

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

In re:

EARTH FARE, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 20-10256 (KBO)

(Jointly Administered)

Related Docket Nos. 33, 62, 70, 102

**OBJECTION AND RESERVATION OF RIGHTS OF
KRG TORINGDON MARKET, LLC AND KRG CENTRE, LLC
TO DEBTORS' MOTION FOR ENTRY OF AN ORDER APPROVING DE MINIMIS
ASSET SALE PROCEDURES AND OBJECTION TO PROPOSED CURE**

KRG Toringdon Market, LLC and KRG Centre, LLC (collectively, the “KRG Entities”), creditors and parties in interest in this bankruptcy case, by and through its undersigned counsel hereby jointly and severally object (the “Objection”) to the motion (Docket No. 33) (the “Motion”) pursuant to which the debtors (collectively, the “Debtors”) request, among other things, entry of an order assuming certain *de minimis* asset sales and procedures related thereto,² and to the cure amount (the “Proposed Cure”) proposed by the Debtors in their First Notice of Possible Assumption and Assignment and Cure Amounts (Docket No. 70) (the “Cure Notice”). In support of the Objection, the KRG Entities respectfully state as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Earth Fare, Inc. (3936) and EF Investment Holdings, Inc. (8084). The mailing address for each of the Debtors is 220 Continuum Drive, Fletcher, North Carolina 28732.

² The Debtors also seek, pursuant to the Motion, approval of a potential sale of some or all of the Debtors’ assets, but have set an objection deadline with respect to such potential sale of February 20, 2020 at 4:00 p.m. (Eastern). Although the KRG Entities have raised their objections to the cure proposed by the Debtors in connection with their leases herein, each of the KRG Entities expressly reserves all of its rights to object to any non-de minimis asset sales involving any proposed transfer of designation rights with respect its lease or any proposed assumption and assignment of such lease.

BACKGROUND

1. Earth Fare, Inc. (“Earth Fare”) and EF Investment Holdings, Inc. (each a “Debtor” and, collectively, the “Debtors”), filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code on February 4, 2020 (the “Petition Date”).

A. The Toringdon Lease

2. On or about August 19, 2003, Toringdon Market, LLC, predecessor-in-interest to KRG Toringdon Market, LLC (“KRG Toringdon”), as landlord, and Earth Fare, as tenant, entered into a lease agreement covering certain real property and improvements located at the Toringdon shopping center in Charlotte, North Carolina, as subsequently amended by the First Amendment to Lease dated December 15, 2017, by and between KRG Toringdon and Earth Fare (as amended the “Toringdon Lease”), a collective copy of which is attached hereto as **Exhibit A**.

3. The Toringdon Lease expires by its own terms on March 31, 2025.

4. Under the terms of the Toringdon Lease, the aggregate monthly rent obligations are \$42,960.04. These are comprised of base rent, and other recurring charges as follows:

RNT	Base Rent	\$31,503.66
CAM	CAM Charges	\$4,595.25
RTX	Real estate Taxes	\$5,136.68
INS	Insurance	\$805.45
WSE	Utilities	\$919.00

These are identified on the Tenant Ledger attached hereto as **Exhibit B**.

5. In the Cure Notice, the Debtors indicate that the estimated total cure amount related to the Toringdon Lease is \$4,441.14 (the “Proposed Toringdon Cure”).

6. Based on KRG Toringdon's books and records, the total cure claim, as of February 12, 2020, related to the Toringdon Lease is \$42,960.04 (the "KRG Toringdon Cure Claim").

7. KRG Toringdon objects to the Proposed Toringdon Cure and does not consent to the assumption and assignment of the Toringdon Lease unless the KRG Toringdon Cure Claim is promptly paid in full.

B. The Rangeline Crossing Lease

8. On or about May 15, 2012, KRG Centre, LLC ("KRG Centre"), as landlord, and Earth Fare, as tenant, entered into a lease agreement (the "Rangeline Crossing Lease") covering certain real property and improvements located at the Rangeline Crossing shopping center in Carmel, Indiana. A true and correct copy of the Rangeline Crossing Lease is attached hereto as **Exhibit C**.³

9. The Rangeline Crossing Lease expires by its own terms on June 30, 2028.

10. Under the terms of the Rangeline Crossing Lease, the aggregate monthly rent obligations are \$44,492.28. These are comprised of base rent, and other recurring charges as follows:

RNT	Base Rent	\$ 32,479.17
CAM	CAM Charges	\$ 4,582.90
RTX	Real Estate Taxes	\$ 6,453.92
INS	Insurance	\$ 926.29
SPS	Specialty Agreement (Pylon Sign)	\$ 50.00

These are identified on the Tenant Ledger attached hereto as **Exhibit D**.

³ The Toringdon Lease and the Rangeline Crossing Lease shall be collectively referred to herein as the KRG Leases.

11. In the Cure Notice, the Debtors indicate that the estimated total cure amount related to the Rangeline Crossing Lease is \$93,587.21 (the “Proposed Rangeline Cure”).

12. Based on KRG Centre’s books and records, the total cure claim, as of February 12, 2020, related to the Rangeline Crossing Lease is \$113,476.84 (the “KRG Centre Cure Claim” and together with the KRG Toringdon Cure Claim, collectively, the “KRG Cure Claim”).

13. KRG Centre objects to the Proposed Rangeline Cure and does not consent to the assumption and assignment of the Rangeline Crossing Lease unless the KRG Centre Cure Claim is promptly paid in full.

OBJECTION

14. The KRG Entities expressly join in the objection filed by RGOP 2, LLC (Docket No. 102).

15. The KRG Entities further object to the Bidding Procedures on the grounds that they do not contemplate landlord participation in the proposed auction in connection with their own leased premises. The Bidding Procedures contain numerous requirements that do not apply to landlords and/or present unnecessary obstacles to landlord participation in the potential assumption and assignment of their leases.

16. With respect to leased commercial real estate, landlords are the functional equivalent of secured lenders. Section 365(b)(1)(A) of the Bankruptcy Code provides that a trustee may not assume an unexpired lease “unless, at the time of assumption of such . . . lease, the trustee cures, or provides adequate assurance that the trustee will promptly cure” any monetary defaults under the lease. 11 U.S.C. § 365(b)(1)(A).

17. KRG Entities should be not be required to submit a cash deposit in order to be deemed a “Qualifying Bidder” and to participate in the Auction as to their own properties. Rather,

they should be allowed to credit bid some or all of the KRG Cure Claim attributable to the KRG Leases.

18. Likewise, paragraph 3(b) through (d) of the Bidding Procedures (Participation Requirements), and paragraph 8(e) through (t) of the Bidding Procedures (Bid Requirements) should be waived as to the KRG Entities. The KRG Entities' participation, if any, in the Auction would be limited to the KRG Leases and as to their own properties. Thus, these provisions are extraneous and unduly burdensome.

19. Further, the Debtors should be required to advise the KRG Entities whether any Stalking Horse Bid has been submitted as to either or both of the KRG Leases at least forty-eight (48) hours prior to the Bid Deadline.

RESERVATION OF RIGHTS AND JOINDER

20. By filing the Objection, neither of the KRG Entities waives, and each of the KRG Entities hereby expressly reserves, its rights to supplement or amend this Objection and assert additional objections to the Motion, including based on any responses to discovery that the KRG Entities may serve in connection with the Motion and this Objection. Moreover, each of the KRG Entities hereby joins in any objections that may be filed by any other party-in-interest, including other landlords or contract counterparties.

CONCLUSION

Accordingly, for the reasons set forth above, each of the KRG Entities respectfully request that this Court (i) deny the Motion and (ii) grant each of the KRG Entities such other and further relief as is just and appropriate under the circumstances.

Dated: February 13, 2020
Wilmington, Delaware

CHIPMAN BROWN CICERO & COLE, LLP

/s/ Mark L. Desgrosseilliers

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KRG Centre, LLC*

EXHIBIT A

LEASE AGREEMENT
BETWEEN
TORINGDON MARKET, LLC
"LANDLORD"
AND
EARTH FARE, INC., A NORTH CAROLINA CORPORATION
"TENANT"

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EXHIBITS

- Exhibit A - Site Plan of the Shopping Center
- Exhibit B - Legal Description of the Shopping Center
- Exhibit C - Site Plan of Adjacent Land
- Exhibit D-1 - Non-Disturbance and Attornment Agreement
- Exhibit D - Intentionally Omitted
- Exhibit E - Tenant's Sign Plan
- Exhibit F - Estoppel Certificate
- Exhibit G - Memorandum of Lease
- Exhibit H - Declaration of Restrictive Covenant

THE SUBMISSION OF THIS DOCUMENT FOR EXAMINATION AND NEGOTIATION DOES NOT CONSTITUTE AN OFFER TO LEASE. THIS DOCUMENT BECOMES EFFECTIVE AND BINDING ONLY UPON EXECUTION AND DELIVERY HEREOF BY TENANT. NO ACT OR OMISSION OF ANY EMPLOYEE OR AGENT OF TENANT OR OF TENANT'S BROKER, IF ANY, SHALL ALTER, CHANGE OR MODIFY ANY OF THE PROVISIONS HEREOF.

LEASE

THIS LEASE is made as of this 14th day of August, 2003, by and between TORINGDON MARKET, LLC, an Ohio limited liability company ("Landlord"), and EARTH FARE, INC., a North Carolina Corporation ("Tenant").

In consideration of the rents and covenants hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the following described real property and improvements, hereinafter called the "Premises", upon the following terms and conditions:

1. FUNDAMENTAL LEASE PROVISIONS

1.1 This Article 1 is an integral part of this Lease (the "Lease") and all of the terms, dates and requirements set forth in this Article 1 are incorporated in this Lease in all respects. In addition to the other provisions which are elsewhere defined in this Lease, the following terms, whenever used in this Lease, shall have the meanings set forth in this Article 1, subject to adjustments thereto or more detailed definitions set forth elsewhere in this Lease. If there is any conflict between any of the Lease provisions set forth in this Article 1 and any other provisions of this Lease, the latter shall control.

1.2 Premises:

Shopping Center: Toringdon Market

City: Charlotte

County: Mecklenberg

State: North Carolina

Store Address:

Floor Area of Premises: approximately 24,500 square feet in Building "C" having a frontage of 175 feet, a depth of 140 feet and illustrated on Exhibit "A". (ARTICLE 2)

1.3 Term:

Initial Term: Fifteen (15) Lease Years and Two (2) months

Option Terms: Three (3) consecutive terms of five (5) Lease Years each

Target Completion Date: Within 10 months after issuance of the building permit for the Premises [See Section 6.1.1 for Landlord's obligation to submit for permits]

Tenant Right to Terminate Date: 10 months from the date of this Lease

(ARTICLE 6)

1.4 Minimum Annual Rent:

Lease Years	Annual	Monthly	Per Sq. Ft.
1* – 5	\$330,750.00	\$27,562.50	\$13.50
6 – 10	\$343,000.00	\$28,583.33	\$14.00
11 – 15	\$355,250.00	\$29,604.17	\$14.50
Option Terms			
16 – 20	\$367,500.00	\$30,625.00	\$15.00
21 – 25	\$379,750.00	\$31,645.83	\$15.50
26 – 30	\$392,000.00	\$32,666.67	\$16.00

*Minimum Rent shall abate for the first two calendar months of the first Lease Year.

1.5 Percentage Rent: One and one-half percent (1.5%) of Tenant's Gross Sales (ARTICLE 4)

1.6 Intentionally Omitted

1.7 Pylon Sign Rights: (ARTICLE 22)

1.8 Intentionally Omitted

1.9 Address For Notices:

To Landlord: Torington Market, LLC
c/o Continental Real Estate Companies
150 East Broad Street
Columbus, Ohio 43215
Attn: Property Management

With a copy to: Torington Market, LLC
c/o Continental Real Estate Companies
150 East Broad Street
Columbus, Ohio 43215
Attn: Mark A. Damante

To Tenant: Earth Fare, Inc.
40 Westgate Parkway, Suite S
Asheville, North Carolina 28806
Attn: Michael A. Cianciarulo,
President & CEO

2. PREMISES

2.1 The "Premises" demised and leased hereunder are described in Article 1 hereof and are cross-hatched, outlined or otherwise shown or marked on the "Site Plan of the Shopping Center" attached hereto as Exhibit "A" and incorporated herein by this reference, and include the non-exclusive right to use all parking areas, driveways, sidewalks, roads, alleys and

means of ingress and egress. If at the Commencement Date the square footage of the Premises is less or more than that stated on Page 1 hereof, a proportionate reduction or addition shall be made to the rents and other charges due Landlord from Tenant hereunder. The Premises, together with and including other property owned by Landlord, comprise a shopping center and commercial development referred to hereinafter and throughout this Lease as the "Shopping Center". The "Legal Description of the Shopping Center" is attached as Exhibit "B" and incorporated herein by this reference. The general layout showing, among other things, buildings and other improvements which comprise the Shopping Center, is also shown on Exhibit "A". Tenant acknowledges that the parcels designated on Exhibit "A" as "Outparcels" may be sold by Landlord to third parties.

3. TERM

3.1 The term of this Lease shall be of the duration set forth in Article 1 hereof and shall commence on the earlier of the following dates in A or B below, ("Commencement Date"), and the Initial Term shall terminate on the last day of the month in which the term expires, as the same may be extended as set forth in this Lease:

A. The date on which Tenant opens for business in the Premises; or

B. The later of (x) the date the work described in Section 6.4 hereof is substantially complete and (y) the date which is one hundred twenty (120) days after the "Completion Date". As used herein, the "Completion Date" shall be the date that which is the last to occur of the following: (i) Landlord's architect certifies to Tenant in writing that the Premises have been substantially completed in all material respects with respect to "Landlord's Work" (as that term is more specifically defined herein); (ii) a certificate of occupancy or other final approval (to the extent available without Tenant's work being completed) with respect to Landlord's Work has been issued or granted to Landlord by the authority which issued the building permit; and (iii) permanent utility service is available to the Premises. If, however, the Completion Date does not occur on or before the Target Completion Date set forth in Article 1 hereof, then Tenant shall be entitled to an offset against Minimum Annual Rent equal to one day's Minimum Annual Rent for each day of delay.

3.2 [Intentionally Deleted]

3.3 Tenant is hereby granted three consecutive options to extend the Initial Term of this Lease as set forth in Article 1 hereof, by giving to Landlord written notice of its exercise of each such option at least one hundred eighty (180) days before the expiration of the Initial Term, or prior option, as the case may be; provided, however, if Tenant shall fail to give any such notice within the above referenced time period, Tenant's right to exercise such options shall nevertheless continue until thirty (30) days after Landlord has given Tenant notice of Landlord's election to terminate the next such option and Tenant may exercise such option at any time until the expiration of said thirty (30) day period. The extended periods shall be upon the same terms, covenants, conditions, provisions and agreements applicable to the Initial Term, or prior option, as the case may be, except that Tenant shall pay to Landlord the Minimum Annual Rent during such extended periods as set forth in Article 1 under Option Term Rent.

3.4 Tenant shall have the right, without an obligation to pay rent or other charges, to enter the Premises while Landlord's Work is in progress, in order to inspect the Premises, to make such improvements as Tenant shall have the right to make, to install fixtures, supplies, merchandise and other property. Tenant agrees that it shall not unreasonably interfere with the progress of Landlord's Work by such entry. Tenant's early entry into the Premises for the foregoing

purposes shall not constitute acceptance thereof nor trigger the commencement of the time period set forth in Section 3.1 B. hereof.

4. RENTAL

4.1 Tenant covenants and agrees to pay as rental for the use and occupancy of the Premises, at the times and in the manner hereinafter provided, the following sums:

A. Minimum Annual Rent: Minimum Annual Rent will be abated for two (2) months after the Commencement Date. Thereafter, Minimum Annual Rent as set forth in Article 1 hereof shall be payable in twelve (12) equal monthly installments, in advance, on the first day of each calendar month during each year of the term of the Lease. If the Commencement Date of the term hereof occurs on a day other than the first day of the month, the monthly installment of Minimum Annual Rent for the fraction of the month starting with the Commencement Date shall be prorated on the basis of the actual number of days in said month and paid on the first day of the month succeeding the Commencement Date.

B. Percentage Rent: In addition to the Minimum Annual Rent, Tenant shall pay to Landlord for each "Lease Year" (as hereinafter defined) a percentage rental equal to the amount that the percentage rent set forth in Article 1 multiplied by "Gross Sales" (as hereinafter defined) exceeds the Minimum Annual Rent attributable to such period. $25,000,000 \times 234,750 / 1,015,226,500$

Such percentage rent shall be computed and payable annually, within sixty (60) days after the end of each Lease Year. Within sixty (60) days after the end of each Lease Year, Tenant shall submit to Landlord a statement indicating the amount of its Gross Sales for said Lease Year. Tenant shall accompany such statement with a payment of the percentage rental due, if any, after all deductions and offsets.

4.2 "Gross Sales" is defined as the selling price of all merchandise sold in or from the Premises by Tenant, its subtenants, licensees and concessionaires, whether for cash or for credit, excluding, however, the following:

A. The sales price of all merchandise returned and accepted for full credit or the amount of the cash refund or allowance made thereon;

B. The sums and credits received in settlement of claims for loss or damage to merchandise;

C. The difference between the sales price of all merchandise purchased by credit card and the actual amount received by Tenant from the credit card issuer.

D. Sales taxes, so called luxury taxes, excise taxes, gross receipt taxes and other taxes now or hereafter imposed upon the sale of merchandise or services, whether added separately to the selling price of the merchandise or services and collected from customers or included in the retail selling price;

E. Promotional markdown coupons to the extent no consideration is received therefrom;

F. Receipts from public telephones and vending machines;

G. Interest, carrying charges or other finance charges in respect of sales

made on credit;

H. Sales of fixtures, trade fixtures or personal property that are not merchandise held for retail sale in the normal course of business;

I. The proceeds from any sale of all or substantially all of the inventory in the Premises in connection with the sale of all or any part of Tenant's business;

J. Sales to employees at discount;

K. Uncollectible debts;

L. Transfers of merchandise between stores or to affiliated stores or companies;

M. Revenue received from delivery or other services performed for minimal or no profit for the benefit of customers;

N. Revenue received from lottery tickets sanctioned by the state in which the Premises are located;

O. Service charges on bad checks;

P. Revenues generated from in-store automated teller machines, telefax, telecopy and photocopy machines or other similar machinery and equipment;

Q. Accommodation sales such as the sale of postage stamps, government bonds, saving stamps, money orders or similar items;

R. Receipts from sales of salvage cartons, meat scraps, suet and other salvage merchandise; and

S. Receipts from sales to hospitals and charitable organizations.

4.3 Tenant shall maintain adequate records for a period of two (2) years after the close of each Lease Year for the purpose of allowing Landlord to verify the reported Gross Sales for such particular Lease Year. At any time within said two (2) year period, Landlord or its agents may inspect such records during normal business hours upon at least seventy-two (72) hours' written notice and in the event an inaccuracy is disclosed and percentage rent is due Landlord, an appropriate adjustment shall be made. In the event Tenant's Gross Sales inaccuracy requires Tenant to pay in excess of three percent (3%) more than Tenant originally paid, then Tenant shall reimburse Landlord for Landlord's actual reasonable expense incurred in establishing the inaccuracy, up to a maximum of One Thousand and 00/100 Dollars (\$1,000.00).

4.4 Should the Commencement Date occur on a date other than January 1, then the percentage rent, if any, shall be computed based on the following time periods which shall be called "Lease Year" or "Lease Years":

A. The first Lease Year shall extend from the Commencement Date of the Lease to the first December 31 to occur after the first anniversary of the Commencement Date. The computation of percentage rent shall be made as follows:

(i) The total Gross Sales for the period from the Commencement Date of the Lease to twelve (12) months thereafter shall be totaled and a daily average derived therefrom (the "Average Daily Sales Figure").

(ii) The Average Daily Sales Figure shall be multiplied by the number of days from the Commencement Date to the first January 1 of the Lease term.

(iii) The product of the above calculation shall be the Gross Sales for the first Lease Year.

B. Subsequent Lease Years shall coincide with the calendar year.

C. For purposes of computing percentage rent for the first Lease Year, the average daily sales for such first Lease Year shall be calculated. The percentage rent payable for the portion of the first Lease Year from the Commencement Date through December 31 (i.e., a partial year) shall be based upon Gross Sales equal to such daily figure multiplied by the number of days in such period. The percentage rent payable for the portion of the first Lease Year that coincides with the calendar year shall be based upon Gross Sales equal to such daily figure multiplied by 365.

