actually selected by the Governmental Authority shall be the applicable standards for that project. The foregoing sentence does not determine whether commercial use standards or unrestricted use standards apply at a Demised Property, but only how the standards, once selected and determined to be applicable, are to be defined.

The covenants, promises and undertakings in this SB Environmental Covenant are cumulative and in addition to all other obligations under the Lease, but remain subject to the terms of Article 29; provided, however, in the event of a conflict between the general terms of Article 29 and the specific terms and covenants in this SB Environmental Covenant, the specific terms and covenants in this Environmental Covenant shall prevail.

ENVIRONMENTAL COVENANT

“ER and SLO Environmental Covenant”¹¹

Tenant has agreed to conduct Phase II work to determine if Hazardous Materials are located at or emanating from the Demised Property (the **“Remediation Properties”**) and, if necessary, Remedial Activities to abate such Hazardous Materials as set forth below.

If Landlord’s Phase II investigation identifies Hazardous Materials above unrestricted use standards, Tenant shall prepare a Phase II scope of work within thirty (30) days and submit the same to Landlord. Landlord shall review such Phase II scope of work proposal and provided comments within fifteen (15) days of receipt. Tenant shall revise the Phase II scope of work proposal to incorporate Landlord’s reasonable comments. If the Phase II workplan involves a self-directed clean-up, and if the reasonably projected time period to achieve the remedial action objectives is expected to exceed five (5) years, then Landlord’s comments respecting technologies or approaches to achieve the remedial action objectives more quickly shall be deemed reasonable, provided the cost is not materially greater (i.e., estimated at less than 25%). If the approach involves enrollment in a voluntary cleanup program, or otherwise suggests resort to Governmental Authority oversight, then Landlord shall be entitled to communicate to the Governmental Authority its preferences, should Tenant not accept Landlord’s suggestions on the Phase II scope of work, but the Governmental Authority shall determine the final scope of work.

The Phase II work may be conducted iteratively, in phases. If the investigations document exceedances of unrestricted use screening standards, then Tenant shall diligently pursue such Remedial Activities as are necessary to achieve unrestricted use standards at the earliest practicable time, except as otherwise provided for in this ER and SLO Environmental Covenant. If groundwater is impacted above Maximum Contaminant Levels, the Remedial Activities shall include notice to the Regional Water Quality Control Board. Tenant may petition for closure under a commercial use standard with the applicable Governmental Authority, but if such Governmental Authority requires achievement of an unrestricted use standard then Tenant shall achieve that standard. If case closure under a commercial use standard is pursued by Tenant, Landlord shall be entitled to review prior to final approval any activity and use limitations and/or any proposed deed restrictions. Landlord may in its sole discretion refuse to consent to any activity and use limitations or deed notices which impose operations and maintenance obligations on current or future surface users of any of the Remediation Properties. Landlord agrees that a prohibition on use of ground water underlying any of the Remediation Properties is an acceptable onsite activity and use restriction.

Tenant shall diligently pursue to completion at its own expense all Remedial Activities mandated hereunder. If a Governmental Authority is exercising jurisdiction over any Remedial Activities, Tenant shall comply with all orders, or agreements and shall pay all oversight costs when due (subject to any right to contest the accuracy of such invoices), as applicable.

The Remedial Activities shall continue until the later of: (a) achievement of unrestricted use standards, including Maximum Contaminant Levels in ground water; or (b) if a Governmental Authority is exercising jurisdiction, until Tenant secures a “no further action” or “case closure” determination. Tenant may petition a Governmental Authority for case closure under a commercial use standard, but not if the Remedial Activities are self-directed (in which case unrestricted use standards shall be documented as achieved) and only if Landlord consents to such standard (as set forth above). Tenant bears the risk of Landlord’s refusal to consent to a less stringent standard than an unrestricted use standard and Landlord shall not be held liable for additional costs or time expended by Tenant to achieve an unrestricted use standard.

Landlord also may elect to pursue such Remedial Activities which Tenant fails to diligently

¹¹ Conform for applicable property

pursue, or to timely complete, as required under this Schedule 29.08, or if Tenant fails to pursue or achieve an unrestricted use standard for all or any portion of the applicable Remediation Property when required by a Governmental Authority. Landlord may use funds under the Holdback Agreement respecting the Remediation Properties to fund this work.

Tenant shall provide to Landlord periodic progress reports of Remedial Activities, and any other material Remedial Activities.

Tenant and its consultants shall comply with all applicable Laws, including Environmental Laws, and use due care in the conduct of the Remedial Activities. Tenant shall employ only experienced and reputable consultants. Landlord shall have the right to disapprove the first recommended consultant in its sole discretion, in which case Tenant shall suggest a second consultant. If Landlord disapproves the second consultant it shall set forth good cause for doing so, in which case Tenant shall recommend a third consultant, subject again to Landlord's disapproval only for good cause shown.

As between Landlord and Tenant, Tenant shall conduct all Remedial Activities at Tenant's sole cost and expense, excepting those Remedial Activities Landlord may conduct under this ER and SLO Environmental Covenant using funds pursuant to the applicable Holdback Agreement. Tenant hereby agrees to repair and restore, at Tenant's sole cost and expense, damage caused by Tenant or its consultants pursuant to the Remedial Activities at and near the Remediation Properties.

Tenant shall take all necessary actions and implement all protections necessary to ensure that all actions taken in connection with the Remedial Activities performed by Tenant (including its consultants) with respect to the Remediation Properties and all equipment, materials and substances generated, used or brought onto any of the Remediation Properties pose no threat to the safety of persons or the environment and cause no (unrepaired) damage to any of the Remediation Properties, or to the property of other persons.

The obligations herein apply to offsite locations to the extent Remedial Activities are or must be conducted on the property of others by Tenant. Ground water underlying any of the Remediation Properties shall be deemed part of any of the Remediation Properties for purposes of the obligations herein, even if such ground water is owned by a third party.

Tenant shall be the generator of record for all wastes generated as a result of any Remedial Activities, and liable and responsible for all costs, fees, permits, taxes, oversight charges, associated with the Remedial Activities including, if necessary, payment of sums to access third party property to conduct or complete the Remedial Activities.

At the completion of any Remedial Activity by Tenant, Tenant shall cause its consultants to remove such equipment, wells, materials and wastes (if any) for proper offsite disposal and shall restore any affected portion of any of the Remediation Properties (and the property of others, if applicable) to the condition it was in prior to initiation of the Remedial Activities.

Tenant shall not permit any mechanic's or materialmen's liens or any other liens to attach to any of the Remediation Properties by reason of the performance of any Remedial Activities. The provisions of this paragraph shall survive the termination of this ER and SLO Environmental Covenant for period of one year.

Unless agreed in writing by the Parties, Tenant shall maintain, at its expense, and shall cause the approved consultant to maintain, at their expense, insurance coverages in the following amounts:

- (i) Worker's Compensation – Coverage A: statutory amount
Coverage B: Employer's Liability insurance:

SCHEDULE 29.08

LAND AND BUILDING LEASE
(Individual Lease Form)

\$500,000 Each Accident

- (ii) Commercial General Liability including contractual liability coverage, on an occurrence basis, including Bodily Injury and Property Damage Liability for the following limits:

General Aggregate	\$ 2,000,000
Each Occurrence	\$ 1,000,000
- (iii) Owned, Hired and Non-Owned Business Automobile liability insurance in an amount no less than \$1,000,000 per accident Combined Single Limit for bodily injury and property damage
- (iv) Umbrella Policy (Occurrence form with defense costs outside the limits): \$1,000,000 Each Occurrence/\$1,000,000 Aggregate Excess of the Employer's Liability, Commercial General Liability and Automobile Liability coverages on a following form basis, including coverage for Additional Insureds.

Within ten (10) days of the Effective Date, Tenant shall furnish Landlord with Certificates of Insurance. The insurance shall remain in effect until completion of all Remedial Activities required under this ER and SLO Environmental Covenant.

This ER and SLO Environmental Covenant shall remain in effect during the Lease Term.

Tenant and Landlord shall cooperate with each other in all reasonable respects so as to effectuate the implementation of this ER and SLO Environmental Covenant.

The obligations under this ER and SLO Environmental Covenant shall be governed by the laws of the State of California, including the applicable California Environmental Laws, and including Environmental Guidance Standards. The definition of the term "commercial use standards," or "unrestricted use standards" (also known as "residential use standards") shall be the most stringent of the applicable definitions used in Environmental Guidance Standards in use in the State of the Demised Property, including Maximum Contaminant Levels for ground water, if the Remedial Activities are self-directed. If a Governmental Authority is exercising jurisdiction over the Remedial Activities, the Environmental Guidance Standards actually selected by the Governmental Authority shall be the applicable standards for that project. The foregoing sentence does not determine whether commercial use standards or unrestricted use standards apply at a Demised Property, but only how the standards, once selected and determined to be applicable, are to be defined.