4.5 It is understood and agreed by Landlord that Tenant has made no representations of any kind as to minimum or maximum annual volume of Gross Sales which Tenant may or shall make in any Lease Year during the term of the Lease or whether, when or if Landlord will ever receive any percentage rent from Tenant. Landlord agrees not to divulge to any person or persons, governmental agency, firm or corporation, the amount of retail sales made by Tenant from the Premises or the rent or other charges paid by Tenant pursuant to this Lease, except that Landlord shall be entitled to reveal such information to lenders, bona fide purchasers and/or as may otherwise be required by law.

5. USE OF PREMISES

5.1 The Premises may be used and occupied for the operation of a grocery store/supermarket which may include the display and retail sale of health foods, natural body care and cosmetics, health and beauty aids, beer and wine making materials, beer and wine sales for on and off Premises consumption; and the operation of a restaurant as an incidental part of its overall grocery store operation selling and serving food for on and off Premises consumption consistent with the operation of similar restaurants as a service to customers in a majority of its stores from time to time; and any other lawful retail purpose. Notwithstanding the foregoing or anything else contrary in this Lease, Tenant may not use the Premises for any use that is required to be supported by parking in excess of 4.5 spaces per 1,000 square feet of floor area. Landlord represents and acknowledges to Tenant that Tenant's use of the Premises as a grocery store/supermarket shall not be deemed to violate the parking ratio set forth in the previous sentence.

5.2 Tenant shall be required to open its Premises for business for at least one day on or before the Commencement Date. Notwithstanding anything contained to the contrary in this Lease including, without limitation, the provisions hereof relating to Percentage Rent, Tenant shall have no obligation to open for business for more than one (1) day or continuously operate its business in the Premises. Except for such one-day operating requirement, Landlord acknowledges

that this Lease contains no express or implied covenant by Tenant to conduct business in the Premises, continuously or otherwise, or to operate during any particular hours.

5.3 If the provisions of this Lease permitting Tenant's use of the Premises as a grocery store/supermarket shall be determined by any government agency having jurisdiction to be invalid or unenforceable, this Lease, effective as of the date of such determination, shall be, and shall be deemed to be, at Tenant's election, void and of no further force or effect and Tenant shall have no further obligations hereunder.

5.4 If Tenant, for a period of one hundred eighty (180) continuous days, ceases to use the Premises for a natural food concept featuring organic items, gourmet foods, and other products catering to an affluent demographic, Landlord may, at its option, upon sixty (60) days written notice to Tenant, elect to recapture the Premises and terminate Tenant's Lease, whereupon Tenant shall only be obligated for rental and other charges accruing prior to the date of lease termination. This right of recapture shall not be applicable if Tenant is prevented from doing business in the Premises due to fire, casualty, condemnation or Landlord's default.

6. CONSTRUCTION OF PREMISES

6.1 Landlord, at its expense, will initially construct the buildings and parking and common areas surrounding same on the Shopping Center property as shown on Exhibit "A", excluding the Outparcels which, if and when constructed, might be constructed by third parties. Landlord shall construct the Premises as agreed pursuant to Section 6.1.1 below. Landlord covenants and agrees that prior to, and at the Commencement Date, the Premises shall conform in all material respects to all laws, orders, ordinances, rules, regulations and orders including, but not limited to, all applicable building and zoning codes of all governmental authorities having jurisdiction thereof with respect to Landlord's Work, as hereinafter defined. Further, during the term of this Lease, Landlord shall, at Landlord's expense, comply with all federal, state, county and municipal laws and ordinances and all rules, regulations and orders of any duly constituted governmental authority, including any governmental retrofit orders, present or future, having jurisdiction thereof, with regard to the Shopping Center and the Premises unless due to Tenant's specific use of the Premises and except for such items that, pursuant to the terms of this Lease, Tenant is required to maintain, repair or replace or that Tenant is permitted to alter.

6.1.1 Tenant has provided Landlord with a front exterior elevation, a footprint and an interior layout of the Premises. Landlord's architect shall, within 30 days after the date of this Lease, deliver to Tenant design development drawings of the Premises shell ("DD Drawings") based on such elevation, footprint and layout. Tenant shall review the proposed DD Drawings within ten days of Tenant's receipt of same. Such DD Drawings will not cover the interior finish-out, or the materials, designs, or colors of the interior of Tenant's Premises (it being understood that Tenant will be responsible for the design and construction of same). In the event Tenant fails to provide Landlord with any written response during such ten-day period, Tenant shall be deemed to have approved the DD Drawings. Tenant shall have the right to disapprove such DD Drawings only to the extent they are not consistent with the elevation, footprint and layout provided to Landlord. If Tenant has so disapproved of DD Drawings, and has specified the reasons why, Landlord shall revise the DD Drawings accordingly and resubmit them to Tenant within 15 days following the date of Tenant's written notice of disapproval. Such procedure for notice of disapproval with specific reasons shall be repeated with respect to any revisions to the DD Drawings until such DD Drawings, with each of Landlord and Tenant acting reasonably and in good faith, are approved.

Once approved in writing by Landlord and Tenant, Landlord shall prepare shell construction documents (the "CD Drawings") based on the DD Drawings within 45 days and submit same to

Tenant for its review and approval. Tenant shall review the proposed CD Drawings within ten days of Tenant's receipt of same. In the event Tenant fails to provide Landlord with any written response during such ten-day period, Tenant shall be deemed to have approved the CD Drawings. Tenant shall have the right to disapprove such CD Drawings only to the extent they are not consistent with the DD Drawings. If Tenant has so disapproved of CD Drawings, and has specified the reasons why, Landlord shall revise the CD Drawings accordingly and resubmit them to Tenant within 15 days following the date of Tenant's written notice of disapproval. Such procedure for notice of disapproval with specific reasons shall be repeated with respect to any revisions to the CD Drawings until such CD Drawings, with each of Landlord and Tenant acting reasonably and in good faith, are approved. Once approved in writing by Landlord and Tenant, the CD Drawings (the "Tenant Plans and Specifications") shall not be modified or amended without the prior written consent of Landlord and Tenant, which consent both parties agree to give reasonably. If Landlord and Tenant, acting reasonably and in good faith, cannot agree on such plans and specifications on or before March 31, 2004, then either party shall have the right to terminate this Lease by written notice to the other at any time thereafter prior to the date such plans and specifications are approved by the parties.

CD DRAWING
w/ shall
construct
documents

Once the Tenant Plans and Specifications have been approved by Landlord and Tenant, Landlord shall promptly submit for a building permit for the Premises based on the Tenant Plans and Specifications and shall diligently pursue obtaining such permit.

6.1.2 Landlord shall have responsibility for construction of the improvements pursuant to the Tenant Plans and Specifications ("Landlord's Work"). Landlord and Tenant will each contribute to the costs of construction of such improvements, with Landlord's share equal to a fraction, the numerator of which is 60 and the denominator of which is the total cost per square foot to complete the improvements. The remaining portion of such costs will be borne by Tenant. Tenant shall be entitled to review all bids for such work and shall have the reasonable rights of prior written approval with respect to the accepted bid, provided that, if Tenant does not respond to any such bid within ten (10) business days after its receipt of same, then such bid shall be deemed approved by Tenant. (Such construction costs shall not include architectural and engineering costs incurred by Landlord with respect to such improvements, all of which shall be paid by Landlord.) As construction progresses and construction draws are submitted to Landlord, Landlord and Tenant shall each contribute their pro-rata share of the cost of construction. It is anticipated that such draws, which shall be certified to Landlord by the design architect, shall be submitted monthly as construction progresses. Landlord and Tenant shall work cooperatively to ensure that the cost for the improvements is at a figure that is reasonably acceptable to both Landlord and Tenant. As an example, assume that the cost of Landlord's Work is \$65.00 per square foot. Landlord would be obligated for 60/65 of the total cost and Tenant would be obligated for 5/65 of the total cost. If the first construction draw were \$100,000, Landlord would pay \$92,307.69 of such drawn amount, and the Tenant would pay the remainder. Landlord shall bill Tenant for its proportionate share of such construction draw at any time after its receipt of a requested draw from Landlord's contractor (it being understood that Landlord may elect to bill Tenant for multiple draws at one time). Tenant shall have ten (10) days from receipt of such draw to pay its pro-rata share. In the event Tenant fails to pay any amount due hereunder within five (5) business days of its due date, then in addition to any other remedies available hereunder or at law or in equity, Landlord may elect to stop construction until such amount is paid. Any past due amounts owed by Tenant (that are not being contested in good faith) shall bear interest for the benefit of Landlord from the due date until paid at a rate equal to twelve percent (12%) per annum. Any delay occasioned by Tenant's failure to pay such construction draw will result in an extension of the Target Completion Date, Tenant Right to Terminate Date and the Outside Completion Date (as hereinafter defined) by the period of time commensurate with such delay.

6.2 If Landlord has not commenced Landlord's Work for any reason, subject to extension for any act of Force Majeure, prior to the "Tenant's Right to Terminate Date" set forth in Article 1 hereof, then Tenant may, at its sole option, in addition to any other right or remedy Tenant may have pursuant to this Lease, at law or in equity and without waiving Tenant's rights pursuant to Section 3.1 B above, terminate this Lease prior to the commencement of Landlord's Work. If Tenant elects to terminate this Lease, it shall do so by written notice to Landlord given within thirty (30) days after the Tenant's Right to Terminate Date but prior to the commencement of Landlord's Work. If Tenant does not deliver such notice within the specified period, such right of termination shall thereafter be null and void.

If Landlord does not complete Landlord's Work, subject to extension for any act of Force Majeure, prior to December 31, 2005 (the "Outside Completion Date"), then Tenant may, at its sole option, in addition to any other right or remedy Tenant may have pursuant to this Lease, at law or in equity and without waiving Tenant's rights pursuant to Section 3.1B above, terminate this Lease prior to the completion of Landlord's Work. If Tenant elects to terminate this Lease, it shall do so by written notice to Landlord given within thirty (30) days after the Outside Completion Date but prior to the completion of Landlord's Work. If Tenant does not deliver such notice within the specified period, such right of termination shall thereafter be null and void

6.3 [Intentionally Deleted]

6.4 Landlord shall substantially complete construction of the Common Areas, except for such areas surrounding the Outparcels that may be under construction in connection with the construction of any buildings on the Outparcels, at least 30 days prior to the Commencement Date.

6.5 After the Completion Date, Tenant shall proceed to fixture and merchandise the Premises in accordance with plans and specification reasonably acceptable to Landlord.

7. TAXES

7.1 Landlord shall pay, on or before the delinquency date, all taxes levied or assessed against the Shopping Center, including the Premises and shall deliver a copy of the paid tax bill to Tenant. Commencing on the Commencement Date, Tenant shall reimburse Landlord its Pro-Rata Share (as hereinafter defined) of ad valorem real estate taxes and assessments and taxes based on gross rentals (collectively "Real Estate Taxes") levied and paid by Landlord upon the Shopping Center for each tax year during the term of this Lease. Landlord estimates that Tenant's Pro Rata Share of Real Estate Taxes for the first year of the Term hereof shall be \$1.15 per square foot within the Premises. Such Real Estate Taxes shall be payable within twenty (20) days after receipt by Tenant of a true copy of the actual real estate tax bill and a statement in writing from Landlord setting forth the amount of Tenant's Pro-Rata Share. Tenant's schedule of payments (annual or semi-annual) shall be concurrent with Landlord's schedule of payment to the taxing authority, but shall in no event shall Tenant be obligated to pay Landlord Tenant's Pro-Rata Share of Real Estate Taxes more than thirty (30) days before delinquency. Under no circumstances shall Tenant be liable for any interest, penalty or surcharge of any kind if Landlord has failed to timely pay such Real Estate Taxes as long as Tenant has paid on a timely basis its Pro Rata Share of Real Estate Taxes. As used herein, Tenant's Pro-Rata Share shall mean that fraction of which the numerator is the number of square feet of Floor Area in the Premises and the denominator of which is the total gross ~~leasable~~ ^{usable} square feet in the entire Shopping Center but in no event shall the denominator be less than 40,000 sq. ft., except with respect to any costs that are paid directly by an occupant of the Shopping Center in which case such minimum denominator shall be increased by

such occupant's square footage with respect to such costs. Such computation shall be made separately for each tax year. In the event any portion of the Shopping Center is separately assessed and any tenant or other occupant of the Shopping Center is obligated to pay such separate assessment, then the amount of any such separate assessed parcel shall be excluded from the total Real Estate Taxes of the Shopping Center and the total gross leasable square feet of such separately assessed parcel shall be excluded in determining Tenant's Pro-Rata Share of Real Estate Taxes. In the event any Real Estate Taxes may be paid in installments, Landlord agrees to pay same in installments over the longest period of time permitted by law and Tenant shall pay its Pro-Rata Share of only those installments which shall be properly allocable to the term of this Lease. Any such installments due and payable in the years in which the term of this Lease commences or terminates shall be a prorated proportionately.

7.2 Tenant shall pay, prior to delinquency, any and all personal property taxes levied against Tenant's leasehold improvements, fixtures, equipment, furniture and other personal property located within the Premises. In the event such taxes are levied against Landlord or together with personal property owned by Landlord, Tenant shall pay Tenant's just and proportionate share thereof within twenty (20) days after Tenant's receipt of a tax bill therefor and an itemized breakdown of the items included therein, together with a statement from Landlord as to the amount of Tenant's share thereof.

7.3 Real Estate Taxes to which Tenant is obligated to contribute shall be reduced by (i) any amounts paid toward such taxes by third parties (excluding tenants or other occupants of the Shopping Center) who may use all or a portion of the Shopping Center, and (ii) any abatements, refunds or rebates made thereof and any discounts available to Landlord with respect thereto (provided Tenant has paid its pro-rata share in a timely manner to enable Landlord to take advantage of any discount).

7.4 Any rebates, refunds or abatements of Real Estate Taxes received by Landlord subsequent to payment of taxes by Tenant shall be refunded to Tenant on a pro-rata basis within twenty (20) days of receipt thereof by Landlord.

7.5 Tenant shall have the right to contest the validity or amount of Real Estate Taxes either in its own name or in the name of Landlord, in either case with Landlord's full cooperation, but at no expense to Landlord. Any resultant refund, rebate or reduction shall be used first to repay the expenses of contesting such taxes, and Tenant's pro-rata share shall reflect the reduced tax amount plus the cost of contesting such taxes.

7.6 Nothing contained in this Lease shall be deemed or construed to require Tenant to pay or discharge any tax which may be levied upon the income, profits, gross receipts (other than rental) or business of Landlord or any personal property taxes, franchise, inheritance or estate taxes which may be levied against the estate or interest of Landlord.

8. INSURANCE

8.1 Landlord shall maintain at all times during the term of this Lease a policy or policies of Special Form Property Insurance on all buildings and other improvements in the Shopping Center excluding the Outparcels, together with loss of rents coverage for a period of one year. Such insurance shall be in the full amount of one hundred percent (100%) replacement value (including, without limitation, Tenant's cost contribution), without deduction for physical depreciation but excluding footings and foundations, against all risks normally covered by such a policy or policies. Such policy or policies may provide a maximum deductible of Ten Thousand Dollars and

No/100 (\$10,000.00) and the proceeds of said policy or policies shall be used, to the extent necessary and required, for repair and reconstruction of the Shopping Center excluding the Outparcels and the Premises as required by this Lease notwithstanding anything to the contrary contained in any mortgage, deed of trust, deed to secure debt or other security instrument which may at any time be in lien upon the Shopping Center. Such policy may be maintained under a blanket insurance policy.

8.2 Landlord shall at all times during the term hereof keep in force a combined single limit policy or policies of Commercial General Liability Insurance or an endorsement on a blanket liability insurance policy or policies insuring against any and all damages and liability on account of, or arising out of, injuries or damage to persons or property within the Shopping Center, in the amount of at least Three Million and 00/100 Dollars (\$3,000,000.00) on an occurrence basis.

8.3 Commencing on the Commencement Date, Tenant shall reimburse Landlord for its Pro Rata Share of the premium costs of the insurance described in Sections 8.1 and 8.2 above within twenty (20) days after receipt by Tenant of a true copy of the insurance premium billing therefor and a statement in writing from Landlord setting forth the amount of Tenant's proportionate share. Landlord estimates that Tenant's Pro Rata Share of such insurance costs for the first year of the term hereof shall be \$0.20 per square foot of space within the Premises. In no event, however, shall Tenant's Pro Rata Share of the cost of such insurance include any contribution toward earthquake or flood. Tenant shall be named as an additional insured on all policies of liability insurance for which Tenant is obligated to pay its proportionate share pursuant to the requirements of this Section 8.3.

8.4 Tenant shall at all times during the term hereof keep in force Special Form Property Insurance in the full amount of one hundred percent (100%) full replacement value of its leasehold improvements, trade fixtures, equipment, merchandise and other personal property located within the Premises, together with storefront plate glass, against any peril customarily covered by standard Special Form Property Insurance. So long as Tenant has a tangible net worth of at least \$75,000,000, Tenant may self-insure some or all of the foregoing risks.

8.5 Tenant shall at all times during the term hereof keep in force a combined single limit policy of liability insurance, or an endorsement on a blanket liability insurance policy or policies, against any and all damages and liability on account of, or arising out of, injuries or damage to persons or property in the Premises, resulting from acts or omissions of Tenant, its agents or representatives, in the amount of One Million and 00/100 Dollars (\$1,000,000.00). Tenant shall cause Landlord to be named as an additional insured on all liability policies maintained by Tenant related to the Premises.

8.6 Landlord and Tenant each agree to deliver to the other certificates of insurance evidencing the existence in force of the policies of insurance described in this Article 8 upon the written request of the other party. All of the policies of insurance required to be maintained hereunder shall be issued by an insurer licensed to do business within the state in which the Premises are located, which insurer is rated "A-X" or better in Best's Insurance Reports and which certificate shall provide that such insurance shall not be canceled or materially amended unless ten (10) days' prior written notice of such cancellation or amendment is given to the other party.

8.7 During the term hereof, Landlord covenants to maintain the insurance required under Sections 8.1 and 8.2 hereof at rates which are comparable for similar shopping centers located in the county in which the Shopping Center is located.

8.8 A. Tenant, on behalf of itself and its insurer, hereby waives and releases any and all right of recovery against Landlord, including Landlord's employees and agents, arising during the term of this Lease, for any and all loss or damage to any property located within the Premises, which loss or damage arises from the perils required to be insured against by Tenant under Section 8.4 hereof.

B. Landlord, on behalf of itself and its insurer, hereby waives and releases any and all right of recovery against Tenant, including Tenant's employees and agents, arising during the term of this Lease, for any and all loss or damage to the Premises or Shopping Center, which loss or damage arises from perils actually insured or required to be insured against by Landlord under Section 8.1 hereof.

C. Landlord and Tenant shall give written notice to its insurers of the provisions of this waiver and release and have its insurance policies endorsed to prevent invalidation of insurance coverage by reason of this waiver and release should the insurer of one party require an additional premium or cost in consideration of inclusion of the endorsement, it will be the responsibility of the party benefitting therefrom to pay such additional costs and, if not paid, such benefitting party will lose the benefit of this Section 8.8.

9. UTILITIES

Tenant shall pay for all water, gas, power and electric current and all other utilities used by Tenant on the Premises. Landlord agrees that as of the Commencement Date the Premises shall have readily available to it electric, water, gas, telephone, sewerage and other necessary utility lines to the extent shown in the agreed-upon Tenant Plans and Specifications, as well as refuse collection service. Landlord shall bear all costs for installation of utility lines to the Premises, including hook-up fees and separate meters. At Landlord's option, water may be submetered off Landlord's provided tap, and Tenant shall pay Landlord directly for the actual cost of Tenant's water usage.