The covenants, promises and undertakings in this ER and SLO Environmental Covenant are cumulative and in addition to all other obligations under the Lease, but remain subject to the terms of Article 29.

EXHIBIT A

LEGAL DESCRIPTION OF DEMISED PROPERTY

EXHIBIT A

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT B

FORM OF SNDA

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (“*Agreement*”) is entered into as of [____], 20[___] (the “*Effective Date*”) by and among [_____] (together with any other holder of the Loan (defined below) and their respective successors and assigns, the “*Mortgagee*”), [_____] a [_____] (hereinafter, the “*Tenant*”) and [_____] a [_____] (the “*Landlord*”), with reference to the following facts:

A. Landlord owns fee simple title in the real property described in Exhibit “A” attached hereto (the “*Property*”).

B. Mortgagee has made or intends to make a loan to Landlord (the “*Loan*”).

C. To secure the Loan, Landlord has or will encumber the Property by entering into a mortgage or deed of trust in favor of Mortgagee (as amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time, the “*Mortgage*”) to be recorded in land records.

D. Pursuant to the Lease dated [____], (the “*Lease*”) between Landlord and Tenant, Landlord leased to Tenant a portion of the Property, as said portion is more particularly described in the Lease (the “*Leased Premises*”).

E. Tenant and Mortgagee desire to agree upon the relative priorities of their interests in the Property and their rights and obligations if certain events occur.

NOW, THEREFORE, for good and sufficient consideration, Tenant and Mortgagee agree:

1. Definitions. The following terms shall have the following meanings for purposes of this agreement.

a. Foreclosure Event. A “*Foreclosure Event*” means: (i) foreclosure under the Mortgage; (ii) any other exercise by Mortgagee of rights and remedies (whether under the Mortgage or under applicable law, including bankruptcy law) as holder of the Loan and/or the Mortgage, as a result of which Mortgagee becomes owner of the Property; or (iii) delivery by Landlord to Mortgagee (or its designee or nominee) of a deed or other conveyance of Landlord’s interest in the Property in lieu of any of the foregoing.

b. Former Landlord. A “*Former Landlord*” means Landlord and any other party that was landlord under the Lease at any time before the occurrence of any attornment under this Agreement.

c. Offset Right. An “**Offset Right**” means any right or alleged right of Tenant to any offset, defense (other than one arising from actual payment and performance, which payment and performance would bind a Successor Landlord pursuant to this Agreement), claim, counterclaim, reduction, deduction, or abatement against Tenant’s payment of Rent or performance of Tenant’s other obligations under the Lease, arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

d. Rent. The “**Rent**” means any fixed rent, base rent or additional rent under the Lease.

e. Successor Landlord. A “**Successor Landlord**” means any party that becomes owner of the Property as the result of a Foreclosure Event.

f. Termination Right. A “**Termination Right**” means any right of Tenant to cancel or terminate the Lease or to claim a partial or total eviction arising (whether under the Lease or under applicable law) from Landlord’s breach or default under the Lease.

g. Other Capitalized Terms. If any capitalized term is used in this Agreement and no separate definition is contained in this Agreement, then such term shall have the same respective definition as set forth in the Lease.

2. Subordination. The Lease, as the same may hereafter be modified, amended or extended, shall be, and shall at all times remain, subject and subordinate to the Mortgage (but not to the terms thereof), the lien imposed by the Mortgage, and all advances made under the Mortgage. notwithstanding the foregoing, Mortgagee may elect, in its sole and absolute discretion, to subordinate the lien of the Mortgage to the Lease.

3. Nondisturbance, Recognition and Attornment.

a. No Exercise of Mortgage Remedies Against Tenant. So long as the Tenant is not in default under the Lease beyond any applicable grace or cure periods (an “Event of Default”), Mortgagee (i) shall not terminate or disturb Tenant’s possession of the Leased Premises or rights under the Lease, except in accordance with the terms of the Lease and (ii) shall not name or join Tenant as a defendant in any exercise of Mortgagee’s rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Landlord or prosecuting such rights and remedies. In the latter case, Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant’s rights under the Lease or this Agreement in such action.

b. Recognition and Attornment. Upon Successor Landlord taking title to the Property (i) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (except as provided in this Agreement); (ii) Tenant shall recognize and attorn to Successor Landlord as Tenant’s direct landlord under the Lease as affected by this Agreement; and (iii) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Successor Landlord and Tenant. Tenant hereby acknowledges that pursuant to the Mortgage and assignment of rents, leases and profits, Landlord has granted to the Mortgagee an absolute, present assignment of the Lease and Rents

which provides that Tenant continue making payments of Rents and other amounts owed by Tenant under the Lease to the Landlord and to recognize the rights of Landlord under the Lease until notified otherwise in writing by the Mortgagee. After receipt of such notice from Mortgagee, the Tenant shall thereafter make all such payments directly to the Mortgagee or as the Mortgagee may otherwise direct, without any further inquiry on the part of the Tenant. Landlord specifically agrees that Tenant may conclusively rely upon any written notice Tenant receives from Mortgagee notwithstanding any claim by Landlord contesting the validity of any term or condition of such notice, including, but not limited to, any default claimed by Mortgagee, and that Landlord shall not make any claim of any kind whatsoever against Tenant or Tenant's leasehold interest with respect to any amounts paid to Mortgagee by Tenant or any acts performed by Tenant pursuant to such written notice and such amounts paid to Mortgagee shall be credited to amounts due under the Lease as if such amounts were paid directly to Landlord.

c. Further Documentation. The provisions of this Article 3 shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents. Tenant and Successor Landlord shall, however, confirm the provisions of this Article 3 in writing upon request by either of them within ten (10) days of such request.

4. Protection of Successor Landlord. Notwithstanding anything to the contrary in the Lease or the Mortgage, Successor Landlord shall not be liable for or bound by any of the following matters:

a. Claims Against Former Landlord. Any Offset Right that Tenant may have against any Former Landlord, unless (i) such Offset Right arises after the date Mortgagee encumbers the Property with the Mortgage and (ii) Tenant shall have given written notice to Mortgagee of such Offset Right promptly upon Tenant's actual knowledge of the occurrence of the event(s) giving rise to such Offset Right. The foregoing shall not limit either (x) Tenant's right to exercise against Successor Landlord any Offset Right otherwise available to Tenant because of events occurring after the date of a Foreclosure Event or because of events occurring on or before the date of a Foreclosure Event, notice of which shall have been given to Mortgagee, or (y) Successor Landlord's obligation to correct any conditions that existed as of the date of a Foreclosure Event that violate Successor Landlord's obligations as landlord under the Lease.

b. Prepayments. Any payment of Rent that Tenant may have made to Former Landlord more than thirty (30) days before the date such Rent was first due and payable under the Lease with respect to any period after the date of a Foreclosure Event and Tenant's receipt of notice of such Foreclosure Event other than, and only to the extent that, the Lease expressly required such a prepayment or such payment was delivered to Mortgagee or Successor Landlord.

c. Security Deposit; Representations and Warranties. Any obligation (i) with respect to any security deposited with Former Landlord, unless such security was actually delivered to Mortgagee or Successor Landlord; or (ii) arising from a breach by Former Landlord of representations and warranties contained in the Lease; or (iii) without in any way superceding subsection (a) above, to pay Tenant any sum(s) accrued prior to Successor Landlord becoming

owner of the Property and owed to Tenant by Former Landlord, unless actually paid over to Successor Landlord.

d. Modification, Amendment or Waiver. Any modification or amendment of the Lease, or any waiver of the terms of the Lease, made without Mortgagee's written consent (which consent shall not be unreasonably withheld, conditioned or delayed), excepting, however, commercially reasonable non-material amendments or modifications of the Lease (for the avoidance of doubt, such non-material modifications do not include any changes in the rights of any "Lender" as such term is defined in the Lease, reductions in rent, reductions in length of term, imposition of material obligations on Landlord or material reductions of the obligations of Tenant under the Lease) which are the result of good faith, arm's length negotiations between Landlord and Tenant and of which Mortgagee receives prompt notice together with a copy of such amendment.

e. Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

5. Exculpation of Successor Landlord. Notwithstanding anything to the contrary in this Agreement or the Lease, Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor landlord's (or its successors' or assigns') interest, if any, in the Property from time to time, including insurance and condemnation proceeds, security deposits, escrows, Successor Landlord's interest in the Lease, and the proceeds from any sale, lease or other disposition of the Property (or any portion thereof) by Successor Landlord (collectively, the "***Successor Landlord's Interest***"). Tenant shall look exclusively to Successor Landlord's Interest (or that of its successors and assigns) for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. If Tenant obtains any money judgment against Successor Landlord with respect to the Lease or the relationship between Successor Landlord and Tenant, then Tenant shall look solely to Successor Landlord's Interest (or that of its successors and assigns) to collect such judgment. Tenant shall not collect or attempt to collect any such judgment out of any other assets of Successor Landlord. Nothing set forth in this paragraph shall be construed to limit Tenant's equitable remedies, including specific performance and injunctive relief.

6. Casualty and Condemnation. Mortgagee agrees that, notwithstanding any provision of the Mortgage or any instrument secured by the Mortgage, any insurance proceeds and any condemnation awards which may be received by any party hereto and which relate to the Property shall be used or disbursed in accordance with the terms of the Lease.

7. Mortgagee's Right to Cure. Notwithstanding anything to the contrary in the Lease or this Agreement, before exercising any Offset Right or Termination Right:

a. Notice to Mortgagee. Tenant shall provide Mortgagee with notice of the breach or default by Landlord giving rise to same (the "***Default Notice***") and, thereafter, the opportunity to cure such breach or default as provided for below.

b. Mortgagee's Cure Period. After Mortgagee receives a Default Notice, Mortgagee shall have a period of thirty (30) days under the Lease in which to cure the breach or default by Landlord. Mortgagee shall have no obligation to cure (and, without limiting anything contained in Section 4(a) above, shall have no liability or obligation for not curing) any breach or default by Landlord, except to the extent that Mortgagee agrees or undertakes otherwise in writing. In addition, as to any breach or default by Landlord the cure of which requires possession and control of the Property, if Mortgagee undertakes such cure or causes such cure to be commenced by a receiver within the period permitted by this paragraph, and so long as Mortgagee continues to or causes a receiver to diligently and in good faith cure such breach or default, Mortgagee's cure period shall continue for such additional time as Mortgagee may reasonably require to either (i) obtain possession and control of the Property with due diligence and thereafter cure the breach or default with reasonable diligence and continuity; or (ii) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default. Nothing set forth in this paragraph shall limit Tenant's offset rights or rights to cure a breach or default and receive any reimbursement to which it is entitled under the Lease.

8. Miscellaneous.

a. Notices. Any notice or request given or demand made under this Agreement by one party to the other shall be in writing, and may be given or be served by hand delivered personal service, or by depositing the same with a reliable overnight courier service or by deposit in the United States mail, postpaid, registered or certified mail, and addressed to the party to be notified, with return receipt requested or by telefax transmission, with the original machine-generated transmit confirmation report as evidence of transmission. Notice deposited in the mail in the manner hereinabove described shall be effective from and after the expiration of three (3) days after it is so deposited; however, delivery by overnight courier service shall be deemed effective on the next succeeding business day after it is so deposited and notice by personal service or telefax transmission shall be deemed effective when delivered to its addressee or within two (2) hours after its transmission unless given after 3:00 p.m. on a business day, in which case it shall be deemed effective at 9:00 a.m. on the next business day. For purposes of notice, the addresses and telefax number of the parties shall, until changed as herein provided, be as follows:

(a) If to the Mortgagee, at:

and

(b) If to the Tenant, at:

and:

b. Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any Successor Landlord, and its successors and assigns. If Mortgagee assigns the Mortgage, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

c. Entire Agreement. This Agreement constitutes the entire agreement between Mortgagee and Tenant regarding the subordination of the Lease to the Mortgage and the rights and obligations of Tenant and Mortgagee as to the subject matter of this Agreement.

d. Interaction with Lease and with Mortgage. If this Agreement conflicts with the Lease, then this Agreement shall govern as between the parties and any Successor Landlord, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of nondisturbance agreements by the holder of, the Mortgage.

e. Mortgagee's Rights and Obligations. Except as expressly provided for in this Agreement, Mortgagee shall have no obligations to Tenant with respect to the Lease. If a Foreclosure Event occurs, then all rights and unaccrued obligations of Mortgagee under this Agreement shall terminate, without thereby affecting in any way the rights and obligations of Successor Landlord provided for in this Agreement or under the Lease.

f. Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of New York, excluding such State's principles of conflict of laws.

g. Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

h. Due Authorization. Tenant represents to Mortgagee that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions. Mortgagee represents to Tenant that it has full authority to enter into this Agreement, which has been duly authorized by all necessary actions.

i. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Mortgagee, Tenant and Landlord have caused this Agreement to be executed as of the date first above written.

MORTGAGEE:

[SIGNATURE PAGES CONTINUE ON FOLLOWING PAGE]

TENANT:

EXHIBIT B

LAND AND BUILDING LEASE
(Individual Lease Form)

LANDLORD:

EXHIBIT B

LAND AND BUILDING LEASE
(Individual Lease Form)

MORTGAGEE'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

EXHIBIT B

LAND AND BUILDING LEASE
(Individual Lease Form)

TENANT'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

EXHIBIT B

LAND AND BUILDING LEASE
(Individual Lease Form)

LANDLORD'S ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, a Notary Public in and for said state, personally appeared _____, proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Signature of Notary Public

EXHIBIT B

LAND AND BUILDING LEASE
(Individual Lease Form)

LIST OF EXHIBITS

If any exhibit is not attached hereto at the time of execution of this Agreement, it may thereafter be attached by written agreement of the parties, evidenced by initialing said exhibit.

Exhibit "A" - Legal Description of the Land

EXHIBIT B

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT C

FORM OF TENANT'S ESTOPPEL CERTIFICATE

The undersigned, _____, whose address is _____
_____ represents and certifies as follows:

1. The undersigned is the tenant ("**Tenant**") under that certain Land and Building Lease dated _____ with _____ as Landlord (the "**Lease**"), covering the property described therein (collectively the "**Demised Property**"), a true and correct copy of which (together with all amendments thereof) is attached hereto as Exhibit A. [Tenant understands that _____ ("**Secured Party**") intends to enter into financing arrangements with Landlord, as borrower, to be secured, among other things, by certain mortgages, deeds of trust and assignments of leases and rents, as amended, covering the Demised Property.]

2. The Lease constitutes the only agreement, promise, understanding or commitment (either written or oral) Tenant has with respect to the Demised Property and any right of occupancy or use thereof, except as follows:

3. The Lease is in full force and effect and has not been assigned, subleased, supplemented, modified or amended, in whole or in part, except as follows:

4. Tenant has not given Landlord any notice of termination under the Lease.

5. Tenant took possession of the Demised Property on or about _____, and commenced paying rent on or about _____, _____. Tenant presently occupies the Demised Property, is open for business and operating at all of the Demised Property, and is paying rent on a current basis. No rent has been paid by Tenant in advance except for the monthly rental that becomes due on _____, and no deposits, including security deposits and prepayments of rent, have been made in connection with the Lease.

6. The monthly base rental is the sum of _____ Dollars (\$_____). Landlord has not agreed to reimburse Tenant for or to pay Tenant's rent obligation under any other lease.

7. The Lease term commenced on _____, expires on _____, and there are no options to renew except: _____.

EXHIBIT C

LAND AND BUILDING LEASE
(Individual Lease Form)

8. To the best knowledge of Tenant, there are no defaults under the Lease by Landlord, nor have any events occurred that with the passage of time or giving of notice or both, will result in any such default, except as follows: _____ . To the best knowledge of Tenant, Tenant does not presently have (nor with the passage of time or giving of notice or both will have) any offset, charge, lien, claim, termination right or defense under the Lease.

9. Tenant has no right of first offer, right of first refusal, or option to purchase, with respect to all or any portion of the Demised Property[.], except as set forth in Article [__] of the Lease].

10. Tenant is aware that Landlord and the other addressees hereto[, including Secured Party,] intend to rely upon this Certificate and the statements set forth herein and that the statements and facts set forth above shall be binding on Tenant to the extent of such reliance by Landlord and any other addressee hereto; provided, however, that Tenant's liability shall be limited to being estopped from claiming that its statements in this Certificate are not accurate (subject to, as applicable, the "best knowledge" limitations expressly set forth in this Certificate).

11. To the best of Tenant's knowledge, Tenant is not entitled to any concession or rebate of rent or other charges from time to time due and payable under the Lease, except as expressly set forth in the Lease, and there are no unpaid or unreimbursed construction allowances or other offsets due Tenant under the Lease.

12. To the best of Tenant's knowledge and belief, there are no rental, lease or similar commissions payable with respect to the Lease.

13. Any notices to be provided hereunder shall be provided pursuant to the notice provisions of the Lease.

14. Tenant and the persons executing this Certificate on behalf of Tenant have the power and authority to execute and deliver this Certificate, thereby binding Tenant.

IN WITNESS WHEREOF, Tenant has executed this Certificate this ____ day of _____, 20____.