10. PARKING AND COMMON AREAS

10.1 The Premises are a part of the Shopping Center depicted on Exhibit "A" which includes parking areas (including areas which are to be designated for employee parking), landscaping and other areas and facilities intended for the common use of the occupants of the Shopping Center and their agents, employees and customers. Tenant, as well as its agents, employees and customers, shall have the non-exclusive right to use all such areas which shall hereafter be collectively referred to as "common areas". Landlord shall maintain all such common areas in first-class condition, repair and cleanliness, including ice, snow, water, mud and debris removal, and free of any impediments to easy and safe movement, including having such common areas well-lighted during all business hours, at competitive rates and costs. During the term, Landlord's obligation shall, without limiting the generality thereof, include the following:

A. Resurfacing, including keeping the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such first-class substitute which shall in all respects be equal in quality, use and durability;

B. Cleaning, striping and lighting and all other tasks necessary to maintain the parking and common areas in a clean, safe, orderly and first-class condition, including, but not limited to, removal of trash, rubbish, garbage and other refuse;

C. Maintenance of any perimeter wall in good condition and repair;

D. Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines; and operating, keeping in repair and replacing when necessary such artificial lighting facilities as shall be required to sufficiently illuminate the Shopping Center to provide adequate protection for Tenant's agents, employees and customers; and

E. Maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping said areas at all times adequately irrigated, weeded, fertilized and fully planted.

10.2 Commencing on the Commencement Date, Tenant shall pay Landlord Tenant's Pro-Rata Share (as defined in Section 7.1 above) of the expenses incurred for the maintenance of the common areas as hereinabove described; provided, however, if any tenant or occupant of the Shopping Center directly performs or pays for any maintenance of the common areas, then the amounts so paid by such tenant or occupant shall be excluded from the common area maintenance costs and the gross leasable square feet of such tenant or occupant shall be excluded in determining Tenant's Pro-Rata Share of such maintenance costs. Tenant shall also pay to Landlord as an administration fee 10% of Tenant's pro-rata share of such maintenance expenses. Landlord estimates that Tenant's Pro Rata Share of such maintenance expenses for the first year of the term hereof shall be \$1.56 per square foot of space within the Premises. Landlord shall estimate the charges payable under this Article 10 based upon the prior year's actual expenses therefor (or, in the case of the first year of the Lease term, upon Landlord's reasonably anticipated expenses) and thereafter Tenant shall include one-twelfth (1/12th) of its annual pro-rata share of such expenses with each ensuing Minimum Rent payment until actual expenditures are computed by Landlord. Landlord shall reconcile actual expenditures and provide such accounting to Tenant within sixty (60) days of the close of each calendar year. The computation of operating expenses shall be made in accordance with generally accepted accounting principles. In the case of an under-payment, Tenant shall reimburse Landlord for such difference within twenty (20) days after Tenant's receipt of such accounting and Landlord's itemized bill therefor. In the case of an overpayment, Landlord shall reimburse Tenant for such difference together with Landlord's accounting to Tenant. Landlord shall keep accurate records showing, in detail, all expenses incurred for common area maintenance, together with copies of invoices therefor and evidence of payment thereof. At Tenant's election, these records shall, upon demand, be made available during business hours at the office of Landlord for inspection by Tenant, and/or upon Tenant's request, Landlord shall supply Tenant with copies of invoices to support each year end accounting given to Tenant hereunder. If it is determined by a review of Landlord's records that Tenant has been over billed for its pro-rata share of common area expenses after any reconciliation, then Landlord shall immediately pay the difference to Tenant.

10.3 Notwithstanding anything contained to the contrary in this Lease, in no event shall Tenant's Pro-Rata share of common area expenses include any of the following:

A. Reserves for future expenses or contingencies;

B. Any and all of Landlord's capital costs, capital improvements, capital alterations, capital repairs, capital equipment, capital tools, and/or any financing related fees, costs and expenses, and professional fees and disbursements incurred in connection therewith, including, but not limited to, roof replacements and/or repairs, (including interior damages due to roof leaks) and costs associated with re-asphalting the parking areas; provided, however, that re-asphalting shall not be deemed to include re-coating, re-sealing and/or re-striping the parking areas or minor patchwork such as pot hole repairs;

- C. Exterior building maintenance and painting;
- D. Except as expressly permitted above, Landlord's overhead or administrative costs including, but not limited to, executive, property manager and personnel salaries and/or business-related expenses;
- E. Any management fees;
- F. Costs incurred in connection with the initial construction of the Shopping Center, signs which identify other tenants of the Shopping Center, and initial landscaping thereof, or the costs of repairing any defects in the design, materials, or workmanship of the Premises or Common Areas;
- G. Advertising and promotional expenditures, or seasonal decorations;
- H. Accounting and legal fees attributable to any matters concerning any other tenant, prospective tenant, or other occupants of the Shopping Center;
- I. Costs attributable to repairing or maintaining items which are covered by warranties or insurance required to be maintained by Landlord;
- J. Costs attributable to repairs or maintenance performed in another tenant's or occupant's exclusive space which is not part of the common areas;
- K. Costs which are reimbursable to Landlord by insurance or paid solely by other tenant(s) as a result of provisions contained in their specific leases or by third parties pursuant to law or contract;
- L. Depreciation and amortization of equipment or debt;
- M. Any and all of Landlord's payments for loan principal or interest, together with expenses thereto related in connection with such financing or any refinancing during the term of this Lease, and/or ground lease rental payments;
- N. Any and all costs of selling, exchanging or refinancing the Shopping Center;
- O. Costs incurred due to violations by Landlord of any of the terms and conditions of any lease in the Shopping Center;
- P. Costs attributable to seeking and obtaining new tenants for, as well as retaining existing tenants in, the Shopping Center, including marketing fees, advertising expenses, brokerage commissions, rent or other rent concessions, vacancy costs, and/or to prepare space for such tenants;
- Q. Any and all of Landlord's costs to compel full performance under leases with all prior, existing, and prospective tenants in the Shopping Center, including without limitation all legal fees, costs and expenses to collect rent arrears and recover possession;
- R. Utility costs attributable to kiosks;
- S. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord;

T. Cost of services paid to Landlord, or to subsidiaries or affiliates of Landlord for services in the Shopping Center to the extent the same exceeds the cost of such services rendered by unaffiliated third parties on a comparable competitive basis;

U. Any sales, use, income, excise, and/or franchise taxes;

V. Any other costs that under generally accepted accounting principles and practices would not be considered an expense;

W. Costs of sculptures, paintings or other art work in the Common Areas;

X. Costs of complying with any statutes, codes, ordinances or regulations which are in effect from time to time during the term of the Lease including, but not limited to any environmental or ADA matters; and

Y. Costs of maintenance, repair and/or insurance of any outparcels to the extent that they are separately maintained, insured and/or paid for by the users of such outparcels.

10.4 Landlord covenants that during the term, that no buildings, structures, improvements, fences, barriers or other obstructions, except improvements and amenities which are incidental to the operation and maintenance of the common areas, shall be placed, constructed or maintained in the "Tenant's Protected Area", depicted on Exhibit "A". Landlord shall keep all walkways, driveways, doorways, parking areas, and other common areas open and accessible at all times, except for temporary closing to make repairs, maintain and resurface. In no event shall Landlord make material improvements to the parking areas during the months of October through January except in case of emergencies. Furthermore, in no event shall (a) the ratio of the number of parking spaces available for cars to the amount of gross leasable area within the Shopping Center be reduced below four (4) parking spaces for each 1,000 square feet of gross leasable area unless caused by eminent domain; and (b) there be any material interference in the access to the Premises from the abutting public thoroughfares and/or the common area caused by Landlord.

10.5 Tenant has entered into this Lease in reliance upon representations by Landlord that the Shopping Center, excluding the Outparcels, is and will remain primarily retail in character, no part of which (excluding the Outparcels) shall be used as a gymnasium, dance hall, billiard or pool hall, massage parlor (except as part of a salon or other spa-type use), movie or live theater, bowling alley, skating rink, automobile dealership, car wash, catering establishment (except catering incident to a restaurant use), assembly hall, entertainment or amusement facility (such as a video arcade or comedy club), night club, tavern or bar (except incidental to a full service restaurant), dry cleaning plant (unless operated as part of a full service retail dry cleaning and laundry service) flea market or adult bookstore [which is defined as a bookstore, a substantial portion of the inventory of which is not available for sale to children under eighteen (18) years of age because it explicitly deals with or depicts human sexuality].

10.6 [Intentionally Deleted]

11. REPAIR AND MAINTENANCE

11.1 Tenant shall, at its sole cost and expense, maintain the interior of the Premises and the storefront thereof (except for Landlord's maintenance obligations under Section 11.2 hereof), including without limitation, all doors, interior walls, floors, ceilings, windows, glass,

utilities within the exterior walls of the Premises and exclusively serving the Premises, and all mechanical equipment, in good repair and good condition, reasonable wear and tear and damage by casualty excepted, and will so deliver the Premises to Landlord at the expiration or earlier termination of this Lease. Tenant's maintenance responsibilities shall include the routine maintenance of the HVAC system for the Premises. Landlord shall warrant and be responsible for replacement of the HVAC system for the first year of the Term. Thereafter, Tenant shall be responsible for the repair and replacement of the HVAC system. Upon Tenant's request to Landlord, Landlord will assign to Tenant or enforce for Tenant's benefit all available warranties by subcontractors, suppliers, manufacturers and materialmen for construction of that portion of the Premises which is Tenant's responsibility including, without limitation, all HVAC warranties. Notwithstanding anything contained to the contrary herein, in no event shall Tenant have any obligation to repair any damage or defects caused by the acts or omissions of Landlord or its agents or contractors.

11.2 Landlord shall, at its sole cost and expense, not subject to reimbursement by Tenant, maintain, repair and replace the foundation (including separation of floor covering due to the foundation splitting), roof (including damages to the interior of the store, and ceiling tiles damaged as a result of water leakage), exterior walls (other than the doors and glazing) and structural elements of the Premises, gutters and downspouts and all wiring, plumbing, pipes, conduits and other utilities which are not exclusively located within the Premises and except in the event of an emergency, Landlord shall give Tenant at least fifteen (15) days prior written notice of any work it is required to perform pursuant to this Section 11.2 which may affect Tenant's use and/or occupancy of the Premises. All repairs and maintenance performed by Landlord pursuant to this Section 11.2 or pursuant to Section 10 shall be performed at such time as to minimize the disruption to the conduct of Tenant's business. Landlord's repairs hereunder shall comply with all federal, state, county and municipal laws and ordinances and all rules, regulations and orders of duly constituted governmental authority having jurisdiction thereof. In the case of an "emergency", if Landlord fails to immediately undertake to repair or maintain the Premises or common areas as required pursuant to this Section 11.2 or pursuant to Section 10.1 after oral notice from Tenant, Tenant may perform the repairs or maintenance and deduct the cost thereof from the rentals next falling due hereunder, until the entire amount is absorbed, in addition to any other remedies Tenant may have hereunder or at law or in equity. For purposes of the foregoing, an "emergency" is a condition that poses an immediate threat of bodily injury to persons or damage to property.

11.3 [Intentionally Deleted]

11.4 Landlord further agrees to secure any vacant space adjacent to the Premises, and also to construct the walls and roof of the Premises, both in such a manner so as to prevent the ease of entry thereto by unauthorized persons.

12. ALTERATIONS

12.1 Except as hereinafter provided, Tenant may make non-structural, non-exterior, alterations or improvements to the Premises, in a good and workmanlike manner, and in conformity with all laws, ordinances and regulations of public authorities having jurisdiction over the Shopping Center, without Landlord's prior consent. In so altering or improving the Premises, Tenant may remove all of the fixtures and equipment in the Premises provided Tenant shall replace any of the aforesaid with new fixtures or equipment. Tenant shall not make any alterations to the foundation, roof, exterior walls, gutters and downspouts, exterior signage, marquees or any structural portions of the Premises without first obtaining the written consent of Landlord, which shall not be unreasonably withheld. Notwithstanding the foregoing, Tenant shall be entitled to install any exterior signage which is code-compliant and compliant with applicable recorded signage

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restrictions. Landlord shall give Tenant fifteen (15) days prior written notice of any alterations to the Premises which may affect Tenant's use and/or occupancy of the Premises. Upon termination of this Lease, Landlord will accept the Premises as altered without any further obligation upon Tenant to restore the Premises to its former condition.

13. MECHANICS' LIENS

13.1 Tenant shall pay or cause to be paid prior to delinquency all costs for work done by it or caused to be done by it on the Premises and Tenant will keep the Premises free and clear of all mechanics' liens and other liens on account of work done by or for Tenant relating thereto. Tenant shall hold Landlord harmless from and indemnify and defend Landlord against any and all liens, claims, demands, liability, loss, cost and expense (including, without limitation, reasonable attorneys' fees) on work performed for or materials or supplies furnished to Tenant, which relate to the Premises.

13.2 If Tenant shall desire to contest any claim of lien, it shall furnish Landlord reasonable security of the value or amount of the lien, plus estimated costs and interest. If a final judgment establishing the validity or existence of a lien for any amount is entered by any court of competent jurisdiction, Tenant shall pay and satisfy the same at once.

13.3 Landlord shall keep the Premises free and clear of all mechanics' liens and other liens on account of work done by or for Landlord relating thereto. Landlord shall hold Tenant harmless from and indemnify and defend Tenant against any and all liens, claims, demands, liability, loss, cost and expense (including, without limitation, reasonable attorney's fees) on work performed for or materials or supplies furnished to Landlord, which relate to the Premises.

14. DAMAGE AND DESTRUCTION

14.1 If, during the term of this Lease, the Premises are damaged or destroyed by a casualty to the extent that rebuilding or repairs cannot reasonably be completed within two hundred seventy (270) days from the date of damage Tenant may, at its option, terminate this Lease effective on the date of damage or destruction, by notice to Landlord within thirty (30) days of such damage or destruction. If Tenant does not so terminate this Lease, or if the improvements are damaged or destroyed such that rebuilding or repairs may be completed within two hundred seventy (270) days from the date of damage or destruction, then this Lease shall not terminate, and Landlord shall proceed forthwith to rebuild or repair such improvements to substantially the condition in which they existed immediately prior to any damage or destruction except for Tenant's furniture, fixtures, equipment, inventory or other personal property. If the entire Premises are damaged or destroyed or so much of the Premises are damaged or destroyed such that Tenant, in Tenant's reasonable business judgment, elects not to continue its business, all Minimum Annual Rent and other charges due hereunder shall abate from the date of damage or destruction to the earlier of (i) ninety (90) days after the date on which Landlord's architect or contractor in charge of the rebuilding or repair certifies to Tenant in writing that the Premises have been substantially completed and are ready for occupancy and Landlord has received all approvals which may be required from any governmental agency relating thereto, or (ii) the date on which Tenant reopens for business in the Premises.

14.2 In the event less than the entire Premises are damaged or destroyed and Tenant elects to continue to do business in the Premises during the period of repair or rebuilding, Minimum Annual Rent shall equitable abate based on the amount of floor area that is unusable during such repair and rebuilding.

14.3 Landlord shall not be required to rebuild or repair any damage to the Premises occurring during the final thirty-six (36) months of the Initial Term unless Tenant exercises in writing, within ten (10) business days after receipt of Landlord's written notice that it intends not to effect repairs or rebuilding, any option to extend given Tenant hereunder. Landlord's notice must be delivered to Tenant by no later than thirty (30) days after the occurrence of casualty loss. If Tenant does not elect to extend within such ten (10) business day period, this Lease shall terminate effective as of the date of damage or destruction.

14.4 If more than twenty-five percent (25%) of the gross leasable area in the Shopping Center, excluding the Outparcels, or if a substantial part of the common areas, including, without limitation, twenty-five percent (25%) or more of the parking areas, is damaged or destroyed, and Landlord does not restore such area to substantially the condition in which it existed immediately prior to such damage or destruction within two hundred seventy (270) days, Tenant shall have the right to terminate this Lease by written notice to Landlord at any time after the expiration of such two hundred seventy (270) days but prior to the date Landlord completes such restoration. In the event Tenant does not elect to terminate this Lease as above provided, but if Tenant is unable to operate as a result of such destruction, Tenant's obligations to pay Minimum Annual Rent and all other charges due Landlord from Tenant hereunder shall be proportionally abated from the date of damage or destruction to the earlier of (i) ninety (90) days after the date on which Landlord's architect or contractor in charge of rebuilding or repair certifies to Tenant in writing that the portion of the Shopping Center so affected has been substantially completed and Landlord has received all approvals which may be required from any governmental agency relating thereto, or (ii) the date upon which Tenant reopens for business.

15. EMINENT DOMAIN

15.1 If, during the term of this Lease, as a result of a condemnation proceeding or transfer in lieu thereof, a substantial or material portion of the Shopping Center, excluding the Outparcels, including, without limitation, any part of the Premises, is taken, Tenant may, within thirty (30) days following the date of such taking, terminate this Lease upon written notice to Landlord, which termination shall be effective as of the date of such taking. In the event of a taking of a portion of the Premises where Tenant does not elect to terminate this Lease, Landlord shall promptly and diligently restore the Premises to as near their condition prior to such taking as is reasonably possible, and the Minimum Annual Rental and other charges due hereunder shall be suspended until the earlier of (i) ninety (90) days after written certification from Landlord's architect or contractor that the Premises have been substantially completed and are ready for occupancy by Tenant or (ii) the date on which Tenant re-opens for business in the portion of the Premises so affected. Provided, however, Landlord shall not in such instance be required to expend more than the amount of proceeds received by Landlord as a result of such condemnation. Minimum Annual Rent and any other charges due from Tenant under this Lease which are based upon the square footage of the Floor Area of the Premises shall thereafter be reduced in proportion to the square footage eliminated or taken from the Premises. Nothing herein contained shall prevent Landlord and Tenant from prosecuting claims in any condemnation proceedings for the value of their respective interests. Landlord shall be entitled to the condemnation award attributable to the real property and improvements made by Landlord, and Tenant shall be entitled to the condemnation award attributed to the value of Tenant's leasehold interest hereunder and for the taking of its fixtures and equipment, leasehold improvements, relocation expenses, goodwill, loss of business or other award not related to the value of the real property. No award to the Tenant shall diminish the award payable to Landlord hereunder. As used in Articles 14 and 15 of this Lease, a "substantial part" or "substantial portion" of the premises, Shopping Center or common areas, as the case may be, means a portion of the applicable area, the taking or damage of which results in a material disruption of the conduct of Tenant's business on the Premises.

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16. TENANT'S DEFAULT

16.1 If Tenant should be in default in the performance of any of its obligations under this Lease, which default continues for a period of more than thirty (30) days [or more than ten (10) days in the event of a default resulting from non-payment of rent or other charges hereunder], after receipt of written notice from Landlord specifying such default, or if such non-monetary default is of a nature as to require more than thirty (30) days to remedy and continues beyond the time reasonably necessary to cure, Landlord may, in addition to any other remedy available at law or in equity, upon written notice, terminate this Lease and retake possession of the Premises and remove all persons and property therefrom. Landlord may also re-enter and retake possession of the Premises without terminating this Lease and hold Tenant liable for the difference in the rent and other amounts paid by any sublessee (if any) of the Premises and the rents and other amounts payable by Tenant hereunder.

17. LANDLORD'S DEFAULT

17.1 If Landlord should be in default in the performance of any of its obligations under this Lease, which default continues for a period of more than thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default is of a nature to require more than thirty (30) days for remedy and continues beyond the time reasonably necessary to cure [unless Landlord has undertaken procedures to cure the default within such thirty (30) day period and diligently pursues such efforts to cure to completion], Tenant may incur any expenses necessary to perform the obligation of Landlord specified in such notice and deduct such expense from the rents next falling due, until the entire credit is absorbed, in addition to any other remedies Tenant may have hereunder or at law or in equity. Landlord's performance of its covenants and agreements herein contained shall not be a condition precedent to Landlord's right to collect rents or to enforce this Lease, it being understood that such covenants and agreements are independent covenants.

18. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT

18.1 Tenant shall, upon Landlord's request, subordinate this Lease to any lien placed by Landlord upon the Premises, or the Shopping Center or building of which the Premises form a part; provided, that such lien, by its terms or by separate written agreement with Tenant, provides that if Tenant is not then in default under this Lease, this Lease shall not terminate as a result of the foreclosure of such lien, or any deed or other transfer in lieu thereof and Tenant's rights under this Lease shall continue in full force and effect and Tenant's possession of the Premises shall be undisturbed except in accordance with the provisions of this Lease. Tenant will, upon request of the lienholder, be a party to such an agreement, if such Agreement does not alter or modify this Lease, and will agree that if such lienholder succeeds to the interest of Landlord, Tenant will attorn to said lienholder (or successor-in-interest of the lienholder) as its landlord under the terms of this Lease.