"TENANT"

a _____

By: _____
Name: _____
Title: _____

EXHIBIT C

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT D

FORM OF MEMORANDUM OF LEASE

(Above space reserved for recorder and recording information)

This instrument prepared by and
after recording return to:

Pircher, Nichols & Meeks
1925 Century Park East
Suite 1700
Los Angeles, California 90067-2512
Attention: Real Estate Notices (SAH
#5602.3)
Facsimile: 310-201-8922

MEMORANDUM OF LEASE

This Memorandum of Lease is made and entered into as of _____, _____, _____ by and between _____, a _____ (“**Landlord**”), and _____, a _____, whose address is _____ (“**Tenant**”), who agree as follows:

1. Terms and Premises. Pursuant to a certain Master Land and Building Lease (the “**Lease**”) dated on or about the date hereof entered into between Landlord and Tenant, Landlord has leased to Tenant and Tenant has leased from Landlord that certain real property, together with all the improvements thereon and appurtenances thereunto belonging (the “**Premises**”), more particularly described on Exhibit “A” attached hereto and incorporated herein, for a term of [_____] ([____]) YEARS from _____, _____, expiring on _____, _____. Tenant has [_____] ([____]) [____]-year options to extend the term of the Lease, all as more particularly set forth in the Lease.

2. Purpose of Memorandum of Lease. This Memorandum of Lease is executed and recorded to give public notice of the Lease between the parties and all terms and conditions of the Lease are incorporated by reference into this Memorandum and this Memorandum of Lease does not modify the provisions of the Lease. If there are any conflicts between the Lease and this Memorandum of Lease, the provisions of the Lease shall prevail. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any term not defined herein shall have the meaning as set forth in the Lease.

EXHIBIT D

LAND AND BUILDING LEASE
(Individual Lease Form)

[SIGNATURES AND ACKNOWLEDGMENTS ON NEXT PAGE]

EXHIBIT D

LAND AND BUILDING LEASE
(Individual Lease Form)

LANDLORD:

TENANT:

_____,
a _____

_____,
a _____

By: _____

By: _____

Date: _____

Date: _____

Signed, sealed, and delivered this _____
day of _____, _____ in the presence of:

Signed, sealed, and delivered this _____
day of _____, _____ in the presence of:

Witness

Witness

Notary Public, County of _____,
State of _____

Notary Public, County of _____,
State of _____

My commission expires: _____

My commission expires: _____

(Notary Seal)

(Notary Seal)

[SIGNATURES CONTINUE ON NEXT PAGE]

EXHIBIT D

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT "A"

EXHIBIT D

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT E
INTENTIONALLY OMITTED

EXHIBIT E

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT F
INTENTIONALLY OMITTED

EXHIBIT F

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT F

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT G

[TENANT ORGANIZATIONAL CHART]

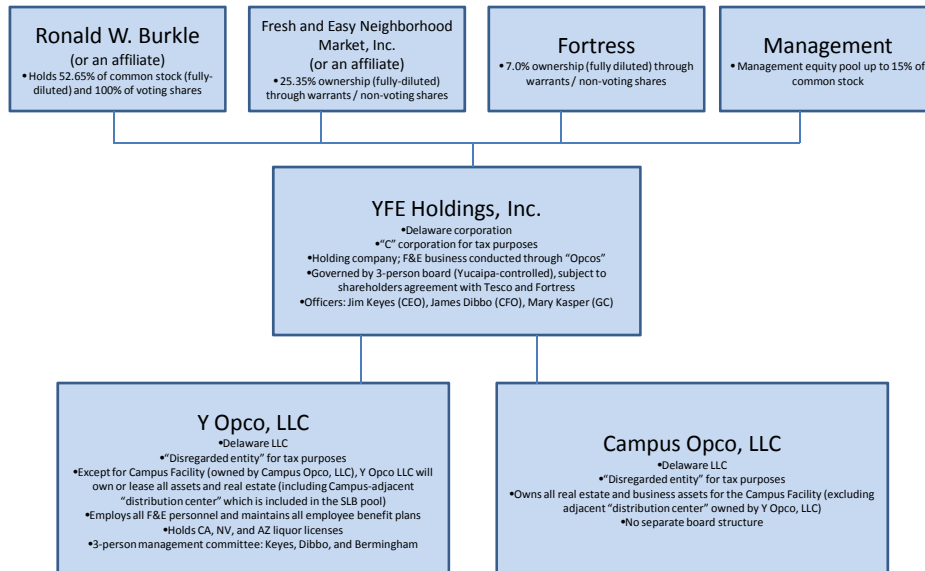


EXHIBIT H

LAND AND BUILDING LEASE
(Individual Lease Form)

EXHIBIT H

INTENTIONALLY OMITTED

EXHIBIT F
INTENTIONALLY OMITTED

EXHIBIT F

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

EXHIBIT F

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

EXHIBIT G **TENANT ORGANIZATIONAL CHART**

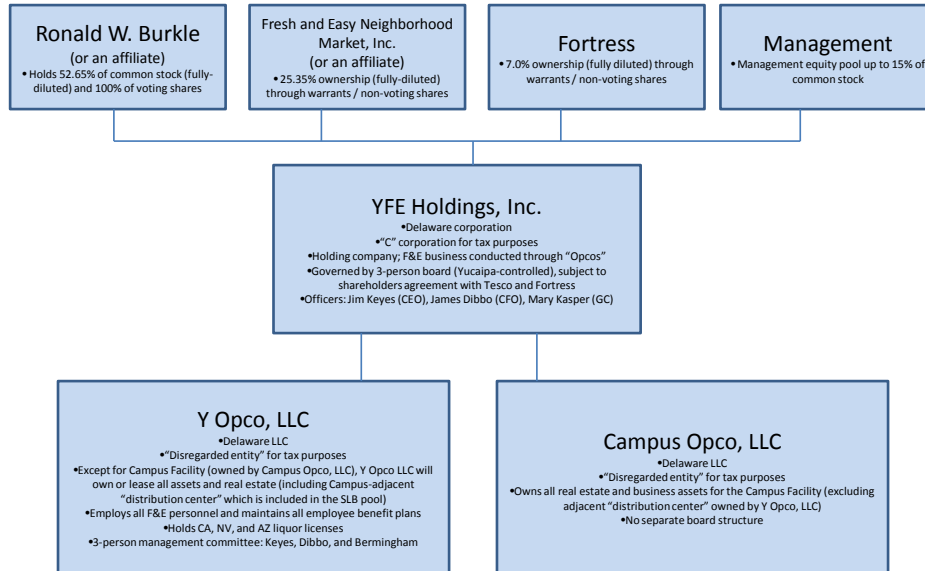


EXHIBIT H

FORM OF MEMORANDUM OF ROFO

RECORDING REQUESTED BY:
AND WHEN RECORDED RETURN TO:

Sidley Austin LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013
Attention: Edward Prokop, Esq.

Space Above For Recorder's Use Only

MEMORANDUM OF RIGHT OF FIRST OFFER

This Memorandum of Right of First Offer (this "Memorandum") is made this ____ day of _____, 2013, by and between _____, a _____ (together with its successors and assigns, collectively, "Option Party") and _____, a _____ (together with its successors and assigns, collectively, "Owner").

RECITALS

A. Owner has granted Option Party a right of first offer pursuant to Section 34.02 of that certain Master Land and Building Lease dated as of _____, 2013 (such section, and related defined terms, the "ROFO Agreement") to purchase certain real property ("Real Property") described on Exhibit "A" attached hereto and incorporated herein by this reference, under certain circumstances, as described in the ROFO Agreement.

B. Owner and Option Party desire to execute and record this Memorandum to make the existence of such right of first offer a matter of public record in order to bind Owner and any successor owner of the Real Property.

NOW, THEREFORE, Owner and Option Party hereby agree as follows:

1. Right of First Offer. Owner has granted Option Party a right of first offer, pursuant to which, prior to offering any Real Property to a third party, Owner has an obligation to provide written notice to Option Party describing the material terms of such offer, along with a written offer to sell the applicable Real Property on the same material terms, prior to Owner selling such property, all as more fully described in (and subject to the further terms and conditions of) the ROFO Agreement. Such right of first offer survives certain assignments, sales or other dispositions of the Real Property by Owner pursuant to the terms of the ROFO Agreement and, subject to the terms of the ROFO Agreement, an owner of the Real Property after the originally named Owner above may be subject to the right of first offer evidenced hereby and in the ROFO Agreement.

2. Incorporation of Agreement. The ROFO Agreement is incorporated herein by this reference. If there are any inconsistencies between the provisions of this Memorandum and the provisions of the ROFO Agreement, the provisions of the ROFO Agreement shall control. All capitalized terms used in this Memorandum

EXHIBIT H

MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)

that are not defined in this Memorandum shall have the meanings given to such terms in the ROFO Agreement.