18.2 In the event Landlord, as of the date of the execution of this Lease, has a lender for the Shopping Center, the Premises and/or the land thereunder, Landlord shall, at Landlord's expense, obtain from said lender, within thirty (30) days after the execution of this Lease, an original written agreement in the form which is attached hereto as Exhibit "D" ("Non-Disturbance and Attornment Agreement") from lender(s), which is signed and acknowledged by such lender. If Landlord fails to timely deliver such Agreement(s), as applicable, Tenant shall have the right to cease the payment of Minimum Annual Rent and all other charges due Landlord from Tenant hereunder and Tenant shall pay Landlord in lieu thereof, the lesser of one-half (1/2) Minimum

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Annual Rent otherwise due or one percent (1%) of Tenant's Gross Sales, monthly, thirty (30) days in arrears until such time of the delivery of such Agreement(s) to Tenant. At such time as such Agreement is delivered, all rentals and other charges which would have otherwise been due hereunder shall be paid in full to Landlord.

19. ASSIGNMENT AND SUBLETTING

19.1 Tenant shall have the right to assign this Lease or sublet the entire Premises (except in the case of a Concessionaire as set forth in clause E. below), without the consent of Landlord (a "Permitted Transfer"):

- A. To any corporation with which Tenant may merge or consolidate; or
- B. To any corporation which acquires any of the following:
 - (i) majority of Tenant's other stores; or
 - (ii) a majority of Tenant's stores in the State in which the Premises are located; or
 - (iii) all or substantially all of the shares of stock or assets of Tenant; or
- C. To any corporation which is a parent or subsidiary of Tenant; or
- D. To any corporation which is the successor corporation in the event of a corporate reorganization; or
- E. To any concessionaire, franchisee, or licensee (collectively or individually referred to as a "Concessionaire") of Tenant, for the operation of a portion of the business to be conducted in the Premises as an incidental part of Tenant's overall grocery store operation.

19.2 Except with respect to a Permitted Transfer, any proposed assignment or sublease shall be subject to Landlord's prior written consent which consent shall not be unreasonably withheld or delayed; provided that it shall be unreasonable for Landlord to withhold such consent in the case of any assignment or subletting to a person or entity (i) whose proposed use of the Premises does not violate any then-existing use restriction or exclusive affecting the Shopping Center; (ii) whose proposed use of the Premises does not adversely affect Landlord's then existing "tenant mix"; and, (iii) whose proposed operation is consistent with the standards and quality of the operation of the Shopping Center. Notwithstanding the forgoing, in the case of an assignment or in the case of a subletting of more than 10,000 square feet of floor area, Landlord shall have the right to terminate this Lease effective as of the proposed effective date of the assignment or subletting by giving Tenant written notice thereof within 15 business days after Landlord's receipt of said notice from Tenant, provided that if Landlord exercises such right to terminate, then Tenant shall have the right to nullify such termination by withdrawing its proposed assignment or subletting by written notice to Landlord given within five business days after receipt of Landlord's termination notice. If Landlord elects not to so terminate this Lease in connection with any proposed assignment or subletting, Landlord shall continue to have the right to disapprove same in its reasonable discretion and shall continue to have the right to terminate this Lease with respect to future proposed assignments or sublettings. However, if Landlord in the exercise of its reasonable discretion, elects to approve a proposed assignment or subletting, all cash or other

proceeds of any assignment, such proceeds as exceed the rentals called for hereunder in the case of a subletting and all cash or other proceeds of any other transfer of Tenant's interest in this Lease shall be paid to Landlord, and Tenant hereby assigns all rights it might have or ever acquire in any such proceeds to Landlord. Upon any assignment or sublease of less than the entire Premises, the determination as to any responsibility for Tenant payment of excess under the previous provision shall be made by prorating the rent according to the percentage of the Premises so assigned or sublet. Any assignment, subletting or other transfer of Tenant's interest in this Lease shall be for an amount equal to the then fair market value of such interest. Each assignee or transferee shall assume and be deemed to have assumed this Lease and shall be jointly and severally liable with Tenant for the payment of rent, percentage rent, additional rent, adjustments of rent, and for the performance of all terms, covenants, conditions and agreements herein contained on Tenant's part to be paid or performed during the term of this Lease.

19.3 Notwithstanding any such assignment or subletting under the terms of this Section 19, both Tenant and any guarantor of this Lease acknowledge that, notwithstanding such assignment or sublease and the consent of Landlord thereto, and whether or not the assignment or sublease is a Permitted Transfer, both Tenant and any guarantor of this Lease will not be released or discharged from any liability whatsoever under this Lease and will continue to be liable thereon with the same force and effect as though no assignment or sublease had been made. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or to be a consent to the assignment of this Lease or the subletting of the Premises.

20. INDEMNIFICATION

20.1 With respect to its use, occupancy and maintenance of the Premises, Tenant shall hold Landlord harmless from and indemnify and defend Landlord against any and all liens, claims, demands, liability, loss, cost and expense (including, without limitation, reasonable attorneys' fees) to any person or property caused or claimed to be caused by or resulting from an act, omission or negligence of Tenant or its employees or agents; provided, that Landlord shall, upon becoming aware of any such event, promptly notify Tenant of same.

20.2 With respect to its maintenance of the Premises, and its operation and maintenance of the common areas and the manner of design and construction of the Shopping Center including, but not limited to, the Premises, Landlord shall hold Tenant harmless from and indemnify and defend Tenant against any and all liens, claims, demands, liability, loss, cost and expense (including, without limitation, reasonable attorneys' fees) to any person or property caused or claimed to be caused by or resulting from any act, omission or negligence of Landlord or its employees or agents; provided, that Tenant shall, upon becoming aware of any such event, promptly notify Landlord of same.

21. QUIET POSSESSION AND TITLE OF LANDLORD

21.1 Landlord covenants that upon Tenant's paying the rent and performing and observing the agreements and conditions herein contained, Tenant shall peaceably and quietly have, hold and enjoy the Premises during the term of this Lease without any manner of hindrance or interference with its quiet enjoyment and possession of the Premises.

21.2 Landlord represents and warrants that Landlord has good marketable title to the Shopping Center, excluding the Outparcels, and to the Premises, free and clear of any matters of record and/or any governmental regulations including, without limitation, use limitations, zoning

codes or ordinances, which prevent the Shopping Center or the Premises from being used as set forth in this Lease.

22. SIGNS AND PROMOTIONS

22.1 Tenant shall have the right, at its own expense, to maintain within the interior of the Premises any signs and advertising matter customary or appropriate in the conduct of Tenant's business. Tenant shall have the exclusive right to the use of the exterior surface of the Premises for its standard exterior building sign and such other advertising matter, banners, lettering, decal signs or decorations of any kind whatsoever; provided, however, that the same shall be subject to the requirements of any governmental authorities having jurisdiction thereof and to Landlord's reasonable approval. Landlord hereby expressly approves Tenant's exterior building signs (one facing Johnston Road Extension and one facing Community House Road) as set forth in Exhibit "E" attached hereto and incorporated herein by this reference ("Tenant's Sign Plan"). Tenant shall have the right, at its own expense, to utilize the common area of the Shopping Center during Tenant's grand opening for promotional balloons and banners and such other advertising matter as is typically employed by Tenant in connection with a grand opening at one of its new store locations.

22.2 Intentionally Omitted.

22.3 If Landlord constructs a pylon sign on the Shopping Center containing tenant signage, then subject to applicable codes and Landlord's reasonable prior approval, Tenant shall have the right to install its prototypical signs in the first (top) position on either side of such pylon sign, provided that Tenant elects to exercise such right within 15 days after Landlord gives Tenant written notice of the availability of such sign. If Tenant does not elect to exercise such right within such 15 days, then Tenant shall be deemed to have waived its rights under this Section 22.3. If Tenant exercises such right, Tenant shall be responsible for its proportionate share of the cost of designing, constructing, installing and providing utilities to such sign based on the ratio that the size of Tenant's signage thereon bears to the size of all occupants' signage thereon; provided that Tenant's proportionate share of such sign shall not exceed \$15,000. The pylon sign, if installed, shall contain complete electrical facilities to serve Tenant's illuminated sign.

22.4 If Landlord changes its sign criteria during this Lease, and Tenant is thereby caused to construct and install new signs to comply with such new criteria, Landlord shall reimburse Tenant for its reasonable costs and expenses in complying with such new criteria. Further, if Landlord changes the fascia of Tenant's building, so that it materially or detrimentally affects the appearance of Tenant's exterior sign(s), then Landlord shall reimburse Tenant's reasonable costs and expenses to change its exterior sign(s).

22.5 Notwithstanding anything contained herein to the contrary, Tenant acknowledges its signage shall conform to any design criteria required by local codes and ordinances.

23. WARRANTY AGAINST EXCLUSIVES

Landlord warrants to Tenant that while operating the Premises for the purposes set forth in Section 5.1 of this Lease Tenant will not be in violation of any prohibited or exclusive use agreements or clauses or other agreements which Landlord may have with other tenants, lenders, governmental authorities or any other parties. Landlord shall hold Tenant harmless from and indemnify and defend Tenant against any and all liens, claims, demands, liability, loss, cost and expense (including, without limitation, reasonable attorneys' fees) suffered or claimed to be suffered

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as a result of any such alleged violations pertaining to Tenant's use of the subject Premises.

24. RESTRICTIVE COVENANT/SHOPPING CENTER

As a material inducement for Tenant to execute this Lease, Landlord covenants, represents, warrants and agrees that no portion of the Shopping Center (excluding the Premises) shall be used as a grocery store or a Natural Pharmacy (as hereinafter defined), provided that:

(1) nothing herein shall prevent any occupant of the Shopping Center from selling food products sold by a grocery store so long as such sale is as an incidental part of its business and the total number of square feet of building area devoted to the display for the sale thereof does not exceed 1,000 square feet or such sale is by a restaurant; *provided, however*, that each of the following, if it exceeds 2,500 square feet of floor area, is prohibited in the Shopping Center and on Outparcel #2 but is not prohibited on Outparcel #1: (A) a delicatessen-style restaurant serving primarily deli-meat sandwiches (e.g., a "Panera Bread" in its current format in excess of 2,500 square feet), (B) a bakery, (C) a coffee and juice bar and (D) a self-service hot bar and salad bar; *provided further, however*, that none of the uses described in clauses (A) through (D) is prohibited if it is part of a sit-down restaurant with full or partial wait staff;

(2) nothing herein shall prevent an operator such as a "Walgreen's", "CVS", "Rite-Aid", "Eckerd" or other national pharmacy operation from selling food items as part of its business as is typical in its other stores; and

(3) notwithstanding the foregoing, a store such as a General Nutrition Store (GNC) or Vitamin World shall be permitted.

The foregoing restriction does not apply to the following leases, which have been executed prior to the date hereof: Red Brick Pizza and Quizno's, but to the extent Landlord has the right to consent to future uses for such premises, it shall apply the restrictions contained in this Section 24 to such future uses. For purposes of this Lease, "Natural Pharmacy" means a pharmacy operation that derives at least 50 percent of its annual revenue from the sale of botanic and herbal medicines, homeopathic preparations and natural personal care products and nutraceuticals. An example of a Natural Pharmacy is "Pharmaca Integrative". Pharmacies such as "Walgreen's", "CVS", "Rite Aid" and "Eckerd", and any similar national or regional pharmacy operation that does not advertise itself as a "natural pharmacy", are not restricted by the foregoing prohibition of Natural Pharmacies regardless of the products they sell.

Landlord acknowledges that, in the event of any default under this Section 24, Tenant shall have the right, after 30 days written notice to Landlord and failure to cure, to all remedies available at law and in equity, including the right to cancel this Lease or to relief by injunction, or otherwise, at Tenant's option, and Tenant's remedies shall be cumulative rather than exclusive. In addition, after the date Landlord receives such notice, Minimum Annual Rent shall be reduced by 25 percent until such breach is cured. Notwithstanding the foregoing, in the event the foregoing restrictions are violated by a tenant or user acting in violation of its lease or restrictive covenant, then Tenant shall not have the right to terminate this Lease so long as Landlord is diligently attempting to stop such violation (including, if necessary, initiating legal proceedings against such tenant).

25. RESTRICTIVE COVENANT/ADJACENT CENTER

The parties acknowledge that an affiliate of Landlord owns the land on the west side of Johnston Road and more particularly shown on Exhibit "C". Prior to the Commencement Date, Landlord shall cause the Declaration of Restrictive Covenant attached hereto as Exhibit "H" (the

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"Declaration") to be recorded against the Adjacent Land. Once the Declaration is recorded, Landlord shall have fulfilled its obligations under this Section 25, and Tenant's remedies for any breach of the terms of the Declaration shall be against the owner of the Adjacent Land as set forth in the Declaration.

26. HOLDING OVER

If Tenant shall remain in possession of the Premises or any portion thereof after the expiration of the term of this Lease then, in the absence of an agreement in writing between Landlord and Tenant, the party remaining in possession shall be deemed a tenant at sufferance, until acceptance of rent by Landlord, at which time the person in possession shall become a tenant from month-to-month at the same rental and under the same terms and conditions as existed immediately prior to the expiration of the Lease.

27. REMOVAL OF FIXTURES AND PERSONAL PROPERTY

At any time during or at the expiration or other termination of the Term of this Lease, or any Options thereof, Tenant shall have the absolute and unrestricted right to remove from the Premises any or all trademark items, trade fixtures, equipment (including without limitation audio-visual units, walk-up audio-visual units, signs, safes, racks, and removable partitions), furniture and other personal property installed or paid for by Tenant, howsoever affixed to the Premises; provided, however, Tenant shall repair any material damage to the Premises resulting from the removal of such trade fixtures.

28. HAZARDOUS MATERIALS

Notwithstanding any other provision in this Lease, except for any Hazardous Materials introduced by Tenant or its employees, agents or contractors, in the event that any investigation, removal, remediation, clean-up or other action in connection with Hazardous Materials (as defined below), is required by any federal, state or local environmental, health and/or safety related law, regulation, standard, court decision, ordinance, rule, code, judicial or administrative order or decree, directive, guideline, permit or permit condition (collectively, "Environmental Laws") applicable to the Premises or the Shopping Center, during the term of this Lease, Landlord (to the extent it is primarily liable under applicable law) shall be responsible for promptly performing such required investigation, removal, remediation, clean-up or other action at Landlord's sole expense, no part of which expense shall be passed through to Tenant. Landlord hereby agrees to indemnify, defend and hold harmless Tenant, its officers, directors, employees, agents and each of their respective successors and their assigns (collectively, "Indemnities") from and against any and all losses, damages, claims, judgments, liabilities, fines, penalties, fees, costs and expenses (including, without limitation, attorneys' fees) which arise during or after the term of this Lease as a result of the presence or suspected presence of any Hazardous Materials in, on, under or about the Premises or the Shopping Center, except only those Hazardous Materials present in, on, under or about the Premises or the Shopping Center due to the activities of Tenant. As used herein, the term "Hazardous Materials" means any chemical, substance, material, object, condition or waste, or combination thereof, which (a) is defined as a hazardous substance, hazardous material, hazardous waste, pollutant, toxic material or contaminant under any Environmental Law, (b) is a petroleum hydrocarbon, including crude oil or any fraction thereof, (c) may be hazardous to human health or safety of the environment due to its harmful or potentially harmful properties or effects, including, toxicity, corrosivity, flammability, explosivity, infectiousness, radioactivity, carcinogenicity or reproductive toxicity, or (d) is regulated pursuant to any Environmental Law.

Landlord shall deliver to Tenant upon the execution of this Lease a copy of Landlord's existing Phase I environmental report.

29. Intentionally Omitted.

30. **BONA FIDE DISPUTES**

In the event of a bona fide dispute between Tenant and Landlord, Tenant shall have the right, within the applicable notice and curative period, to notify Landlord of Tenant's desire to dispute the propriety of Landlord's claim of default. In the event such bona fide dispute relates to the payment of money, the notice of dispute, to be valid, shall be accompanied by payment of that portion of the sum due as to which Tenant does not take issue, limiting the notice of dispute to only the net amount actually disputed. The dispute notice shall be accompanied by a detailed statement as to the basis for Tenant's dispute. Such dispute may be litigated under the provisions of any simplified procedure for court determination of disputes applicable under the laws of the State in which the Premises are located if appropriate and available in such State, or, may be submitted to arbitration, in either of which events, all parties will join in a request for expedition in the disposition of any proceeding brought to resolve the dispute. In such circumstances, the time within which to cure any claimed default as to which a bona fide dispute has been raised will be extended to the date which is ten (10) days following the final determination of the arbitrators, court or other forum, if with respect to the payment of money, or thirty (30) days if with respect to any other term, provision, covenant, condition or agreement contained herein, or such additional time as is reasonably required to cure such default if Tenant commences such cure within said thirty (30) days and diligently prosecutes same to completion; or, in the event the dispute is resolved before any such final determination, within said ten (10) days, thirty (30) days, or such additional time as may be required as aforesaid, after the judgment, settlement or other resolution of the dispute.

31. **FORCE MAJEURE**

In the event of any act of Force Majeure, the act of Force Majeure shall serve to extend performance by such party for a period of time equal to such prevention, delay or stoppage, unless a shorter period is specifically provided for in this Lease. As used in this Lease, the term "Force Majeure" shall include, but not be limited to, the prevention, delay or stoppage encountered by either party hereto due to fire or other casualty, bad weather, inability to secure materials, strikes or labor disputes (over which said party has no direct or indirect bearing, in the resolution thereof, or if either party hereto does have said bearing, said dispute occurs despite either party's attempt to resolve same via good faith bargaining) directly affecting the performance of the party's obligations under this Lease, acts of God, acts of the public enemy or other hostile governmental action, civil commotion, and/or governmental restrictions, regulations or controls affecting the party obligated to perform (or of its contractors or subcontractors).

32. **NOTICE**

32.1 Whenever under this Lease a provision is made for any demand, notice or declaration of any kind or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other, it shall be in writing and served personally, or sent by registered mail or certified mail, return receipt requested, with postage prepaid, or sent by a nationally recognized overnight carrier with receipt signed therefore, addressed to Tenant or Landlord, as the case may be, at the appropriate address specified in Article 1 hereof. Either party may by like notice at any time and from time to time designate a different address to which notices shall be sent. Notices shall be effective when received (as evidenced by a delivery receipt) or receipt is refused

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33. MISCELLANEOUS

33.1 Interest. Except as otherwise provided herein, any sum accruing to Landlord or Tenant under the provisions of this Lease which shall not be paid when due shall bear interest at the rate of ten percent (10%) per annum from the date written notice specifying such non-payment is served upon the defaulting party.

33.2 Partial Invalidity/Severability. If any term, covenant, condition or restriction of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

33.3 No Partnership. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent, or of partnership, or of joint venture, or of any other association between the parties other than Landlord and Tenant.

33.4 Term Definition. All references to the "term" of this Lease shall include any extension of such term.

33.5 Time of the Essence. Time is of the essence of the performance of each provision of this Lease.

33.6 Waiver. The waiver of performance of any covenant, term or condition of this Lease by Landlord or Tenant shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

33.7 Gender and Captions. Words of gender used in this Lease shall be deemed to include other genders, and singular and plural words shall be deemed to include the other, as the context may require. Paragraph headings in this Lease are for convenience only, are not a part of the agreement of the parties, and shall not be used to interpret this Lease.

33.8 Successors. The terms, conditions and covenants herein contained shall inure to the benefit of and be binding upon the permitted assigns and other successors-in-interest of the parties hereto. The benefits of this Lease and burdens of this Lease, shall inure to the benefit of and will be binding upon parties hereto and their permitted successors and assigns. The term "successors" is used herein in its broadest possible meaning and includes, but is not limited to, every person succeeding to any interest in this Lease or the Premises of Landlord or Tenant herein, whether such succession results from the act or omission of such party.

33.9 Accounting Terms. All accounting terms not specifically defined in this Lease shall be construed in accordance with generally accepted accounting principles ("GAAP") and interpretations of the American Institute of Certified Public Accountants or its successors, consistently applied, as in effect from time to time, including, without limitation, applicable statements, bulletins and interpretations issued by the Financial Accounting Standards Board and bulletins, opinions, interpretations and statements issued by the American Institute of Certified Public Accountants or its committees.

33.10 Headings. Paragraph headings, numbers and underscoring have been set forth herein for convenience only, do not define or limit the provisions hereof, and have no significance whatsoever. The order in which the paragraphs appear in this Agreement has no

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significance whatsoever.

33.11 References. References in this Lease to "Sections", "Subsections", "Paragraphs", "Subparagraphs", "Exhibits", and "Schedules" are to sections, subsections, paragraphs, subparagraphs, exhibits and schedules herein and hereto unless otherwise indicated. References to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto. References to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

33.12 Consent. Wherever in this Lease Landlord or Tenant is required to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed.

33.13 Prompt Billing. All charges due from Tenant to Landlord for which Tenant must be billed by Landlord must be so billed within 24 months of the date the charge is incurred by Landlord or Landlord will have waived its right to reimbursement thereof.

33.14 Attorney's Fees. If either party hereto shall file any action or bring any proceeding against the other party arising out of this Lease or for the declaration of any rights hereunder, the prevailing party therein shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party as determined by the court, an arbitrator or by settlement. If either party ("secondary party") without its fault is made a party to litigation instituted by or against the other party ("primary party"), the primary party shall pay to the secondary party all costs and expenses, including reasonable attorneys' fees, incurred by the secondary party in connection therewith.

33.15 Estoppels. Within fifteen (15) days after a request by Landlord or Tenant, as the case may be, Landlord or Tenant shall execute and deliver to the other an estoppel statement. Such statement shall include representations (i) that this Lease is in full force and effect, (ii) that there are no uncured defaults in the other party's performance hereunder, and/or (iii) that not more than one (1) monthly installment of the Minimum Annual Rent has been paid in advance. Tenant may satisfy its obligations under this Section by delivering to Landlord a completed Estoppel Certificate in the form as attached hereto as Exhibit "F".

33.16 Site Plan. At any time throughout the term of this Lease within ten (10) days after Tenant's written request therefor, Landlord shall provide Tenant with a copy of the most current available site plan of the Shopping Center, which shall reflect: (a) the square footage of each individual premises currently leased therein; and (b) the names and exact locations of the respective tenants thereof; and (c) those premises in the Shopping Center, if any, which are not then currently occupied and open for business. If the circumstances existing shall be the same as existing at the time of the prior request, then Landlord shall certify that the state of events remain unchanged.

33.17 Change of Ownership. Landlord shall promptly notify Tenant in writing of any change in the ownership of the Shopping Center or of the Premises, and shall give the name and address of the new owner and instructions regarding the payment of rent. In the event of any change in or transfer of title of Landlord in and to the Shopping Center or the Premises, whether voluntary or involuntary, or by act of Landlord or by operation of law, Tenant shall be under no obligation to pay rents thereafter accruing to the new owner until Tenant shall have been duly notified of such change and given satisfactory proof thereof. In the event of any such transfer, the

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transferor shall be freed of all liability thereafter accruing hereunder provided that the new landlord shall assume all of the obligations on Landlord's part to be performed hereunder from and after the date of such transfer and a copy of such assumption is delivered to Tenant.

33.18 Memorandum of Lease. The parties hereto agree that neither shall record this Lease, but each shall execute the Memorandum of Lease attached hereto as Exhibit "G". The Memorandum of Lease shall be recorded in the land records of Mecklenberg County, North Carolina and the parties hereto shall each bear one-half (1/2) of the recording charges or transfer taxes therefor.

33.19 Brokers. Landlord and Tenant hereby represent and warrant that neither party has employed the services of a real estate broker in connection with the lease transaction created hereby other than Carolina Holdings, Inc. (By Tenant) and Core Properties (by Landlord) (the "Brokers"), and that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease. Each party hereby holds the other harmless from and shall indemnify and defend the other against any and all liens, claims, demands, liability, loss, cost and expense (including, without limitation, reasonable attorneys' fees) in connection with any claim for such commissions or fees by any third party. Landlord shall pay a broker commission equal to \$2.00 per square foot of the Premises to Core Properties and a fee equal to \$2.00 per square foot of the Premises to Carolina Holdings. In addition, Tenant shall pay Carolina Holdings a commission equal to \$1.00 per square foot of the Premises. The foregoing commissions shall be payable one-half upon full execution of this Lease and one-half upon the Commencement Date.

33.20 Preparer of the Lease. This Lease has been prepared by Tenant, and its professional advisors, and reviewed by Landlord and its professional advisors. Landlord, Tenant, and their separate advisors believe that this Lease is the product of all of their efforts, that it expresses their agreement, and that it should not be interpreted in favor of either Landlord or Tenant or against either Landlord or Tenant merely because of their efforts in preparing it.

33.21 Entire Agreement. Any agreements, warranties or representations not expressly contained herein shall in no way bind either Landlord or Tenant, and Landlord and Tenant expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Lease. This Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, whether written or oral, between Landlord and its agents and Tenant and its agents with respect to the Premises, building, common areas, Shopping Center or this Lease. This Lease constitutes the entire agreement between the parties hereto and no addition to, or modification of, any term or provision of this Lease shall be effective until and unless set forth in a written instrument signed by both Landlord and Tenant.

33.22 Choice of Law. This Lease shall be construed and enforced in accordance with the laws of the State in which the Premises are located.

33.23 Landlord's Exculpatory Clause. It is specifically understood and agreed that there shall be no personal liability of Landlord or any of its members in respect to any of the covenants, conditions, or provisions of this Lease. In the event of a breach or default by Landlord of any of its obligations under this Lease, Tenant shall look solely to any right of offset allowed by law against any amounts due hereunder or to the equity of the Landlord in the Shopping Center for the satisfaction of Tenant's remedies, it being understood and agreed that the exculpation of Landlord (and its successors and assigns) shall be absolute.

SIGNATURE PAGE
FOR
TENANT AND LANDLORD

Dated this 19th August day of July, 2003.

"LANDLORD"

TORINGDON MARKET, LLC

WITNESS

[Signature]

By:

[Signature]
Jonathan E. Kass,
Manager

Dated this 18th August day of July, 2003.

"TENANT"

EARTH FARE, INC., a North Carolina Corporation

BY:

[Signature] (SEAL)

WITNESS

[Signature]

ITS:

V.P. & CFO

Toringdon Market Charlotte, North Carolina

FUTURE
DEVELOPMENT
BY OTHERS

COMMUNITY HOUSE ROAD

OUTPARCEL #2

OUTPARCEL #1

STREETS OF
TORINGDON

EXHIBIT A
Site Plan
of Shopping Center

EAERK PARE
K 24,500 SF

OUTPARCEL #3

OUTPARCEL #4

OUTPARCEL #5

OUTPARCEL #6

OUTPARCEL #7

OUTPARCEL #8

OUTPARCEL #9

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OUTPARCEL #273

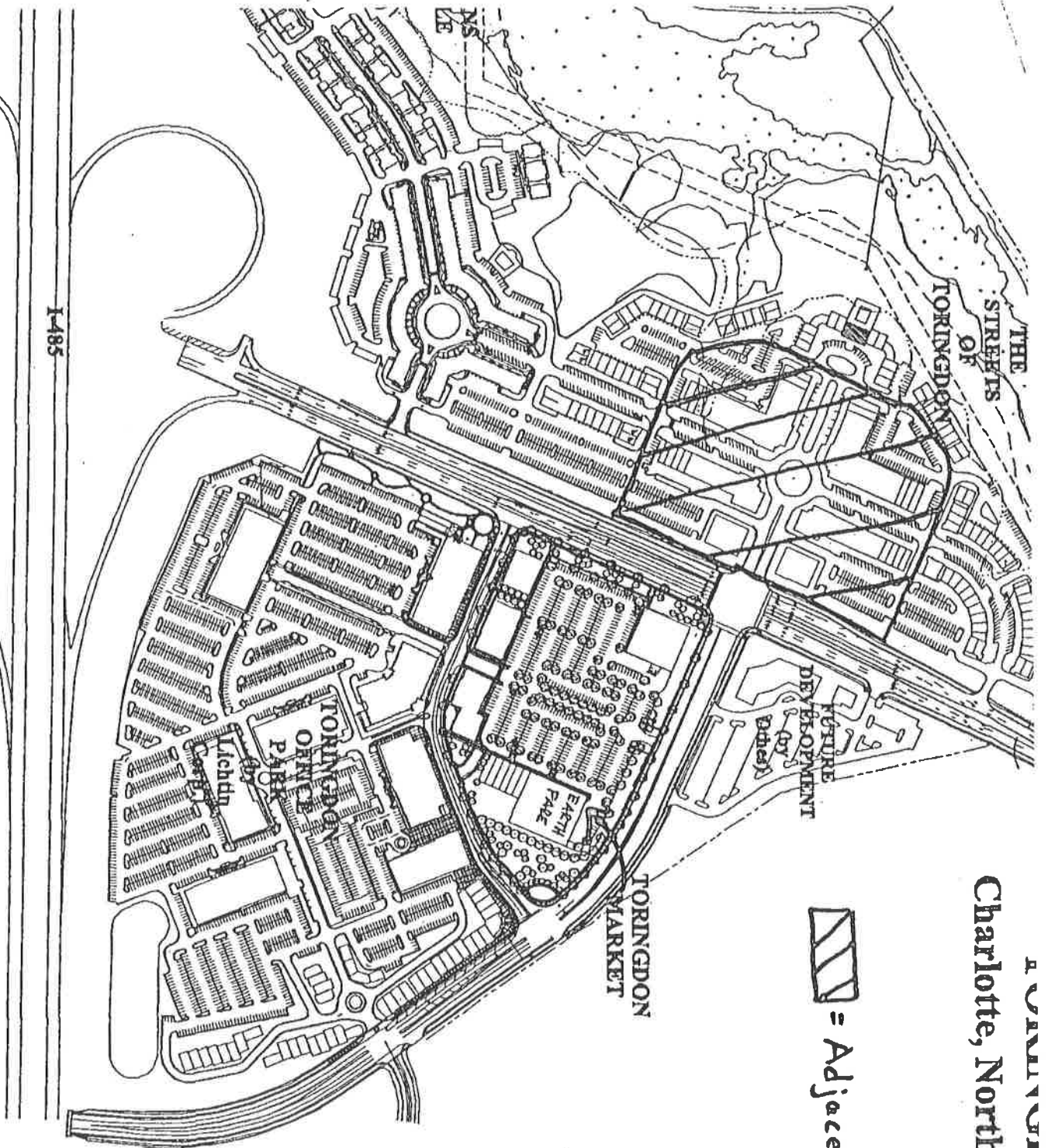
OUTPARCEL #274

OUTPARCEL #275

EXHIBIT "B"

LEGAL DESCRIPTION OF THE SHOPPING CENTER

Lot 2 of Toringdon Development as shown on Revised Final Plat of Toringdon Development – Phase 1, Map 2, dated February 2, 2002, and last revised June 28, 2002, sealed by Michael C. Sawhill, NCRLS L-3223, and filed for record on June 28, 2002, in Map Book 37, Page 787, in the Office of the Register of Deeds for Mecklenburg County, North Carolina.



ADJACENT
Charlotte, North Carolina

 = Adjacent Land

EXHIBIT C
Site Plan of Adjacent Land

EXHIBIT "D"

SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT

This SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE AGREEMENT ("Agreement") is made as of the _____ day of _____, 20____, by and between _____, with its principal office at _____ ("Lessee") and _____, with its principal offices at _____ ("Mortgagee") in connection with a mortgage loan by Mortgagee to _____, with its principal office at _____ ("Lessor").

WITNESSETH:

WHEREAS, Lessor and Lessee have entered into a lease agreement dated _____, _____ (the "Lease"), pursuant to which Lessor has leased to Lessee approximately _____ square feet of retail store space ("Premises") in a retail shopping center constructed or to be constructed by Lessor on a certain _____ acre parcel of real property ("Property") situated in the State of _____, County of _____ and City of _____, as more particularly described in Exhibit "A" attached hereto and made a part hereof;

WHEREAS, a Memorandum of Lease, dated _____, _____, was filed in the Official Records Volume _____, Page _____, of _____ County, _____;

WHEREAS, Lessor desires to obtain or has previously obtained from Mortgagee a mortgage loan;

WHEREAS, Mortgagee requires as a condition of making said loan that said loan be secured by a certain Open-End Mortgage, Assignment of Rents and Security Agreement on the Property ("Mortgage, which term shall include all modifications, amendments and replacements thereof"), and that the lien of said Mortgage be superior and prior to the Lease and/or that Lessee requires as a condition of entering into the Lease that Mortgagee enter into this Agreement;

WHEREAS, the Mortgage is dated effective _____, _____ and filed in the Official Records Volume _____, Page _____, Recorder's Office _____ County, _____;

WHEREAS, Lessee is willing to subject and subordinate its right, title, interest and claim in the premises to the lien of the Mortgage subject to the terms of this Agreement; and

NOW, THEREFORE, Mortgagee and Lessee hereby undertake and agree as follows:

1. Lessee, in consideration of the foregoing recitations and the other matters herein set forth, does hereby:

- (a) covenant and agree with Mortgagee, its successors and assigns, that all of the right, title, interest and claim of Lessee (including, but not limited to, its rights, options, interests, title, claim and privileges under the Lease, and all renewals and extensions thereof) is and shall be and remain at all times subject and subordinate to the lien of the Mortgage to Mortgagee for all

advances made or to be made under the provisions of the Mortgage or on the note secured thereby and to all modifications and extensions thereof, subject to the terms of this Agreement; and

- (b) covenant and agree that it and its successors and assigns shall, after Mortgagee has acquired the Property, look solely to the Premises and the Property, any income derived therefrom, proceeds from the sale thereof and to proceeds from insurance or condemnation proceedings, to the extent of Mortgagee's interests therein, for the satisfaction of any claim of Lessee against Mortgagee arising under the Lease or this Agreement and in any event shall not seek to impose personal liability on Mortgagee, any shareholder, officer, director or employee of Mortgagee or any affiliates, subsidiaries or related company.

2. Mortgagee, in consideration of the foregoing recitations, does hereby:

- (a) acknowledge receipt of a copy of the Lease and that the execution of the Lease by Lessor and the exercise by Lessee of its rights under the Lease does not constitute a default under the Mortgage; notwithstanding the foregoing, any default by Lessor under the Lease does constitute a default under the Mortgage;
- (b) covenant and agree with Lessee that in the event Mortgagee shall file one or more suits to foreclose the Mortgage or shall file any proceeding under the Mortgage or under the Mortgage Note or any other obligation secured thereby or shall exercise any rights given to the holder of the Mortgage under the Mortgage, Mortgagee will not join Lessee in the suit, action or other proceedings so long as Lessee is not then in default under any of the terms, covenants or conditions of the Lease beyond any applicable notice and cure period, except as may be necessary or required by applicable law, to subject the property described in the Mortgage to the indebtedness secured thereby;
- (c) covenant and agree with Lessee that, so long as Lessee shall not then be in default under any of the terms, covenants or conditions of the Lease beyond applicable notice and cure periods and subject to the terms of this Agreement, the possession by Lessee of the Premises and Lessee's rights thereto shall not be adversely disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise adversely affected by (i) any suit, action or proceeding by Mortgagee upon the Mortgage or the note or other obligation secured thereby, or by the foreclosure of the Mortgage or the enforcement by Mortgagee of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Premises or the Property or by any deed given in lieu of foreclosure, or by the exercise of any other rights given to Mortgagee under the Mortgage or other documents as a matter of law, provided that Mortgagee does not so covenant with respect to any action itself (such as, by way of illustration, but not limited to, actions in bankruptcy or solvency proceedings) by any other person or entity (other than Mortgagee, any other holder of the Mortgage or the Note or obligations secured thereby, or their or its successors and assigns) taken as a result of any suit, action or proceeding by Mortgagee,

any other holder of the Mortgage or the Note or obligations secured thereby, or their or its successors and assigns, described above, or (ii) any default by Lessor under the Mortgage or the note or other obligations secured thereby;

- (d) covenant and agree with Lessee that in the event Mortgagee shall file foreclosure proceedings, or shall file any other proceeding under the Mortgage or Note or other obligation secured thereby or shall exercise any rights given to the holder of the Mortgage in accordance with the foregoing, and shall succeed to the interest of Lessor, or its successors or assigns, under the Lease, whether through purchase at a sale pursuant to a judgment or decree of foreclosure and sale, by deed and assignment in lieu of foreclosure, or otherwise, and Lessee shall not then be in default under any of the terms, covenants or conditions of the Lease beyond applicable notice and cure periods, Mortgagee shall be bound to Lessee under all of the terms, covenants and conditions of the Lease, and Lessee shall, from and after such event, have the same remedies against Mortgagee for Mortgagee's breach of any covenant contained in the Lease that Lessee might have had under the Lease against Lessor if Mortgagee had not succeeded to the interests of Lessor; provided, however, that Mortgagee (and all of its rights, including, but not limited to, the right to collect the rents under the Lease) shall not be (i) liable or responsible for any act or omission of Lessor, its successors and assigns prior to the date Mortgagee acquires title to the Property, unless Mortgagee has been given prior written notice of and a reasonable period of time (not to exceed the applicable cure period set forth in the Lease plus thirty (30) days) and opportunity to cure such act or omission; (ii) subject to, or affected by, any offsets, defenses, causes of action, credits or counterclaims which Lessee might now or may hereafter have against Lessor, its successors and assigns, or any other person or persons unless same pertains to the prior landlord's failure to perform repairs or replacements required under the Lease and such failure continues from and after the date upon which the new owner succeeds to the interest of the landlord. Notwithstanding anything to the contrary in this Paragraph, in the event Mortgagee succeeds to the interest of Lessor under the Lease and due to a default of Lessor under the Lease, prior to such time, Lessee is then entitled under the Lease to offset against future rents and costs previously incurred by Lessee in curing the Lessor's defaults, then Lessee may offset against Mortgagee to the extent said offset is permitted under the terms of the Lease, and provided that before taking such offset for such costs against future rents due Mortgagee as successor Lessor, Lessee provides Mortgagee with evidence of such costs and the authorization therefore under the Lease reasonably satisfactory to Mortgagee (in any event, offsets under the Lease previously deducted before Mortgagee forecloses are not subject to challenge by Mortgagee); (iii) bound by any prepayment of rent which Lessee may heretofore or may hereafter have paid to Lessor, its successors or assigns, or to any other person or persons, excepting only any prepayment of not more than one month's rent and any prepayment of Additional Rent (as defined in the Lease) required under the Lease; (iv) bound by any amendment or modification of the Lease made without first obtaining Mortgagee's written consent thereto; or (v) responsible for the return of any security deposit(s) that Mortgagee has not received;

- (e) agree that, provided Lessee shall not then be in default under any terms, covenants or conditions of the Lease beyond any applicable notice and cure period, all condemnation awards and insurance proceeds paid or payable with respect to the Premises or any part of the Shopping Center shall be applied and paid in the manner set forth in the Lease; and
- (f) agree that it and its successors and assigns shall look solely to the assets, if any, of Lessee or its successors and assigns, for the satisfaction of any claim arising from or under the Lease and shall not seek to impose personal liability on any shareholder, officer, director, or employee of any Lessee or any affiliates, subsidiaries or related company.

3. If the interests of Lessor shall be transferred to and owned by Mortgagee by reason of foreclosure proceedings or deed in lieu of foreclosure or by any other manner and Mortgagee succeeds to the interest of Lessor under the Lease, then so long as Mortgagee is bound to Lessee thereunder, Lessee shall be bound to Mortgagee, its successors and assigns, under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof which may be effected in accordance with any option thereof in the Lease, with the same changes and effect as if Mortgagee were the lessor under the Lease, and Lessee hereby does attorn to Mortgagee, its successors and assigns, as its lessor, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Mortgagee's succeeding to such interest. Notwithstanding the same, at the request of Mortgagee, its successors and assigns, or any other person acquiring the interest of Lessor, Lessee agrees to execute and deliver at any time and from time to time, may be necessary or appropriate to evidence such attornment.

4. Neither the Mortgage or any security interest executed in connection therewith, shall cover or be construed as subjecting in any manner to the lien thereof, any trade fixtures, signs or other personal property at any time furnished or installed by or for Lessee or its subtenants, or licensees on the aforementioned property, regardless of the manner or motive attachment thereof.