3. Counterparts. This Memorandum may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one document.

4. Runs With Land. All restrictions, conditions, covenants and agreements contained in the ROFO Agreement shall operate as restrictions, conditions, covenants and agreements running with the land and shall bind the land in perpetuity.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum to be duly executed by their duly authorized representatives, all as of the day and year first above written.

OPTION PARTY:

OWNER:

_____,
a _____

_____,
a _____

By: _____

By: _____

Date: _____

Date: _____

Signed, sealed, and delivered this _____
day of _____, _____ in the presence of:

Signed, sealed, and delivered this _____
day of _____, _____ in the presence of:

Witness

Witness

Notary Public, County of _____,
State of _____

Notary Public, County of _____,
State of _____

My commission expires: _____

My commission expires: _____

(Notary Seal)

(Notary Seal)

EXHIBIT A

EXHIBIT C

**FIRST AMENDMENT TO
MASTER LAND AND BUILDING LEASE
(PORTFOLIO 1)**

This **FIRST AMENDMENT TO MASTER LAND AND BUILDING LEASE (PORTFOLIO 1)** (this "**Amendment**") is dated as of September __, 2015 ("**Effective Date**"), and is entered into by and between EM-50 UAV SLBCO LLC, a Delaware limited liability company ("**Landlord**"), and FRESH & EASY, LLC, a Delaware limited liability company (formerly known as Y-OPCO, LLC, a Delaware limited liability company) ("**Tenant**").

RECITALS

A. Landlord and Tenant entered into that certain Master Land and Building Lease (Portfolio 1), dated as of November 25, 2013 (the "**Original Lease**" and as amended by this Amendment, the "**Lease**"). Any capitalized term used herein but not defined herein has the meaning set forth in the Original Lease.

B. Tenant now desires to remove from the Original Lease that certain Demised Property described on Exhibit A attached hereto (the "**Removed Property**"). Notwithstanding that Tenant has no right to any such removal under the terms of the Lease, Landlord has agreed to such removal, subject to the terms of this Amendment.

STATEMENT OF AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, Landlord and Tenant agree as follows:

1. **Removal.** The Removed Property is hereby removed from the Original Lease as a Demised Property; provided, however, that all Tenant's obligations under the Original Lease with respect to the Removed Property (including without limitation the payment of Real Estate Taxes, indemnity obligations under Article 9 and Article 29 of the Original Lease, and payments of any other Additional Rent related to the Removed Property) accruing prior to the Effective Date, or arising out of or in any way related to acts, omissions or events occurring prior to the Effective Date, shall remain in full force and effect notwithstanding such removal.

2. **Base Rent.** The Base Rent under the Lease prior to the Effective Date is as set forth below and as of Effective Date, the monthly Base Rent is hereby reduced to the amount set forth below, and which shall be increased after the Effective Date as described in the Original Lease.

<u>Base Rent</u>	<u>Effective Date of Change</u>	<u>Amount</u>
Based Rent (annual escalation)	December 1, 2014	\$164,434.53
Base Rent (from Effective Date)	Effective Date	\$141,350.72

3. Termination of Memorandum of Lease. Concurrently herewith, Landlord and Tenant have entered into that certain Termination of Memorandum of Lease in the form attached hereto as Exhibit B regarding the Removed Property, and Tenant shall cause such document to be duly recorded in the official records of the county where the Removed Property is located promptly following the date hereof. Without limiting the foregoing, in no event shall Landlord have any liabilities or obligations to Tenant in respect of the Removed Property from and after the Effective Date.

4. Characterization. The following expressions of intent, representations, warranties, covenants, agreements, stipulations and waivers are a material inducement to Landlord entering into this Amendment:

(a) Landlord and Tenant intend that: (i) the Lease constitutes an un-severable, unitary and single lease of all, but not less than all, of the Demised Properties, shall not be subject to severance or division except as expressly set forth in the Lease, and neither the Lease, nor Tenant's obligations or rights under the Lease may be allocated or otherwise divided among any Demised Properties by Tenant; (ii) the Lease is a "true lease," is not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of the Lease are those of a true lease; and (iii) the business relationship created by the Lease and any related documents is solely that of a long term commercial lease between Landlord and Tenant, the Lease has been entered into by both parties in reliance upon the economic and legal bargains contained in the Lease.

(b) Each of Landlord and Tenant covenant and agree that: (i) it will treat the Lease as an operating lease and as a true lease for state law reporting purposes and for federal income tax purposes; and (ii) it will not, nor will it permit any of its Affiliates to, at any time, take any action or fail to take any action with respect to the preparation or filing of any statement or disclosure to any Governmental Authority, including without limitation, any income tax return (including an amended income tax return), to the extent that such action or such failure to take action would be inconsistent with the intention of the parties expressed in this Section 4.

(c) Tenant waives any claim or defense based upon the characterization of the Lease as anything other than a true lease and as a master lease of all of the Demised Properties. Tenant stipulates and agrees: (i) not to challenge the validity, enforceability or characterization of the lease of the Demised Properties as a true lease and/or as a single, unitary, un-severable instrument pertaining to the lease of all, but not less than all, of the Demised Properties; (ii) not to assert that the Lease is anything but a single, unitary, un-severable instrument pertaining to the lease of all, but not less than all, of the Demised Properties; (iii) to support the intent of the parties that the Lease is a single,

unitary, unseverable instrument pertaining to the lease of all, but not less than all, of the Demised Properties, if, and to the extent that, any challenge occurs; and (iv) not to assert or take or omit to take any action inconsistent with the agreements and understandings set forth in this Section 4. Without limiting the foregoing, for the purposes of any assumption, rejection or assignment of the Lease under 11 U.S.C. Section 365 or any amendment or successor section thereof, this is one indivisible and non-severable lease dealing with and covering one legal and economic unit that must be assumed, rejected or assigned as a whole with respect to all (and only all) of the Demised Properties.

5. Correction of Scrivener's Error. The phrase "Tenant Review Period" appearing in clause (c) of the sixth sentence of Section 34.02 of the Lease is hereby replaced with "Landlord Review Period" in order to accurately represent the parties' originally intended meaning of such clause.

6. Full Force and Effect. Except as herein amended, the Lease shall continue in full force and effect as written.

7. Attorneys' Fees. If any legal action should be commenced in any court regarding any dispute arising between the parties hereto, or their successors and assigns, concerning any provision of this Amendment or the rights and duties of any person in relation thereto, then the prevailing party therein shall be entitled to collect its reasonable expenses, attorneys' fees and court costs to the extent actually incurred, including the same on appeal. As used herein, the term "prevailing party" means the party who, in light of the claims, causes of action, and defenses asserted, is afforded greater relief.

8. Counterparts. This Amendment may be executed in counterparts and shall be binding on all the parties hereto as if one document had been signed. The delivery of an executed copy of this Amendment by facsimile or electronic transmission shall have the same force and effect as the delivery of an executed original of this Amendment.

9. Brokers. Landlord and Tenant each represents to the other party that such representing party has dealt with no broker or brokers in connection with the negotiation, execution and delivery of this Amendment or any related transactions (including, without limitation, the new lease regarding the Removed Property between Landlord and Longs Drug Stores California, L.L.C.), and (b) agrees to indemnify, defend, protect (with counsel selected by the indemnified party, subject to the approval of the indemnifying party (unless the indemnifying party is Tenant and an Event of Default has occurred)) and hold such other party free and harmless of, from and against any and all Losses arising from (including all brokerage commissions and/or finder's fees due or alleged to be due as a result of) any agreement or purported agreement made by such indemnifying party.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day first above written.

“LANDLORD”

EM-50 UAV SLBCO LLC,
a Delaware limited liability company

By: 

Name: Constantine M. Dakolias

Title: President

[SIGNATURES CONTINUE ON NEXT PAGE]

“TENANT”

FRESH & EASY, LLC,
a Delaware limited liability company

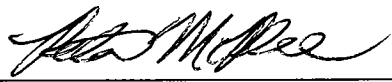
By: 
Name: **Peter McPhee**
Title: **Chief Financial Officer**

Exhibit A

Removed Property

Real property in the City of Chula Vista, County of San Diego, State of California, described as follows:

PARCELS 1:

PARCELS 1 AND 2 OF PARCEL MAP NO. 7831, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 15, 1978, AS FILE NO. 78-395472, TOGETHER WITH A PORTION OF LOT 14 IN QUARTER SECTION 139 OF CHULA VISTA, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 505, FILED IN SAID OFFICE OF THE COUNTY RECORDER, MARCH 13, 1888, DESCRIBED IN WHOLE AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 1;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 1 NORTH 71° 04' 01" EAST, 291.30 FEET TO THE EASTERLY LINE OF SAID PARCEL 1;

THENCE ALONG SAID EASTERLY LINE AND THE SOUTHERLY PROLONGATION THEREOF SOUTH 18° 58' 47" EAST, 150.00 FEET TO THE NORTHERLY LINE OF THE SOUTHERLY 100 FEET OF SAID LOT 14;

THENCE ALONG SAID NORTHERLY LINE SOUTH 71° 04' 01" WEST, 96.25 FEET TO THE EASTERLY LINE OF THE WESTERLY 195 FEET OF SAID LOT 14;

THENCE ALONG SAID EASTERLY LINE SOUTH 19° 00' 00" EAST, 100.00 FEET TO THE SOUTHERLY LINE OF SAID LOT 14;

THENCE ALONG SAID SOUTHERLY LINE SOUTH 71° 04' 01" WEST, 173.03 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 22.00 FEET, SAID POINT BEING THE MOST EASTERLY POINT IN THE BOUNDARY OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE CITY OF CHULA VISTA BY DEED RECORDED APRIL 29, 1976 AS FILE/PAGE NO. 76-129009 OF SAID OFFICIAL RECORDS;

THENCE ALONG SAID BOUNDARY NORTHWESTERLY 34.53 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89° 55' 59" TO THE WESTERLY LINE OF SAID LOT 14;

THENCE ALONG SAID WESTERLY LINE TANGENT FROM SAID CURVE NORTH 19° 00' 00" WEST, 228.03 FEET TO THE POINT OF BEGINNING.