5. Except as hereinafter limited, all parties hereto, and their respective successors and assigns (including subsequent owners of the Property taking title through Mortgagee, its successors and assigns), are bound by all of the covenants, terms, conditions, subordinations and other matters contained herein.

6. Mortgagee, in the event it succeeds to the interest of Lessor, whether through foreclosure proceedings or otherwise, shall be entitled to convey and/or assign its right, title and interest, or any part thereof, in and to the Premises and/or the Lease to a nominee, agent, independent contractor or any other person. Upon sale, conveyance and assignment of the Premises and its interest in the Lease, Mortgagee shall be automatically, and without further consent, written agreement or acknowledgment by Lessee, released, discharged and relieved of any and all liabilities and obligations of every kind, nature and type whatsoever accruing or arising under the Lease on and after the date Mortgagee shall have sold, assigned and transferred its interest in and to the Premises and the Lease to the purchaser(s) provided such nominee, agent, independent contractor or other person assumes all of the obligations under the Lease.

7. The provisions of this agreement are not intended to, and shall not, release Lessor, its successors and assigns, from its obligations under the Lease or the Mortgage, but are solely for the benefit of Mortgagee and Lessee.

8. All notices required or permitted to be given by either party hereunder shall be in writing and shall be considered properly given if delivered by nationally recognized overnight delivery service or mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested. Notice so mailed shall be received and effective five (5) days after being deposited in the United States mail, registered or certified mail, return receipt requested, postage prepaid or one (1) business day after being sent by overnight express mail or nationally recognized courier service (e.g., Federal Express). Notice given in any other manner shall be effective only if and when received by addressee. For purposes of notice the addresses of Lessee and Mortgagee shall be as set forth hereinabove; provided however that either party shall have the right to change such party's address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove.

9. This Agreement contains the entire agreement between the parties and cannot be changed, modified, waived or canceled except by an agreement in writing executed by the party against whom enforcement of such modification, change, waiver or cancellation is sought.

IN WITNESS WHEREOF, Lessee and Mortgagee have executed these presents as of the day and year first above written.

Signed and acknowledged in
the presence of:

LESSEE:

Witness

By: _____
Name: _____
Its: _____

Witness

MORTGAGEE:

Witness

By: _____
Name: _____
Its: _____

Witness

STATE OF _____)
) §:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____ by _____, the _____ of _____, on behalf of the corporation.

Notary Public

Commission
Expiration: _____

STATE OF OHIO)
) §:
COUNTY OF FRANKLIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____, the _____ of _____, a(n) _____, on behalf of the _____.

Notary Public

Commission
Expiration: _____

This instrument was prepared by: David K. Conrad, Esq.
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291

EXHIBIT "E"
TENANT'S SIGN PLAN
[TO BE ATTACHED]

EXHIBIT "F"

ESTOPPEL CERTIFICATE

This Estoppel Certificate is made this _____ day of _____,
20____, by _____ ("Tenant").

Tenant hereby acknowledges that it is the tenant of certain premises described on Schedule "A" attached hereto (the "Premises") located in _____ pursuant to a lease dated _____, 20____ (the "Lease") by and between Tenant and _____ ("Landlord").

Tenant understands that for purposes of transferring its interests in the property of which the Premises is a part, (the "Property"), or for purposes of securing a new lender on the Property, Landlord has requested the following representations and certification by Tenant:

1. The Lease is in full force and effect in accordance with its terms and has not been modified, amended, supplemented, or changed in any respect, except as set forth on Schedule "A" attached hereto.

2. The present term of the Lease commenced on _____ and will expire on _____. The Lease provides Tenant with _____ (____) consecutive options to renew the Lease for _____ (____) years each.

3. To the best of Tenant's current actual knowledge, Landlord is not in default under the Lease as of the date hereof and no notice of default has been given which has not been cured, except as set forth on Schedule "A" attached hereto.

4. The current monthly installment of Minimum Annual Rent payable by Tenant to Landlord as of this date is \$_____.

5. All Minimum Annual Rent, percentage rent, and any additional rent or charges due Landlord from Tenant pursuant to the Lease have been paid through the payment period last ending prior to the date hereof, except as set forth on Schedule "A" attached hereto. No rent or charge has been paid more than thirty (30) days in advance of its due date.

IN WITNESS WHEREOF, the undersigned has executed this Estoppel Certificate as of the date and year above written.

TENANT:

BY: _____

ITS: _____

EXHIBIT "G"

MEMORANDUM OF LEASE

MEMORANDUM OF LEASE AGREEMENT, dated _____, 2003, by and between TORINGDON MARKET, LLC, an Ohio limited liability company ("Landlord"), EARTH FARE, INC., a North Carolina corporation ("Tenant"), covering that certain premises located in the Toringdon Market Shopping Center located in the City of Charlotte, County of Mecklenburg, State of North Carolina (the "Premises"), which Shopping Center is more particularly described on Schedule "A", attached hereto and made a part hereof by reference.

AGREEMENT

1. For good and valuable consideration, Landlord leases the Premises, together with all easements, rights, improvements and appurtenances thereto, to Tenant and Tenant hires the same from Landlord for the term and under the provisions contained in the unrecorded Lease Agreement dated _____, 2003 between Landlord and Tenant (the "Lease").

2. The terms, provisions, covenants, conditions and agreements set forth in said Lease are by this reference incorporated herein.

3. No portion of the Shopping Center (excluding the Premises) shall be used as a grocery store or a Natural Pharmacy (as hereinafter defined), provided that:

(1) nothing herein shall prevent any occupant of the Shopping Center from selling food products sold by a grocery store so long as such sale is as an incidental part of its business and the total number of square feet of building area devoted to the display for the sale thereof does not exceed 1,000 square feet or such sale is by a restaurant; *provided, however*, that each of the following, if it exceeds 2,500 square feet of floor area, is prohibited in the Shopping Center and on Outparcel #2 but is not prohibited on Outparcel #1: (A) a delicatessen-style restaurant serving primarily deli-meat sandwiches (e.g., a "Panera Bread" in its current format in excess of 2,500 square feet), (B) a bakery, (C) a coffee and juice bar and (D) a self-service hot bar and salad bar; *provided further, however*, that none of the uses described in clauses (A) through (D) is prohibited if it is part of a sit-down restaurant with full or partial wait staff;

(2) nothing herein shall prevent an operator such as a "Walgreen's", "CVS", "Rite-Aid", "Eckerd" or other national pharmacy operation from selling food items as part of its business as is typical in its other stores; and

(3) notwithstanding the foregoing, a store such as a General Nutrition Store (GNC) or Vitamin World shall be permitted.

The foregoing restriction does not apply to the following leases, which have been executed prior to the date hereof: Red Brick Pizza and Quizno's, but to the extent Landlord has the right to consent to future uses for such premises, it shall apply the restrictions contained in this Section to such future uses. For purposes of this Lease, "Natural Pharmacy" means a pharmacy operation that derives at least 50 percent of its annual revenue from the sale of botanic and herbal medicines, homeopathic

charlotte/leases/earthfare/lease{aocd}072803

preparations and natural personal care products and nutraceuticals. An example of a Natural Pharmacy is "Pharmaca Integrative". Pharmacies such as "Walgreen's", "CVS", "Rite Aid" and "Eckerd", and any similar national or regional pharmacy operation that does not advertise itself as a "natural pharmacy", are not restricted by the foregoing prohibition of Natural Pharmacies regardless of the products they sell.

4. The term of the Lease is to commence on the earlier of: (a) the date Tenant opens for business or (b) _____ (_____) days after delivery of possession of the Premises, and shall continue for a period of _____ (_____) years thereafter. Tenant has the right to extend the term of the Lease for _____ (_____) consecutive options of _____ (_____) years each.

5. This Agreement is executed for recording purposes only and is not intended to be a summary of the Lease, and is subject to the terms of that said Lease. In the event of conflict between this Agreement and the said Lease, the said Lease shall control.

6. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

LANDLORD:

TENANT:

TORINGDON MARKET, LLC

EARTH FARE, INC.

BY: _____

BY: _____

Jonathan E. Kass,
Manager

ITS: _____

State of Ohio)

) ss

County of Franklin)

On this _____ day of _____, 2003, before me, _____, the undersigned Notary Public, personally appeared Jonathan E. Kass, personally known to me as the person who executed the Memorandum of Lease as Manager, of Toringdon Market, LLC, an Ohio limited liability company; and the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal the day and year aforesaid.

charlotte/nc/uses/earthfare/lease(execution)072803

[SEAL]

Notary Public

State of _____)
County of _____) ss

On this _____ day of _____, 2003, before me, _____, the undersigned Notary Public, personally appeared _____, personally known to me as the person who executed the Memorandum of Lease as _____, of Earth Fare, Inc., a North Carolina corporation; and the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal the day and year aforesaid.

[SEAL]

Notary Public

EXHIBIT H

DECLARATION OF RESTRICTIVE COVENANT

This DECLARATION OF RESTRICTIVE COVENANT (this "Declaration") is made and entered into as of _____, 2003, by CONTINENTAL COMMUNITIES CHARLOTTE, LLC, an Ohio limited liability company ("Declarant").

BACKGROUND INFORMATION

- A. Declarant is the fee simple owner of certain real property, among other real property, located in Charlotte, Mecklenburg County, North Carolina, and more particularly described on Exhibit A attached hereto and made a part hereof (the "Burdened Parcel").
- B. Toringdon Market, LLC, an Ohio limited liability company, is the fee simple owner of certain real property located in Charlotte, Mecklenburg County, North Carolina, and more particularly described on Exhibit B attached hereto and made a part hereof (the "Market Parcel").
- C. Earth Fare, Inc., a North Carolina corporation ("Earth Fare"), has a leasehold interest (the "Earth Fare Lease") in certain premises located on the Market Parcel.
- D. Declarant has agreed to restrict the Burdened Parcel for the benefit of Earth Fare upon the terms set forth herein.

DECLARATION OF RESTRICTION

As so described in the foregoing Background Information, and in consideration of certain benefits to be derived by Declarant, receipt of which is hereby acknowledged, Declarant hereby establishes the following restriction against the Burdened Parcel upon the following terms:

1. Subject to the terms hereof, the Burdened Parcel shall not be used primarily for the operation of (i) a grocery store specializing in "natural foods" in more than 10,000 square feet of floor area or (ii) a Natural Pharmacy (as hereinafter defined); provided, however, that nothing contained herein shall prohibit any of the following:
- (a) Any pharmacy of the type currently operated by "Walgreen's", "CVS", "Eckerd", "Rite Aid" or similar type of pharmacy, it being understood that such pharmacy operations are not considered "natural pharmacies".
 - (b) A health food store such as a "General Nutrition Store" (also known as "GNC") or "Vitamin World".
 - (c) A specialty foods or gourmet grocery store such as a "Dean & DeLuca", "Trader's Joe's" or "Eatzi's".

For purposes of this Declaration, "Natural Pharmacy" means a pharmacy operation that derives at

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least 50 percent of its annual revenue from the sale of botanic and herbal medicines, homeopathic preparations and natural personal care products and nutraceuticals. An example of a Natural Pharmacy is "Pharmaca Integrative". Pharmacies such as "Walgreen's", "CVS", "Rite Aid" and "Eckerd", and any similar national or regional pharmacy operation that does not advertise itself as a "natural pharmacy", are not restricted by the foregoing prohibition of Natural Pharmacies regardless of the products they sell.

2. This Declaration shall terminate and cease to be in force and effect upon the earlier of (i) the date the Earth Fare Lease is terminated or expires by its terms or (ii) if Earth Fare does not conduct a business on the Market Parcel as a grocery store specializing in the sale of "natural foods" and a "natural pharmacy" for a period of 180 days or longer, except when such failure is caused by renovations, strikes, labor disputes, casualty, or conditions beyond its control.

3. This Declaration may only be modified or released, as it affects the Burdened Parcel or any portion thereof, by written agreement entered into by the fee owner of the Burdened Parcel or such portion thereof and Earth Fare and recorded against the Burdened Parcel or applicable portion.

4. The terms and provisions of this Declaration shall run with the land and be binding upon the Burdened Parcel and shall benefit the Earth Fare and any successor or assign of Earth Fare under the Earth Fare Lease.

IN WITNESS WHEREOF the Declarant has caused this Declaration to be executed as of the date first written above.

DECLARANT:

CONTINENTAL COMMUNITIES CHARLOTTE, LLC,
an Ohio limited liability company

By: CONTINENTAL COMMUNITIES, LTD.
Sole Member

By: _____
Jonathan E. Kass,
Vice President

STATE OF OHIO
COUNTY OF FRANKLIN, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by Jonathan E. Kass, Vice President of Continental Communities, Ltd., an Ohio limited liability company, in its capacity as sole member of Continental Communities Charlotte, LLC, an Ohio limited liability company, for and on behalf of said company.

Notary Public

charlotte/leases/earthfare/lease(execution)072803

Exhibit A

The Burdened Parcel

Exhibit B

The Market Parcel

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H-4

FIRST AMENDMENT TO LEASE

This First Amendment to Lease ("Amendment") is made and entered into by and between KRG Toringdon Market, LLC, an Indiana limited liability company ("Landlord") and Earth Fare, Inc., a North Carolina corporation ("Tenant"), as of the date of the last execution hereby by Tenant and Landlord ("Effective Date").

RECITALS

WHEREAS, Landlord, as successor in interest to Toringdon Market, LLC, an Ohio limited liability company, and Tenant entered into that certain Lease Agreement dated as of August 19, 2003 (the "Lease") for premises consisting of approximately twenty-six thousand seventy-two (26,072) square feet of Floor Area located in Charlotte, North Carolina (the "Premises") in the shopping center more commonly known as Toringdon Market ("Shopping Center");

WHEREAS, Landlord and Tenant now desire to modify the Lease under the terms and conditions outlined in the Lease and amend the Lease as hereinafter set forth in this Amendment.

CONSIDERATION

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant mutually covenant and agree to modify the above mentioned agreement as follows:

AGREEMENT

1. **DEFINITIONS:** Capitalized terms used herein, but not otherwise defined, shall have the meaning ascribed to them in the Lease.
2. **RECITALS:** Each and every of the foregoing recitals are true and correct and hereby incorporated herein.
3. **CURB CUT IMPROVEMENTS.** Subject to receipt of necessary approvals and permits, Landlord agrees to construct and install a curb cut and related improvements as generally shown on Exhibit A attached hereto, at its sole cost and expense ("Curb Cut Improvements"). The necessary approvals and permits to perform the Curb Cut Improvements are collectively referred to herein as the "Required Curb Cut Approvals". Landlord agrees to perform the Curb Cut Improvements regardless of the cost and expense and Landlord's sole reason for not performing the Curb Cut Improvements shall be Landlord's failure to obtain the Required Curb Cut Approvals, so long as Landlord has timely applied and diligently pursued such Curb Cut Approvals as provided herein, including diligently pursuing any and all appeals, if necessary. Landlord shall apply for the Required Curb Cut Approvals within sixty (60) days after the Effective Date, and shall diligently thereafter prosecute obtaining the Required Curb Cut Approvals. Within

thirty (30) days following receipt of the Required Curb Cut Approvals, Landlord will diligently proceed to construct and install the Curb Cut Improvements. During the completion of the Curb Cut Improvements, Landlord agrees to use commercially reasonable efforts minimize the interruption of the use of the Common Areas by Tenant or its customers and invitees as set forth in the Lease. Landlord shall give notice to Tenant on or about the date that the Curb Cut Improvements have been substantially completed ("Curb Cut Completion Date"). Landlord agrees to provide Tenant with written notice of the Curb Cut Completion Date. Tenant shall have a period of twenty (20) days to raise a written objection to the substantial completion of the Curb Cut Improvements. Effective on the Curb Cut Completion Date, the option to renew the Lease as contemplated in Paragraph 4 of this Amendment shall be deemed exercised by Tenant. In the event the Curb Cut Completion Date does not occur within two hundred seventy (270) days following the Effective Date; provided, however, if Landlord shall in good faith be diligently pursuing completion of the Curb Cut Improvements, Landlord shall be entitled to extend such date by up to sixty (60) days ("Outside Curb Cut Completion Date"), Tenant shall have the right to withdraw Tenant's early exercise of the Option Term as contemplated herein, by giving written notice of such withdrawal not later than thirty (30) days after the Outside Curb Cut Completion Date.

In addition to the foregoing, Landlord agrees to trim the existing trees and landscaping, to the extent permitted by applicable laws, that is currently limiting the visibility of the Premises as well as Tenant's signage on the monument sign. Landlord agrees to coordinate completing such work with Tenant within thirty (30) days following the Effective Date.

4. **First Option Term.** In consideration of Landlord's completion of the Curb Cut Improvements, Tenant shall exercise the first Option Term as set forth in the Lease, subject to the terms of Paragraph 3 of this Amendment. The first Option Term shall commence following the expiration of the Initial Term, subject to the terms of Paragraph 3 of this Amendment.
5. **Timed Out Consent.** In further consideration of Landlord pursuing the Required Curb Cut Approvals as required herein, Tenant shall simultaneously deliver to Landlord the executed consent letter for the "Timed Out" use in the form attached hereto as Schedule 1.
6. **CONFLICT:** Except as modified by this Amendment, the Lease and all the covenants, agreements, terms, provisions and conditions thereof shall remain in full force and effect and are hereby ratified and affirmed. The covenants, agreements, terms, provisions and conditions contained in this Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. In the event of any conflict between the terms contained in this Amendment and the Lease, the terms herein contained shall supersede and control the obligations and liabilities of the parties.

7. **COUNTERPARTS:** This Amendment may be executed in several counterparts, via facsimile, or via PDF each of which shall be deemed an original, and all such counterparts shall together constitute one in the same instrument.
8. **AUTHORITY:** Each of the persons executing this Amendment on behalf of Landlord and Tenant covenant and warrant that it Tenant has full right and authority to enter into this Amendment and each of the persons executing this Amendment on behalf of Tenant and Landlord and is authorized to do so and this Amendment constitutes a valid and legally binding obligation of Tenant and Landlord, enforceable in accordance with its terms.
9. **MISCELLANEOUS:** This Amendment shall be binding upon and inure to the benefit of, the parties hereto and their respective successors. This Amendment shall be governed and construed in accordance with the laws of the state in which the Shopping Center is located.

[SIGNATURE PAGE TO FOLLOW]

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
IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day and year set forth below.