THIS LEGAL DESCRIPTION IS PURSUANT TO "CERTIFICATE OF COMPLIANCE" RECORDED AUGUST 24, 2011 AS INSTRUMENT NO. 2011-0436610 OF OFFICIAL RECORDS.

PARCEL 2:

NORTHERLY 40.00 FEET OF THE WESTERLY 156.00 FEET OF THE EASTERLY 330.00 FEET OF THE SOUTHERLY 195.00 FEET OF LOT 14 IN QUARTER SECTION 139 OF CHULA VISTA, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 505, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 13, 1888.

PARCEL 3:

THE NORTHERLY 55.00 FEET OF THE WESTERLY 156.00 FEET OF THE EASTERLY 330.00 FEET OF THE SOUTHERLY 155.00 FEET OF LOT 14 IN QUARTER SECTION 139 OF CHULA VISTA, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 505, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 13, 1888.

EXCEPTING FROM THE ABOVE DESCRIBED PROPERTY THAT PORTION INCLUDED WITHIN THE SOUTHERLY 113.00 FEET OF THE WESTERLY 136.00 FEET OF THE EASTERLY 310.00 FEET OF SAID LOT 14.

APN: 573-250-19-00 (Affects Parcel 3), 573-250-20-00 (Affects Parcel 2), and 573-250-40-00 (Affects Parcel 1)

Exhibit B

Form of Termination of Memorandum of Lease

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Sidley Austin LLP
555 W. Fifth Street, Suite 4000
Los Angeles, California 90013
Attn: Danny Park, Esq.

691 3rd Ave., Chula Vista, CA [SPACE ABOVE THIS LINE RESERVED FOR RECORDER]
APN: 573-250-19-00; 573-250-20-00;
573-250-40-00

**TERMINATION
OF MEMORANDUM OF LEASE
AND RIGHT OF FIRST OFFER**

THIS TERMINATION OF MEMORANDUM OF LEASE AND RIGHT OF FIRST OFFER is dated as of _____, 2015 and executed by EM-50 UAV SLBCO LLC, a Delaware limited liability company ("**Landlord**") and FRESH & EASY, LLC, a Delaware limited liability company (formerly known as Y-OPCO, LLC, a Delaware limited liability company) ("**Tenant**").

Recitals

A. On November 25, 2013, Landlord and Tenant, entered into a Master Land and Building Lease (Portfolio 1) ("**Lease**") pursuant to which Landlord leased to Tenant and Tenant leased from Landlord certain real property in the City of Chula Vista, County of San Diego, State of California, more particularly described in Exhibit A attached hereto and incorporated by reference herein ("**Property**").

B. Landlord and Tenant entered into that certain Memorandum of Lease and Right of First Offer dated as of November 25, 2013 and recorded on December 4, 2013 as Instrument No. 2013-0705441 in the Official Records of San Diego County, California (the "**Memorandum of Lease**").

Notice

NOW, THEREFORE, Landlord and Tenant hereby agree that (i) the Property is no longer a demised property under the Lease, (ii) the Memorandum of Lease is hereby terminated

Exhibit B

and of no further force or effect, and (iii) Tenant has no further rights with respect to the Property (including any Right of First Offer which is now null and void).

[signature pages follow]

“LANDLORD”

EM-50 UAV SLBCO LLC,
a Delaware limited liability company

By: _____
Name:
Title:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 2015, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

“TENANT”

FRESH & EASY, LLC, a Delaware limited liability company
(formerly known as Y-OPCO, LLC, a Delaware limited liability company)

By: _____
Name:
Title:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 2015, before me, _____, a
Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Chula Vista, County of San Diego, State of California, described as follows:

PARCELS 1:

PARCELS 1 AND 2 OF PARCEL MAP NO. 7831, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, SEPTEMBER 15, 1978, AS FILE NO. 78-395472, TOGETHER WITH A PORTION OF LOT 14 IN QUARTER SECTION 139 OF CHULA VISTA, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 505, FILED IN SAID OFFICE OF THE COUNTY RECORDER, MARCH 13, 1888, DESCRIBED IN WHOLE AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 1;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 1 NORTH 71° 04' 01" EAST, 291.30 FEET TO THE EASTERLY LINE OF SAID PARCEL 1;

THENCE ALONG SAID EASTERLY LINE AND THE SOUTHERLY PROLONGATION THEREOF SOUTH 18° 58' 47" EAST, 150.00 FEET TO THE NORTHERLY LINE OF THE SOUTHERLY 100 FEET OF SAID LOT 14;

THENCE ALONG SAID NORTHERLY LINE SOUTH 71° 04' 01" WEST, 96.25 FEET TO THE EASTERLY LINE OF THE WESTERLY 195 FEET OF SAID LOT 14;

THENCE ALONG SAID EASTERLY LINE SOUTH 19° 00' 00" EAST, 100.00 FEET TO THE SOUTHERLY LINE OF SAID LOT 14;

THENCE ALONG SAID SOUTHERLY LINE SOUTH 71° 04' 01" WEST, 173.03 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 22.00 FEET, SAID POINT BEING THE MOST EASTERLY POINT IN THE BOUNDARY OF THAT CERTAIN PARCEL OF LAND GRANTED TO THE CITY OF CHULA VISTA BY DEED RECORDED APRIL 29, 1976 AS FILE/PAGE NO. 76-129009 OF SAID OFFICIAL RECORDS;

THENCE ALONG SAID BOUNDARY NORTHWESTERLY 34.53 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89° 55' 59" TO THE WESTERLY LINE OF SAID LOT 14;

THENCE ALONG SAID WESTERLY LINE TANGENT FROM SAID CURVE NORTH 19° 00' 00" WEST, 228.03 FEET TO THE POINT OF BEGINNING.

THIS LEGAL DESCRIPTION IS PURSUANT TO "CERTIFICATE OF COMPLIANCE" RECORDED AUGUST 24, 2011 AS INSTRUMENT NO. 2011-0436610 OF OFFICIAL RECORDS.

PARCEL 2:

NORTHERLY 40.00 FEET OF THE WESTERLY 156.00 FEET OF THE EASTERLY 330.00 FEET OF THE SOUTHERLY 195.00 FEET OF LOT 14 IN QUARTER SECTION 139 OF CHULA VISTA, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 505, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 13, 1888.

PARCEL 3:

THE NORTHERLY 55.00 FEET OF THE WESTERLY 156.00 FEET OF THE EASTERLY 330.00 FEET OF THE SOUTHERLY 155.00 FEET OF LOT 14 IN QUARTER SECTION 139 OF CHULA VISTA, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 505, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 13, 1888.

EXCEPTING FROM THE ABOVE DESCRIBED PROPERTY THAT PORTION INCLUDED WITHIN THE SOUTHERLY 113.00 FEET OF THE WESTERLY 136.00 FEET OF THE EASTERLY 310.00 FEET OF SAID LOT 14.

APN: 573-250-19-00 (Affects Parcel 3), 573-250-20-00 (Affects Parcel 2), and 573-250-40-00 (Affects Parcel 1)

EXHIBIT D

**FIRST AMENDMENT
TO
MASTER LAND AND BUILDING LEASE
(PORTFOLIO 2)**

This **FIRST AMENDMENT TO MASTER LAND AND BUILDING LEASE (PORTFOLIO 2)** (this "**Amendment**") is dated as of September __, 2015 ("**Effective Date**"), and is entered into by and between EM-50 UAV SLBCO LLC, a Delaware limited liability company ("**Landlord**"), and FRESH & EASY, LLC, a Delaware limited liability company (formerly known as Y-OPCO, LLC, a Delaware limited liability company) ("**Tenant**"). Capitalized terms used in this Amendment and not separately defined herein shall have the meanings ascribed to such terms in the Modified Lease (as defined below).

RECITALS

A. Landlord and Tenant entered into that certain Master Land and Building Lease (Portfolio 2) dated as of November 25, 2013 (the "**Original Lease**"), pursuant to which Landlord leased to Tenant and Tenant leased from Landlord the Demised Properties.

B. On December 4, 2014, Landlord sold the Eagle Rock Demised Property to Camden Holdings, LLC, a California limited liability company, and, among other documents, Landlord and Tenant entered into that certain Termination of Lease, dated December 4, 2014 ("**Termination Agreement**") whereby the Eagle Rock Demised Property was removed as a Demised Property under the Lease, pursuant to the terms of the Termination Agreement. The Original Lease, as modified by the Termination Agreement, is referred to herein as the "**Modified Lease**". The Modified Lease as amended by this Amendment is referred to herein as the "**Lease**".

C. Landlord and Tenant now desire to confirm certain terms of the Modified Lease and to clarify and supplement the terms of the Termination Agreement, all as described herein.

STATEMENT OF AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the foregoing recitals and the mutual promises and covenants contained herein, Landlord and Tenant agree as follows:

1. **Removal of Eagle Rock Demised Property.** The Eagle Rock Demised Property was removed from the Original Lease as a Demised Property (and, for the avoidance of doubt, from all Schedules to the Lease referencing such Demised Property) effective on December 4, 2014 ("**Removal Date**"); provided, however, that all Tenant's obligations under the Original Lease with respect to the Eagle Rock Demised Property (including without limitation the payment of Real Estate Taxes, indemnity obligations under **Article 9** and **Article 29** of the Lease, and payments of any other Additional Rent related to the Eagle Rock Demised Property) accruing prior to the Removal Date, or arising out of or in any way related to acts, omissions or events occurring prior to the Removal Date, have remained, and will remain, in full force and effect notwithstanding such removal. Without limiting the foregoing, in no event shall Landlord

have any liabilities or obligations to Tenant in respect of the Eagle Rock Demised Property from and after the Removal Date.

2. Base Rent. The initial Base Rent under the Lease was as set forth below, which amount was increased in accordance with the terms of the Lease effective on December 1, 2014 as set forth below, and effective on the Removal Date, the monthly Base Rent was reduced to the amount set forth below, which is still the monthly Base Rent as of the Effective Date, and which shall be increased after the Effective Date as described in the Lease.

<u>Base Rent</u>	<u>Effective Date of Change</u>	<u>Amount</u>
Base Rent (initial)	November 25, 2013	\$186,078.87
Based Rent (annual escalation)	December 1, 2014	\$188,870.05
Base Rent (from Removal Date)	December 4, 2014	\$154,286.72

3. Characterization. The following expressions of intent, representations, warranties, covenants, agreements, stipulations and waivers are a material inducement to Landlord entering into this Amendment:

(a) Landlord and Tenant intend that: (i) the Lease constitutes an un-severable, unitary and single lease of all, but not less than all, of the Demised Properties, shall not be subject to severance or division except as expressly set forth in the Lease, and neither the Lease, nor Tenant's obligations or rights under the Lease may be allocated or otherwise divided among any Demised Properties by Tenant; (ii) the Lease is a "true lease," is not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of the Lease are those of a true lease; and (iii) the business relationship created by the Lease and any related documents is solely that of a long term commercial lease between Landlord and Tenant, the Lease has been entered into by both parties in reliance upon the economic and legal bargains contained in the Lease.

(b) Each of Landlord and Tenant covenant and agree that: (i) it will treat the Lease as an operating lease and as a true lease for state law reporting purposes and for federal income tax purposes; and (ii) it will not, nor will it permit any of its Affiliates to, at any time, take any action or fail to take any action with respect to the preparation or filing of any statement or disclosure to any Governmental Authority, including without limitation, any income tax return (including an amended income tax return), to the extent that such action or such failure to take action would be inconsistent with the intention of the parties expressed in this Section 3.

(c) Tenant waives any claim or defense based upon the characterization of the Lease as anything other than a true lease and as a master lease of all of the Demised Properties. Tenant stipulates and agrees: (i) not to challenge the validity, enforceability or characterization of the lease of the Demised Properties as a true lease and/or as a single, unitary, un-severable instrument pertaining to the lease of all, but not less than all, of the Demised Properties; (ii) not to assert that the Lease is anything but a single,

unitary, un-severable instrument pertaining to the lease of all, but not less than all, of the Demised Properties, (iii) to support the intent of the parties that the Lease is a single, unitary, unseverable instrument pertaining to the lease of all, but not less than all, of the Demised Properties, if, and to the extent that, any challenge occurs and (iv) not to assert or take or omit to take any action inconsistent with the agreements and understandings set forth in this Section 3. Without limiting the foregoing, for the purposes of any assumption, rejection or assignment of the Lease under 11 U.S.C. Section 365 or any amendment or successor section thereof, this is one indivisible and non-severable lease dealing with and covering one legal and economic unit that must be assumed, rejected or assigned as a whole with respect to all (and only all) of the Demised Properties.

4. Correction of Scrivener's Error. The phrase "Tenant Review Period" appearing in clause (c) of the sixth sentence of Section 34.02 of the Lease is hereby replaced with "Landlord Review Period" in order to accurately represent the parties' originally intended meaning of such clause.

5. Full Force and Effect; Conflict with Termination Agreement. Except as herein amended, the Modified Lease shall continue in full force and effect as written. In the event of any conflict between the terms of the Termination Agreement and the terms of this Amendment, the terms of this Amendment shall govern.

6. Attorneys' Fees. If any legal action should be commenced in any court regarding any dispute arising between the parties hereto, or their successors and assigns, concerning any provision of this Amendment or the rights and duties of any person in relation thereto, then the prevailing party therein shall be entitled to collect its reasonable expenses, attorneys' fees and court costs to the extent actually incurred, including the same on appeal. As used herein, the term "prevailing party" means the party who, in light of the claims, causes of action, and defenses asserted, is afforded greater relief.

7. Counterparts. This Amendment may be executed in counterparts and shall be binding on all the parties hereto as if one document had been signed. The delivery of an executed copy of this Amendment by facsimile or electronic transmission shall have the same force and effect as the delivery of an executed original of this Amendment.

[Signatures Next Page]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the day first above written.

“LANDLORD”

EM-50 UAV SLBCO LLC,
a Delaware limited liability company

By: 

Name: Constantine M. Dakolias

Title: President

[SIGNATURES CONTINUE ON NEXT PAGE]

“TENANT”

FRESH & EASY, LLC,
a Delaware limited liability company


By: 
Name: Peter McPhee
Title: Chief Financial Officer

EXHIBIT E

Schedule of Remaining Sites Subject to Master LeasesPortfolio 1 Master Lease:

Unit No.	Address	City	State
1053	600 S. Green Valley Pkwy, NV	Henderson	Nevada
1449	2238 Broad St.	San Luis Obispo	California
1209	685 E. Bonita Ave.	San Dimas	California
1024	1960 West Baseline Road	Phoenix	Arizona
1058	1400 S. Boulder Hwy	Henderson	Nevada
1462	21815 Hawthorne Blvd.	Torrance	California

Portfolio 2 Master Lease:

Unit No.	Address	City	State
1041	1537 S. Higley Rd.	Gilbert	Arizona
1081	1660 W. Sunset Rd.	Henderson	Nevada
1135	150 Cinnamon Drive	Lemoore	California
1455	324-336 N. Milpas and 918 E. Gutierrez Street	Santa Barbara	California
1102	7752 N. El Capitan Way	Las Vegas	Nevada
1222	3231 E. University Avenue	San Diego	California

EXHIBIT F



SIDLEY AUSTIN LLP
555 WEST FIFTH STREET
LOS ANGELES, CA 90013
(213) 896 6000
(213) 896 6600 FAX

eprokop@sidley.com
(213) 896 6048

BEIJING	HONG KONG	SHANGHAI
BOSTON	HOUSTON	SINGAPORE
BRUSSELS	LONDON	SYDNEY
CENTURY CITY	LOS ANGELES	TOKYO
CHICAGO	NEW YORK	WASHINGTON, D.C.
DALLAS	PALO ALTO	
GENEVA	SAN FRANCISCO	

FOUNDED 1866

October 2, 2015

BY FACSIMILE AND FEDERAL EXPRESS

Fresh & Easy, LLC (f.k.a. Y-Opco, LLC)
c/o The Yucaipa Companies, LLC
9130 West Sunset Boulevard
Los Angeles, California 90069
Attention: Legal Department
Facsimile: (310) 789-1791

With a copy to:

Pircher, Nichols & Meeks
1925 Century Park East, Suite 1700
Los Angeles, California 90067-2512
Attention: Real Estate Notices (SAH #5602.3)
Facsimile: (310) 201-8922

Re: Events of Default For Failure to Timely Pay Base Rent under Master Leases

Ladies and Gentlemen:

Reference is hereby made to (i) that certain Master Land and Building Lease (Portfolio 1) dated as of November 25, 2013, by and between EM-50 UAV SLBCO LLC, a Delaware limited liability company ("Landlord"), and FRESH & EASY, LLC, a Delaware limited liability company (formerly known as Y-OPCO, LLC, a Delaware limited liability company) ("Tenant") (the "Portfolio 1 Master Lease") and (ii) that certain Master Land and Building Lease (Portfolio 2) dated as of November 25, 2013, by and between Landlord and Tenant (collectively with the Portfolio 1 Master Lease, the "Master Leases", and each individually a "Master Lease"). Any capitalized term used herein but not defined herein shall have the meaning set forth in each respective Master Lease.