LANDLORD: KRG Toringdon Market, LLC, an Indiana limited liability company

DS
JW

DS
TM

RAS

DocuSigned by:
BY: 
NAME: John Kite
ITS: CEO
DATED: 12/15/2017

TENANT: Earth Fare, Inc., a North Carolina corporation


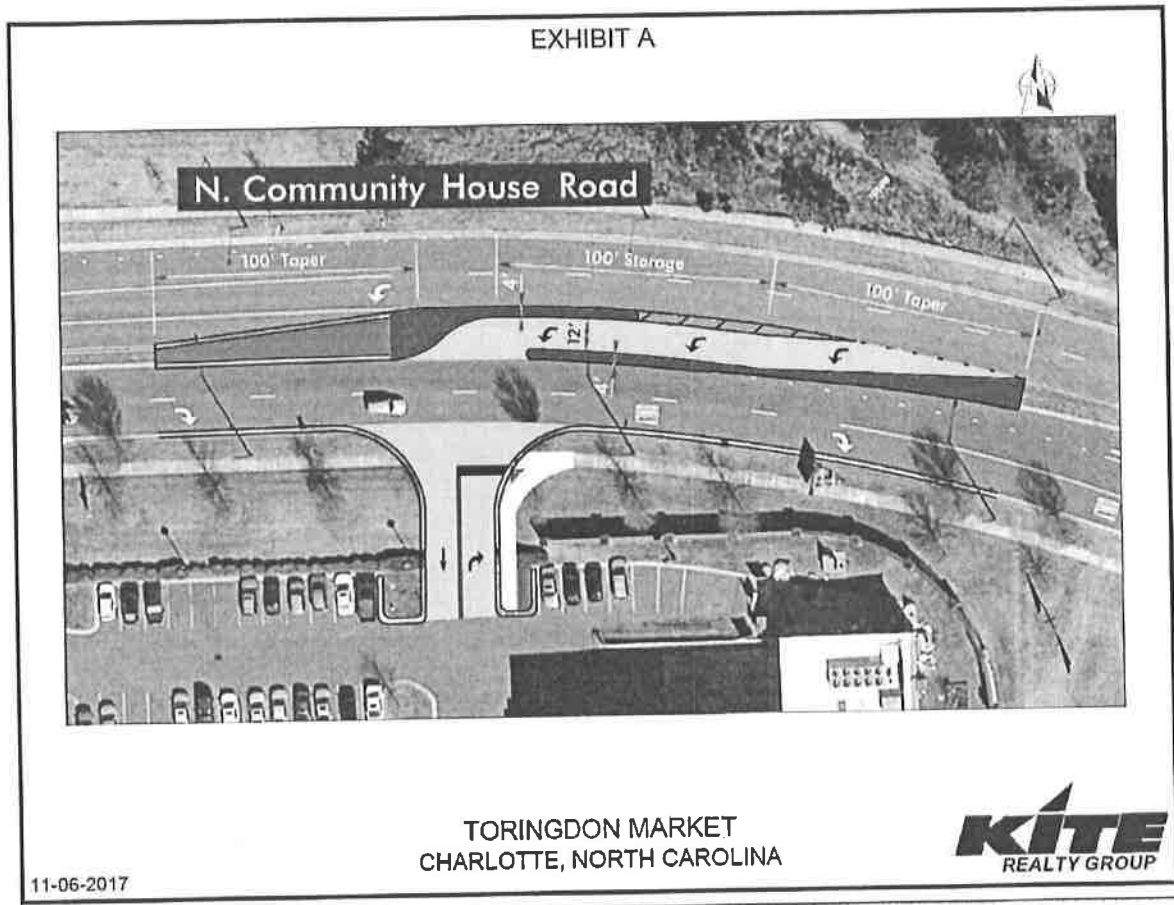
BY: 
NAME: Scott Little
ITS: CEO
DATED: 11/27/17

EXHIBIT A



SCHEDULE I

December -
November 2, 2017

BY 2-DAY UPS - (317) 577-5600
KRG TORINGDON MARKET, LLC
 c/o Kite Realty Group
 Attn: Asset Management
 30 South Meridian Street, Suite 1100
 Indianapolis, Indiana 46204

Re: Lease Agreement (as amended to date, the "Lease") dated effective as of August 19, 2003, the current parties to which are KRG Toringdon Market, LLC, an Indiana limited liability company ("Landlord"), and Earth Fare, Inc., a North Carolina corporation ("Tenant"), for premises located in Toringdon Market, located in Charlotte, North Carolina ("Shopping Center")

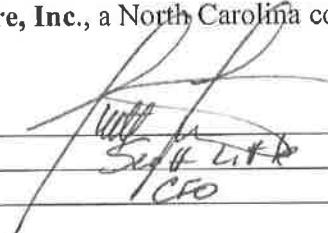
Dear Madams and Sirs:

Landlord wishes to Lease space within the portion of the Shopping Center labeled "Premises" on the site plan attached hereto for the operation of an entertainment facility consisting of various rooms containing puzzles within with customers are to solve the puzzles within an allotted time frame (the "Permitted Use"). This letter confirms that, notwithstanding anything contained in the Lease to the contrary, including, without limitation, Section 10.5 of the Lease, Tenant hereby consents to the Permitted Use within the portion of the Shopping Center labeled "Premises" on the site plan attached hereto. Except as expressly modified by the terms of this letter, the Lease shall remain unchanged and in full force and effect.

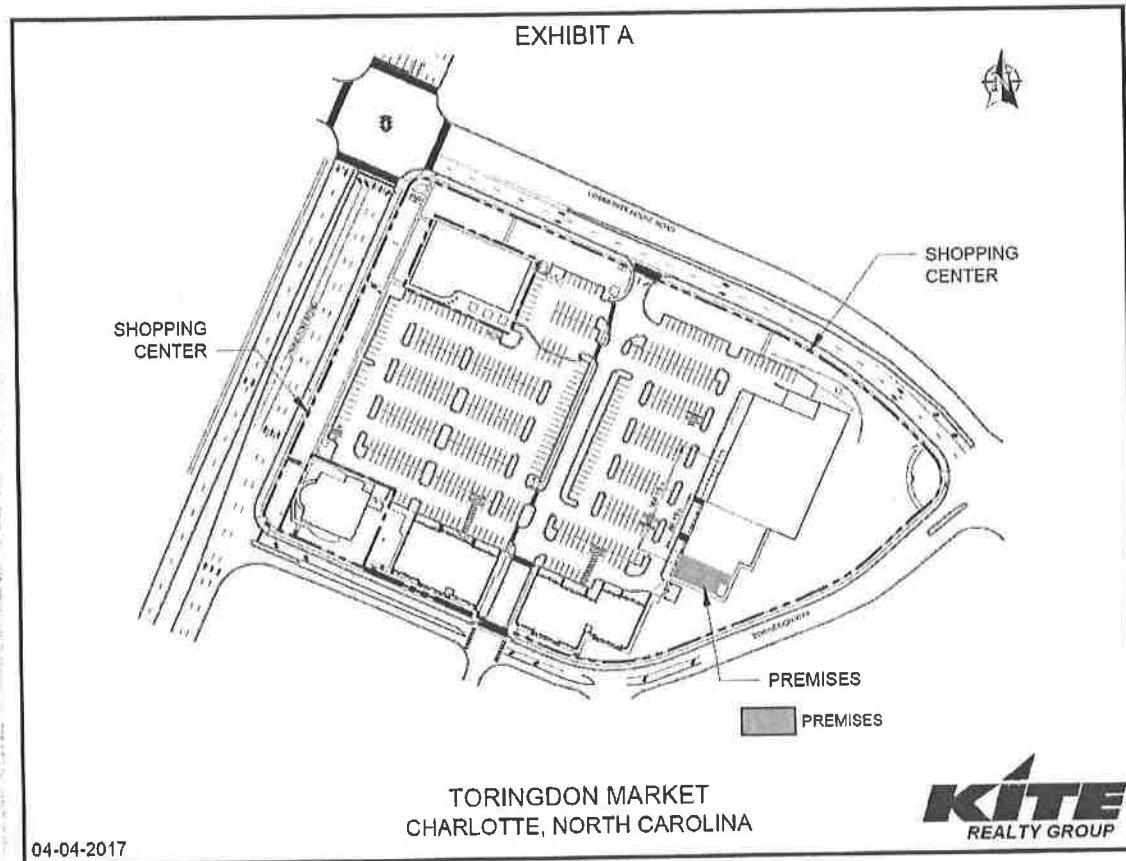
All capitalized terms not defined herein shall have the same meaning as set forth in the Lease. Except as otherwise expressly provided herein, nothing contained herein shall be construed as a waiver by Tenant of any rights under the Lease. Further, as the individual signing this letter on behalf of Tenant, I represent and warrant that I have the full power and authority to execute this letter and that upon such execution, Tenant shall be fully bound by each and every provision of the Lease, as amended herein.

Sincerely,

Earth Fare, Inc., a North Carolina corporation

By: 
 Name: Jeff Little
 Title: CFO

DocuSign Envelope ID: 2AAFA419-3929-4C36-B578-199357BC3DE3



DocuSign Envelope ID: 2D4D24D6-FE69-485A-945E-612EABEAE0E2



30 S. Meridian Street, Suite 1100
Indianapolis, IN 46204
317-577-5600
FAX 317-577-5605
kite Realty.com

February 6, 2019

VIA UPS OVERNIGHT

Earth Fare, Inc.
Attn: Steven Jarvis
220 Continuum Drive
Fletcher, NC 28732

LANDLORD'S WORK DELIVERY NOTICE

RE: First Amendment to Lease dated December 15, 2017, by and between **KRG TORINGDON MARKET LLC**, an Indiana limited liability company ("Landlord") and **EARTH FARE, INC.**, a North Carolina corporation ("Tenant") for certain space (the "Premises") in Charlotte, North Carolina. (the "Amendment")

Dear Mr. Jarvis:

This letter shall serve as notice that Landlord has substantially completed the Curb Cut Improvements as contemplated in the above-referenced Amendment. This notice confirms that February 5, 2019, was the Curb Cut Completion Date as that term is defined in the First Amendment.

Please countersign and return this Delivery Notice to Landlord. *If you fail to return this letter within five (5) business days, you will be deemed to have accepted the Completion Date.*

A self-addressed envelope is enclosed for your convenience to return the requested documents. Also, in the interest of time, if you prefer to fax the documents and mail originals, please fax to 317-577-5605.

Acknowledged and Agreed:

EARTH FARE, INC., a North Carolina corporation

Signature: _____

Printed Name: _____

Title: _____

Respectfully,

KRG TORINGDON MARKET, LLC, an Indiana limited liability company

DocuSigned by:
Matthew Van Dyke
984633EFBA6B44A...

RMS Matthew Van Dyke
Sr. Project Manager

KRG
LISTED
NYSE

EXHIBIT B

CM Inquiry Report for
 Sorted by Date for Open / Closed Charges.
 Master Occupant ID:
 Address Id:
 Building ID:
 Lease ID:
 Income Category:
 Receipt Type Id:
 Receipt Descriptor:

From 1/1/2020 to 2/6/2020

Balance Forward:: 0.00
 Charges (Debit): 85,920.08
 Receipts (Credit): -42,960.04
 Prepaid:: 0.00
 Net: 42,960.04
 Security Deposit: 0.00

Cat	Date	BatchID	Building ID	Lease ID	Src Description	Charges (Debit)	Receipts (Credit)	Receipt Type	Receipt Descr	Balance
CAM	1/1/2020	78599	4130		2120 CH AUTOCHRG @T1/31/2020	4,595.25	0.00			4,595.25
INS	1/1/2020	78599	4130		2120 CH AUTOCHRG @T1/31/2020	805.45	0.00			5,400.70
RNT	1/1/2020	78599	4130		2120 CH AUTOCHRG @T1/31/2020	31,503.66	0.00			36,904.36
RTX	1/1/2020	78599	4130		2120 CH AUTOCHRG @T1/31/2020	5,136.68	0.00			42,041.04
WSE	1/1/2020	78599	4130		2120 CH AUTOCHRG @T1/31/2020	919.00	0.00			42,960.04
WSE	1/13/2020	79382	4130		2120 CR Receipt	0.00	-42,960.04	CHK	415064	0.00
CAM	2/1/2020	79702	4130		2120 CH AUTOCHRG @T2/29/2020	4,595.25	0.00			4,595.25
INS	2/1/2020	79702	4130		2120 CH AUTOCHRG @T2/29/2020	805.45	0.00			5,400.70
RNT	2/1/2020	79702	4130		2120 CH AUTOCHRG @T2/29/2020	31,503.66	0.00			36,904.36
RTX	2/1/2020	79702	4130		2120 CH AUTOCHRG @T2/29/2020	5,136.68	0.00			42,041.04
WSE	2/1/2020	79702	4130		2120 CH AUTOCHRG @T2/29/2020	919.00	0.00			42,960.04
						85,920.08	-42,960.04			

EXHIBIT C

LEASE AGREEMENT

BETWEEN

**KRG CENTRE, LLC,
AN INDIANA LIMITED LIABILITY COMPANY**

"LANDLORD"

AND

EARTH FARE, INC., A NORTH CAROLINA CORPORATION

"TENANT"

**THE CENTRE
CARMEL, INDIANA**

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EXHIBITS

- Exhibit A** - Site Plan of the Shopping Center
- Exhibit B** - Legal Description of the Shopping Center
- Exhibit C** - Prohibited Uses
- Exhibit D** - Landlord's Work
- Exhibit E** - Timeline of Critical Actions
- Exhibit F** - Subordination, Non-Disturbance and Attornment Agreement
- Exhibit G** - Estoppel Certificate
- Exhibit H** - Memorandum of Lease
- Exhibit I** - Monument Sign
- Exhibit J** - Existing Exclusives
- Exhibit K** - Rules
- Exhibit L** - Walgreens Restrictions
- Exhibit M** - IRR Calculations

LEASE

THIS LEASE is made as of this 15th day of May, 2012, by and between KRG CENTRE, LLC, an Indiana limited liability company ("Landlord"), and EARTH FARE, INC., a North Carolina corporation ("Tenant").

In consideration of the rents and covenants hereinafter set forth, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the following described real property and improvements, hereinafter called the "Premises", upon the following terms and conditions:

1. FUNDAMENTAL LEASE PROVISIONS

1.1 This Article 1 is an integral part of this Lease and all of the terms, dates and requirements set forth in this Article 1 are incorporated in this Lease in all respects. In addition to the other provisions which are elsewhere defined in this Lease, the following terms, whenever used in this Lease, shall have the meanings set forth in this Article 1, subject to adjustments thereto or more detailed definitions set forth elsewhere in this Lease. If there is any conflict between any of the Lease provisions set forth in this Article 1 and any other provisions of this Lease, the latter shall control.

1.2 Shopping Center: The Centre
City: Carmel
County: Hamilton
State: Indiana
Address of Premises: _____

The Premises shall be comprised of approximately 25,000 square feet and shall be the space within the Shopping Center designated as the Premises on the Site Plan attached hereto as Exhibit A.
(ARTICLE 2)

1.3 Term:

Initial Term: Commencing on the Rent Commencement Date and ending on the last day of the month which is fifteen (15) years after the Rent Commencement Date
Option Terms: Two (2) consecutive terms of seven (7) years each
(ARTICLE 3)

1.4 Minimum Annual Rent:

<u>Lease Years</u>	<u>Rate Per Square Foot Per Lease Year</u>
1-5	\$14.75
6-10	\$15.25
11-15	\$15.75
16-22	\$16.25
23-29	\$16.75

Minimum Annual Rent shall be based on the measured Floor Area (Section 2.3) and is subject to adjustments pursuant to Section 4.1(B).

Rent Commencement Date: Earlier of (i) that date which is ninety (90) days after the Premises Ready Date (as defined in Section 6.3) or (ii) the date that Tenant opens for business
(ARTICLE 4)

1.5 Percentage Rent: One and one-half percent (1.5%) of Tenant's Gross Sales in each Lease Year in excess of a natural breakpoint calculated by dividing the Minimum Annual Rent payable in the Lease Year by 0.015. (ARTICLE 4)1.6 Target Substantial Completion: (ARTICLE 6)1.7 Estimated First Lease Year Costs:

Real Estate Taxes \$2.05 per square foot (ARTICLE 7)

Insurance \$0.22 per square foot (ARTICLE 8)
 Common Area Costs \$2.03 per square foot (ARTICLE 10)

1.8 Pylon Sign Rights: (ARTICLE 22)

1.9 Address For Notices:

To Landlord: KRG Centre, LLC
 c/o Kite Realty Group
 Attn: Vice President of Property Operations
 30 South Meridian Street, Suite 1100
 Indianapolis, Indiana 46204

To Tenant: Earth Fare, Inc.
 145 Cane Creek Industrial Park Drive, Suite 150
 Fletcher, North Carolina 28732
 Attn: Jack Murphy, President & CEO

(ARTICLE 30)

2. PREMISES

2.1 The "Premises" demised and leased hereunder are described in Article 1 hereof and are cross-hatched, outlined or otherwise shown or marked on the Site Plan (the "Site Plan") attached hereto as Exhibit A and incorporated herein by this reference. Together with the Premises, Landlord hereby grants to Tenant the non-exclusive right to use all driveways, sidewalks, roads, alleys and means of ingress and egress and other common areas available to the tenants and occupants of the Shopping Center (as hereinafter defined) as well as the exclusive right to use the cart corrals and loading dock serving the Premises as shown on Exhibit A. The Premises, together with and including the improvements and surrounding common areas shown on Exhibit A, comprise the "Shopping Center". The legal description of the Shopping Center is attached as Exhibit B and incorporated herein by this reference.

2.2 Landlord may use and shall control the surfaces of the exterior walls of the Premises and all other buildings in the Shopping Center, the interior walls between surfaces, under the floor surface and above the finished ceiling for utility lines or other purposes in connection with the operation of the Shopping Center, provided, however, that Landlord's use of the exterior walls, the interior walls, the area beneath the floor surface and above the finished ceiling does not adversely affect Tenant's access to or use of the Premises. Upon reasonable prior notice, Tenant shall permit Landlord and its agents to enter the Premises at reasonable times for the purpose of showing the Premises to prospective purchasers and lenders, and, during the last nine (9) months of the Term, prospective tenants.

2.3 For purposes of this Lease, the Floor Area within the Premises shall mean the gross square feet of floor area within the Premises, measured from the exterior surface of exterior walls and from the center line of interior, demising walls, without deduction or exclusion by reason of columns, stairs, elevators, escalators, shafts, or other interior areas, and shall include any mezzanine space or basements which are open to the public. Prior to the Rent Commencement Date, either Landlord or Tenant shall have the right to cause its licensed architect to measure the Floor Area of the Premises and to submit such measurement to the other party; provided that the other party shall have the right, upon written notice to the original measuring party within thirty (30) days after receipt of such measurement, to object to such calculation, and in such event Landlord and Tenant shall mutually agree upon an architect or contractor to measure the Premises, and the measurement determined by such architect or contractor shall be binding upon Landlord and Tenant, and each shall pay one-half (1/2) of the cost of such architect or contractor. If it is determined herein that the Floor Area of the Premises varies from the Floor Area set forth in Section 1.2 above, then Minimum Annual Rent and Tenant's Pro-Rata Share of the Real Estate Taxes, Insurance Cost, and Common Area Costs shall be adjusted in accordance with such adjusted Floor Area and the parties shall enter into an amendment to this Lease to confirm the actual Floor Area of the Premises and the amount of Minimum Annual Rent due as a result of the measurement of the Premises. In no event, however, shall Minimum Annual Rent be increased by more than five percent (5%) as a result of the measurement of the Floor Area of the Premises.

2.4. Tenant's interest in the Premises is and shall be subject to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters of record affecting the Premises or the Shopping Center. Notwithstanding the foregoing, none of said instruments shall impair or prohibit the full exercise and enjoyment by Tenant of its rights under this Lease.