As you know, Tenant previously failed to pay when due Base Rent under each Master Lease for August, 2015, and September, 2015. Tenant has now failed to pay when due Base Rent for the month of October, 2015, under each Master Lease. This current failure to pay constitutes an Event of Default under each Master Lease.



Fresh & Easy, LLC (f.k.a. Y-Opco, LLC)
October 2, 2015
Page 2

Nothing contained herein should be deemed to be an admission of any fact or waiver of any rights, claims, or remedies that Landlord may have as to the foregoing, or any future breach or Event of Default under either Master Lease. This letter is delivered under the reservation of all rights and remedies of Landlord.

Any delay by Landlord in exercising any of its rights and/or remedies under either Master Lease at law, in equity or otherwise shall not be deemed to constitute a waiver, modification, relinquishment or forbearance by Landlord of any such rights or remedies at law, in equity or otherwise.

Any discussions or correspondence Landlord may engage in with Tenant concerning the Master Leases or any Events of Default under the Master Leases shall in no way be, or be construed to be, an acceptance of any purported cure, or a waiver of any rights or remedies of Landlord, at law or in equity, except to the extent expressly set forth in a written instrument signed by Landlord and Tenant.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ed Prokop", with a stylized flourish at the end.

Edward C. Prokop

ECP:lcb

cc: Joshua Pack (by email only)
William Turner (by email only)
David Pezza, Esq. (by email only)
Tim Scott, Esq. (by email only)
Catherine Schneider, Esq. (by email only)

EXHIBIT G

EM-50 UAV SLBCO LLC
c/o Drawbridge Special Opportunities Fund LP
1345 Avenue of the Americas, 46th Floor
New York, New York 10105

October 28, 2015

BY FACSIMILE AND FEDERAL EXPRESS

Fresh & Easy, LLC (f.k.a. Y-Opco, LLC)
c/o The Yucaipa Companies, LLC
9130 West Sunset Boulevard
Los Angeles, California 90069
Attention: Legal Department
Facsimile: (310) 789-1791

With a copy to:

Pircher, Nichols & Meeks
1925 Century Park East, Suite 1700
Los Angeles, California 90067-2512
Attention: Real Estate Notices (SAH #5602.3)
Facsimile: (310) 201-8922

Re: Termination of Master Leases

Ladies and Gentlemen:

Reference is hereby made to (i) that certain Master Land and Building Lease (Portfolio 1) dated as of November 25, 2013, by and between EM-50 UAV SLBCO LLC, a Delaware limited liability company ("Landlord"), and FRESH & EASY, LLC, a Delaware limited liability company (formerly known as Y-OPCO, LLC, a Delaware limited liability company) ("Tenant") (as amended, the "Portfolio 1 Master Lease") and (ii) that certain Master Land and Building Lease (Portfolio 2) dated as of November 25, 2013, by and between Landlord and Tenant (as amended, and collectively with the Portfolio 1 Master Lease, the "Master Leases", and each individually a "Master Lease"). Any capitalized term used herein but not defined herein shall have the meaning set forth in each respective Master Lease.

As you know, pursuant to that certain letter dated October 2, 2015, from counsel for Landlord to Tenant, Landlord advised Tenant that there was an Event of Default under each Master Lease arising from Tenant's failure to pay Base Rent on or before the date due for the month of October 2015 under each Master Lease.

Pursuant to Landlord's rights under Section 15.02(a) of each Master Lease and because of each such continuing Event of Default, Landlord hereby terminates each Master Lease and Tenant's right to possession of all Demised Properties under each Master Lease.

Fresh & Easy, LLC (f.k.a. Y-Opco, LLC)
October 28, 2015
Page 2

Nothing contained herein should be deemed to be an admission of any fact or waiver of any other rights, claims, or remedies that Landlord may have as to the above-referenced Events of Default, or any other breach or Event of Default under either Master Lease, whether now existing or hereafter occurring. This letter is delivered under the reservation of all rights and remedies of Landlord.

Any delay by Landlord in exercising any of its other rights and/or remedies under either Master Lease at law, in equity or otherwise shall not be deemed to constitute a waiver, modification, relinquishment or forbearance by Landlord of any such rights or remedies at law, in equity or otherwise.

[Signature Next Page]

Fresh & Easy, LLC (f.k.a. Y-Opco, LLC)

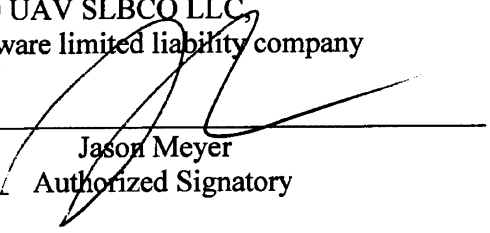
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Page 3

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LANDLORD:

EM-50 UAV SLBCO LLC
a Delaware limited liability company

By: 
Name: Jason Meyer
Title: Authorized Signatory

cc: Joshua Pack (by email only)
William Turner (by email only)
Edward C. Prokop (by email only)
Marc I. Hayutin (by email only)
David Pezza, Esq. (by email only)
Tim Scott, Esq. (by email only)
Catherine Schneider, Esq. (by email only)

* * * Communication Result Report (Oct. 28. 2015 2:47PM) * * *

1)
2)

Date/Time: Oct. 28. 2015 2:45PM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
0116 Memory TX	913107891791 913102018922	P. 3	OK OK	

Reason for error

E. 1) Hang up or line fail

E. 3) No answer

E. 5) Exceeded max. E-mail size

E. 2) Busy

E. 4) No facsimile connection

E. 6) Destination does not support IP-Fax

EM-50 UAV SLBCO LLC
c/o Drawbridge Special Opportunities Fund LP
1345 Avenue of the Americas, 46th Floor
New York, New York 10105

October 28, 2015

BY FACSIMILE AND FEDERAL EXPRESS

Fresh & Easy, LLC (f.k.a. Y-Opco, LLC)
c/o The Yucaipa Companies, LLC
9130 West Sunset Boulevard
Los Angeles, California 90069
Attention: Legal Department
Facsimile: (310) 789-1791

With a copy to:

Pircher, Nichols & Meeks
1925 Century Park East, Suite 1700
Los Angeles, California 90067-2512
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ACTIVE 70609453

CERTIFICATE OF SERVICE

I, Jeremy W. Ryan, hereby certify that I am not less than 18 years of age and that on this 23rd day of November 2015, I caused a true and correct copy of the foregoing **Objection to Debtor's Motion for Entry of (I) Order (A)(1) Establishing Bidding Procedures for Certain Unexpired Leases of Nonresidential Real Property, (2) Authorizing and Scheduling Auction with Respect Thereto, (3) Approving Cure Procedures, and (4) Scheduling Hearing with Respect to the Outcome of the Auction; (B) Establishing Procedures for the Rejection of Certain Unexpired Leases of Nonresidential Real Property; and (C) Granting Related Relief; and (II) Order (A) Approving Assumption and Assignment of Leases and (B) Waiving Stay Provisions Pursuant to Bankruptcy Rule 6006(d)** to be served upon the parties on the attached service list in the manner indicated.

Under penalty of perjury, I declare the foregoing is true and correct.

POTTER ANDERSON & CORROON LLP

/s/ Jeremy W. Ryan

Jeremy W. Ryan (DE Bar No. 4057)
1313 North Market Street, Sixth Floor
P.O. Box 951
Wilmington, DE 19899-0951
Telephone: (302) 984-6000
Facsimile: (302) 658-1192

SERVICE LIST

Via Hand Delivery

Norman L. Pernick, Esq.

J. Kate Stickles, Esq.

Patrick J. Reilley, Esq.

David W. Gaattino, Esq.

Cole Schotz P.C.

500 Delaware Avenue, Suite 1410

Wilmington, DE 19801