3. TERM

1 3.1 The term of this Lease shall commence on the Rent Commencement Date and
2 shall be of the duration set forth in Article 1. The Initial Term shall terminate on the last day of the month
3 in which the term expires, as the same may be extended as set forth in this Lease.
4

5 3.2 Provided Tenant is not in default of this Lease beyond any applicable notice and
6 cure periods, Tenant is hereby granted two (2) consecutive option terms (the "Option Term(s)") to extend
7 the Term of this Lease as set forth in Article 1 hereof by giving to Landlord written notice of its exercise
8 of each such Option Term at least two hundred seventy (270) days before the expiration of the Initial
9 Term, or prior Option Term, as the case may be. The Option Terms shall be upon the same terms,
10 covenants, conditions, provisions and agreements applicable to the Initial Term, or prior Option Term, as
11 the case may be, except that Tenant shall pay to Landlord the Minimum Annual Rent during such
12 extended periods as set forth in Article 1. If Tenant fails to exercise any of its Option Terms in the time
13 periods set forth in this Section 3.2, all then unexercised Option Terms shall immediately terminate and
14 have no further force or effect, without further notice from Landlord. The Initial Term, together with the
15 Option Term(s) are sometimes herein collectively referred to as the "Term".
16

17 3.3 The first Lease Year shall commence on the Rent Commencement Date and end
18 on the last day of the month twelve (12) full consecutive calendar months later (provided that if the Rent
19 Commencement Date is the first day of the month, then the first Lease Year shall end on the last day of
20 the month immediately preceding the one (1) year anniversary of the Rent Commencement Date).
21 Thereafter, a Lease Year shall consist of twelve (12) consecutive full calendar months commencing on the
22 day following the close of the prior Lease Year.
23

24 4. RENTAL

25
26 4.1 Tenant covenants and agrees to pay as rental for the use and occupancy of the
27 Premises, at the times and in the manner hereinafter provided, the following sums:
28

29 A. Minimum Annual Rent: From and after the Rent Commencement Date,
30 Minimum Annual Rent as set forth in Article 1 hereof is payable in twelve (12) equal monthly
31 installments, in advance, without demand or offset, on the first day of each calendar month during each
32 year of the term of the Lease unless otherwise provided in the following sentence. If the Rent
33 Commencement Date occurs on a day other than the first day of the month, the monthly installment of
34 Minimum Annual Rent for the fraction of the initial partial month within which the Rent Commencement
35 Date falls shall be prorated on the basis of the actual number of days in said month.
36

37 B. Adjustment of Minimum Annual Rent Based on the Cost of Landlord's
38 Work: The amount of Minimum Annual Rent is subject to adjustment as specified in Section 6.5 hereof.
39 If under the terms of such Section 6.5 Minimum Annual Rent is to be adjusted the parties shall enter into
40 an amendment to this Lease prior to the Rent Commencement Date confirming the adjusted amount of
41 Minimum Annual Rent due pursuant to Section 6.5.
42

43 C. Percentage Rent: In addition to the Minimum Annual Rent, Tenant shall
44 pay to Landlord for each Lease Year percentage rent ("Percentage Rent") on Gross Sales (as hereinafter
45 defined) calculated according Section 1.5 above. Within forty-five (45) days after the end of each Lease
46 Year quarter, Tenant shall submit to Landlord a written statement indicating the amount of its Gross Sales
47 for the Lease Year to date and showing monthly detail for such Gross Sales. Tenant shall accompany
48 such statement for the fourth quarter of each Lease Year with a payment of the Percentage Rent due, if
49 any. All Gross Sales statements shall be certified by an officer of Tenant and shall be in such form and
50 with such detail as shall be reasonably satisfactory to Landlord.
51

52 4.2 "Gross Sales" is defined as the selling price of all merchandise and services sold
53 in or from the Premises by Tenant, its subtenants, licensees and concessionaires, whether for cash or for
54 credit (or any other means of payment), excluding, however, the following:
55

56 A. The sales price of all merchandise returned and accepted for full credit or
57 the amount of the cash refund or allowance made thereon;
58

59 B. The sums and credits received in settlement of claims for loss or damage
60 to merchandise;
61

62 C. The difference between the sales price of all merchandise purchased by
63 credit card and the actual amount received by Tenant from the credit card issuer.
64

65 D. Sales taxes, so called luxury taxes, excise taxes, gross receipt taxes and
66 other taxes now or hereafter imposed upon the sale of merchandise or services, whether added separately
67 to the selling price of the merchandise or services and collected from customers or included in the retail

1 selling price to the extent payable to governmental authorities;
2
3 E. Promotional markdown coupons to the extent no consideration is
4 received therefrom;
5
6 F. Receipts from public telephones and vending machines;
7
8 G. Interest, carrying charges or other finance charges in respect of sales
9 made on credit;
10
11 H. Sales of fixtures, trade fixtures or personal property that are not
12 merchandise held for retail sale in the normal course of business;
13
14 I. The proceeds from any sale of all or substantially all of the inventory in
15 the Premises to a Permitted Transferee (as defined in Article 19) in connection with a Permitted Transfer
16 (as defined in Article 19);
17
18 J. Sales to employees at discount, provided such sales shall not exceed two
19 percent (2%) of Gross Sales;
20
21 K. Uncollectible debts;
22
23 L. Transfers of merchandise between stores or to affiliated stores or
24 companies where such transfers are made in the normal operation of Tenant's business and not for the
25 purpose of (i) consummating a sale that has been made in or from the Premises, or (ii) depriving Landlord
26 of the benefit of a sale that otherwise would be made in or from the Premises;
27
28 M. Revenue received from delivery or other services performed for minimal
29 or no profit for the benefit of customers, provided such revenue shall not exceed two percent (2%) of
30 Gross Sales;
31
32 N. Revenue received from lottery tickets sanctioned by the state in which
33 the Premises are located;
34
35 O. Service charges on bad checks;
36
37 P. Revenues generated from video games, in-store automated teller
38 machines, telefax, telecopy and photocopy machines or other similar equipment so long as Tenant is
39 operating primarily as a grocery store;
40
41 Q. Accommodation sales such as the sale of postage stamps, government
42 bonds, saving stamps, money orders or similar items so long as Tenant is operating primarily as a grocery
43 store;
44
45 R. Receipts from sales of salvage cartons, meat scraps, suet and other
46 salvage merchandise so long as Tenant is operating primarily as a grocery store; and
47
48 S. Receipts from sales at or below Tenant's cost of goods to hospitals and
49 charitable organizations, provided such receipts do not exceed two percent (2%) of Gross Sales.
50
51 4.3 Tenant shall maintain adequate and accurate records for a period of two (2) years
52 after the close of each Lease Year for the purpose of allowing Landlord to verify the reported Gross Sales
53 for such particular Lease Year. At any time within said two (2) year period, Landlord or its agents may
54 inspect and audit such records during normal business hours upon at least seventy-two (72) hours' written
55 notice. In the event an inaccuracy is determined as a result of such inspection and Percentage Rent is due
56 Landlord, Tenant shall remit the difference to Landlord in conjunction with the next payment of
57 Minimum Annual Rent. If the inspection reveals that Tenant paid more Percentage Rent than required, an
58 adjustment shall be made reducing the next payment of Minimum Annual Rent. In the event Tenant's
59 Gross Sales inaccuracy requires Tenant to pay in excess of three percent (3%) more than Tenant
60 originally paid, then Tenant shall reimburse Landlord for Landlord's actual reasonable expenses incurred
61 in establishing the inaccuracy, up to a maximum of Two Thousand Five Hundred and 00/100 Dollars
62 (\$2,500.00). If there is a dispute with respect to Tenant inaccuracies in reported Gross Sales for any
63 Lease Year within such two (2) year period, then Tenant shall keep all related records until such time as
64 the dispute is settled. The obligation of Tenant to keep records as provided in this Section 4.3 shall
65 survive the expiration or earlier termination of this Lease.
66

4.4 It is understood and agreed by Landlord that Tenant has made no representations of any kind as to minimum or maximum annual volume of Gross Sales which Tenant may or shall make in any Lease Year during the term of the Lease or whether, when or if Landlord will ever receive any Percentage Rent from Tenant. Further, nothing herein shall be deemed to be a covenant of Tenant to open, conduct business or continue its business except as otherwise expressly stated in Section 5.2 of this Lease. Landlord agrees not to divulge to any person or persons, governmental agency, firm or corporation, the amount of Gross Sales made by Tenant from the Premises or the rent or other charges paid by Tenant pursuant to this Lease, except that Landlord shall be entitled to reveal such information to lenders, investors, bona fide purchasers and/or as may otherwise be required by law.

4.5 Rent shall be deemed paid at such time as Landlord actually receives such payment. Any amount of Rent that is overdue shall bear interest at the Default Rate from the date when such amount is due and payable under this Lease until the date paid.

4.6 The term "Rent" as used in this Lease shall mean all Annual Minimum Rent, Percentage Rent and all other charges and payments due from Tenant to Landlord under the term of this Lease.

5. USE OF PREMISES

5.1 The Premises may be used and occupied for (i) the operation of a grocery store/supermarket marketing and selling organic and natural groceries and products which may include the display and retail sale of health foods, natural body care products and cosmetics, health and beauty aids, beer and wine sales for on and off-Premises consumption and the ancillary operation of a restaurant selling and serving food for on and off-Premises consumption under Tenant's trade name, and (ii) for any other lawful retail purpose. Notwithstanding the foregoing, in no event shall the Premises be used for the uses set forth in Exhibit C (the "Prohibited Uses") or Exhibit J, or in violation of Exhibit L.

5.2 Subject to casualty, condemnation or Force Majeure conditions, within one hundred eighty (180) days after the Premises Ready Date Tenant shall be required to open and operate, fully stocked and fully staffed, within the Premises as an "Earth Fare" grocery store for at least one (1) day. Due to the difficulty of determining damages Landlord would sustain should Tenant fail to open and operate by that date which is one hundred eighty (180) days after the Premises Ready Date (except as a result of casualty, condemnation, or Force Majeure conditions), Landlord may, without notice, in addition to deeming such failure an Event of Default and exercising any other rights or remedies provided herein or at law, collect all Rent plus an additional fifty percent (50%) of such Rent due each month, as liquidated damages, until such month as Tenant opens for business. Landlord and Tenant agree that the amount set forth above is a reasonable estimate of the damages Landlord would sustain, and that it is not and shall not be construed as a penalty. Notwithstanding anything contained to the contrary in this Lease, Tenant shall have no obligation to operate for business for more than one (1) day or continuously operate its business in the Premises; provided, however, that Tenant shall continue to comply with all other obligations of Tenant under this Lease during any periods that Tenant is not operating in the Premises. Landlord acknowledges that this Lease contains no express or implied covenant by Tenant to conduct business in the Premises, continuously or otherwise, or to operate during any particular hours; provided, however, that if Tenant ceases operations at the Premises, Tenant shall nevertheless continue to be responsible for all of its obligations under the Lease. If Tenant ceases operations for one hundred twenty (120) or more consecutive days for any reason other than (y) in connection with performing approved alterations to the Premises, or (z) as a result of a casualty or condemnation, Landlord shall have the right, effective upon thirty (30) days prior written notice to Tenant, to terminate the Lease, provided that if Tenant recommences operating in the Premises within such thirty (30) days and the Premises is substantially inventoried and substantially staffed, Landlord's termination shall be null and void. Upon Landlord's exercise of such termination right and Tenant's vacating the Premises in accordance with the terms hereof, Tenant shall reimburse Landlord for (a) the unamortized value of all broker's or consultant's fees paid in connection with this Lease, and (b) the unamortized value of Landlord's Work, and neither party shall have further liability or obligation for any matter thereafter arising.

5.3 Tenant agrees to comply with and observe all reasonable, non-discriminatory written rules and regulations for the Shopping Center which Landlord may promulgate and deliver to Tenant from time to time, include those rules attached hereto as Exhibit K. In addition, Tenant covenants and agrees to operate its business at the Premises in compliance with all Legal Requirements which are applicable to Tenant solely because of Tenant's particular use of the Premises as permitted herein. The term "Legal Requirements" means all applicable laws, regulations, ordinances and other legal requirements.

5.4 Intentionally omitted.

5.5 Tenant shall have the right, without an obligation to pay rent or other charges but

with prior notice to Landlord, to enter the Premises while Landlord's Work (as hereinafter defined) is in progress, in order to inspect the Premises, to make such improvements as Tenant shall have the right to make and to install fixtures, supplies, merchandise and other property, provided that: (a) Tenant shall coordinate with Landlord regarding such entry; (b) Tenant shall indemnify and hold Landlord harmless from any damage or liability caused by such entry by Tenant or Tenant's contractors or agents; (c) Tenant shall not materially impede the progress of Landlord's Work in any way; and (d) Tenant shall provide Landlord proof that all insurance Tenant is required to carry under this Lease is in full force and effect of or before the date of such entry. Tenant agrees that it shall not materially interfere with the progress of Landlord's Work by such entry. Tenant's early entry into the Premises for the foregoing purposes shall not constitute acceptance thereof nor be deemed or construed as causing the occurrence of the Rent Commencement Date.

6. CONSTRUCTION OF PREMISES

6.1 Landlord shall construct the buildings, parking, driveways and common areas comprising the Shopping Center materially as shown on Exhibit A as part of the Redevelopment Work, as defined in Section 6.7. Landlord covenants and agrees that as of the Premises Ready Date the Shopping Center shall comply with all Legal Requirements and, except as provided in Section 6.7 below, (i) all parking and driveway areas of the Shopping Center as shown on Exhibit A shall be in good repair, with all striping and directional marking and signage installed; (ii) all landscaping shall be installed and in good condition; (iii) all Shopping Center pylon signs shall be installed and in working condition; (iv) all utility lines and facilities serving the Shopping Center shall be installed underground and shall be in good working order; (v) the stormwater drainage system serving the Shopping Center shall be completed and in good working order; and (vi) all off-site improvements required of Landlord in conjunction with the construction of the Shopping Center shall be completed and shall be operational and in compliance with all Legal Requirements.

6.2 Landlord agrees to design and construct the Premises as generally set forth in Exhibit D attached hereto at Landlord's expense in accordance with Landlord's Final Plans (as defined in Exhibit E, attached hereto). The work required to construct the improvements described in Landlord's Final Plans is referred to herein as "Landlord's Work." Tenant agrees to design and construct at Tenant's cost Tenant's leasehold improvements and interior upfitting in accordance with Tenant's Final Plans (as defined in Exhibit E). The work required to construct the improvements described in Tenant's Final Plans is referred to herein as "Tenant's Work". Tenant shall promptly and diligently pursue approvals for Tenant's Final Plans and shall apprise Landlord of the status of its permit application.

Landlord and Tenant each acknowledge and agree that the "timeline of critical actions" set forth on Exhibit E attached to this Lease and made a part hereof by reference represents an accurate summary of certain obligations and time periods regarding plan preparation and review, permitting and construction with respect to Landlord's Work and Tenant's Work and agree to deliver plans and plan comments and, subject to force majeure delays, commence and complete construction in accordance with the provisions of Exhibit E.

6.3 The term "Premises Ready Date" shall mean the date upon which all of the following have occurred: (i) the design architect for Landlord's Work delivers an AIA Certificate of Substantial Completion with respect to Landlord's Work to Tenant other than minor punchlist items and Landlord and Tenant have agreed on a completion schedule for such punchlist items; (ii) a final certificate of occupancy (or temporary certificate of occupancy which will become unconditional subject only to the installation of Tenant's trade fixtures) has been delivered to Tenant; (iii) all items of Landlord's Work which are required to be completed in order for Tenant to obtain any permit issued by the Health Department as a prerequisite to the commencement of Tenant's Work have been completed; (iv) all utilities required under the permitted Landlord's Plans have been installed and are fully operational (subject to application for service by Tenant and payment by Tenant of deposits to be paid by Tenant that are customarily required by utility companies to establish service for new customers); (v) Landlord has delivered possession of the Premises to Tenant free of all other tenancies and possessory rights; (vi) Tenant's Plans for Tenant's Work have been approved by Landlord; and (vii) in the event that there is a mortgage on the Shopping Center or Premises, Landlord has delivered a commercially reasonable SNDA (as hereinafter defined) which has been executed by Landlord's mortgagee and is in recordable form.

6.4 Tenant shall commence and proceed with the construction of Tenant's Work in accordance with a construction sequence agreed upon by Landlord and Tenant, with Tenant's Work being undertaken simultaneously with Landlord's Work, provided the performance of Tenant's Work simultaneous with Landlord's Work does not interfere with and cause Landlord's Work to be delayed, in Landlord's reasonable discretion. All Tenant Work shall be performed in a good and workmanlike manner, using good materials, and in compliance with all applicable Legal Requirements and Tenant's Final Plans.

6.5 Landlord shall obtain at least three (3) competitive bids from an appropriately licensed general contractor for Landlord's Work and shall select the lowest qualified bid price unless otherwise approved in writing by Landlord and Tenant.

Subject to the terms of the following paragraph, in the event the as-built cost of Landlord's Work (which costs shall include soft costs incurred in design and planning as certified to Tenant by Landlord (the "Actual Cost") exceeds \$3,125,000.00 (the "Target Amount") then the Minimum Annual Rent for each year of the Term, including Option Terms, as provided in Section 1.4, shall be increased to an amount that equals the Revised IRR (calculated using the revised cost per square foot over the primary term of the Lease) equal to the Initial IRR generated over the primary term of the Lease using \$3,125,000.00. In the event that the Actual Costs is less than the Target Amount, then the Minimum annual Rent for the term shall be decreased to an amount that equals the Revised IRR (calculated using the revised cost/square foot over the primary term of the Lease) equal to the Initial IRR generated over the primary term of the Lease using \$3,125,000.00. For illustrative purposes, the calculations on Exhibit M, attached hereto and incorporated herein, show the Minimum Annual Rent adjustments to be made in the event that the Actual Cost is \$125,000.00 greater than or \$125,000.00 less than the Target Amount.

Not later than thirty (30) days prior to the Rent Commencement Date Landlord shall certify in writing to Tenant the Actual Cost and shall deliver an itemized schedule of such costs along with its certificate. Thereafter, the parties shall review whether an adjustment to Minimum Annual Rent should be made, and if Minimum Annual Rent must be adjusted under this Section 6.5 the parties shall amend the Lease accordingly.

Notwithstanding anything contained herein to the contrary, within thirty (30) days after Landlord has received the bids (as defined in Exhibit E) for Landlord's Work, Landlord shall make a good faith determination of the estimated cost to complete Landlord's Work (the "Estimated Cost"), and if the Estimated Cost is greater than \$3,375,000.00, then Landlord shall have the right to terminate this Lease upon written notice to Tenant given on or before that date which is forty five (45) days after Landlord has received the bids. In the event that Landlord does not timely terminate this Lease pursuant to this paragraph, then there shall be no adjustment of Minimum Annual Rent for any portion of the Actual Cost in excess of \$3,375,000.00, unless such excess is due to (a) changes to Landlord's Final Plans made at the request of Tenant, or (b) changes to Landlord's Final Plans which are required by Legal Requirements.

6.6 Landlord shall give Tenant written notice of the date that Landlord anticipates that Landlord's Work shall be substantially completed and possession of the Premises will be delivered to Tenant (with such date being the "Target Completion Date") at least ninety (90) days before the Target Completion Date but in no event later than two hundred forty (240) days after Landlord has received all permits or other necessary governmental approvals for the performance of Landlord's Work. If Landlord's Work is not substantially completed by the Target Completion Date, Tenant shall be entitled to an offset against Minimum Annual Rent equal to one day's Minimum Annual Rent for each day that substantial completion occurred after the Target Completion Date. If substantial completion has not occurred by that date which is one hundred eighty (180) days after the Target Completion Date, subject to extensions pursuant to force majeure events as hereinafter defined, Tenant, at Tenant's election, may terminate this Lease by written notice to Landlord. The term "substantially completed" shall mean completion of Landlord's Work such that Tenant can commence Tenant's Work without material interference by Landlord while Landlord is completing Landlord's Work. If a dispute shall arise as to whether or not Landlord's Work is substantially completed, a certification from Landlord's architect that such work is substantially complete in accordance with Landlord's Plans shall be conclusive and binding upon the parties to this Lease.

6.7 Tenant acknowledges that Landlord, during the performance of Landlord's Work, shall be performing redevelopment work to several portions of the Shopping Center (the "Redevelopment Work"). Tenant acknowledges and agrees that Landlord's Redevelopment Work to those portions of the Shopping Center shown as "Continuing Redevelopment Work" on Exhibit A may not be completed on the Premises Ready Date. From the Rent Commencement Date through the completion of the Continuing Redevelopment Work: (a) Landlord shall not materially impair access to the Premises or Shopping Center from 116th Street and from Westfield Boulevard; (b) Landlord shall install commercially reasonable signage informing the public that Tenant is open for business during the Continuing Redevelopment Work; and (c) all staging and storage of any construction vehicles, machinery, equipment or supplies used to perform the Continuing Redevelopment Work shall be at a location within those portions of the Shopping Center shown as "Continuing Redevelopment Work on Exhibit A."

6.8 Notwithstanding anything contained herein to the contrary, in the event that Landlord, within one hundred eighty (180) days after the date upon which Landlord and Tenant have

1 agreed to Landlord's Final Plans (the "Outside Permit Date"), despite its reasonable efforts and diligent
 2 pursuit, is unable to obtain all permits or other necessary governmental approvals for the performance of
 3 Landlord's Work, Landlord may terminate this Lease upon giving written notice to Tenant within thirty
 4 (30) days after the Outside Permit Date (the "Permit Termination Notice"). Upon the valid termination of
 5 this Lease pursuant to this Section 6.8, this Lease shall have no further force or effect, except as
 6 specifically provided herein, effective as of the date of the Termination Notice. In the event the
 7 Termination Notice is not provided in accordance with this Section 6.8, the termination right provided
 8 hereunder shall become null and void.

10 7. TAXES

12 7.1 Landlord shall pay, on or before the due date, all taxes levied or assessed against
 13 the Shopping Center, including the Premises. Commencing on the Rent Commencement Date, Tenant
 14 shall reimburse Landlord its Pro-Rata Share (as hereinafter defined) of all real estate taxes and
 15 assessments, together with any ad valorem personal property taxes assessed against or upon any fixtures
 16 located in the common areas, including without limitation, poles and fixtures for common area lighting,
 17 benches, pylon signs, monument signs, directional signs and detention pond fountains ("Real Estate
 18 Taxes") levied and paid by Landlord upon the Shopping Center for each Tax Year (as defined below)
 19 during the term of this Lease. Tenant's Pro Rata Share of Real Estate Taxes shall be paid by Tenant in
 20 equal monthly installments in such amounts as are estimated and billed for each Tax Year by Landlord
 21 during the Term, each such installment being due on the first day of each calendar month. If at any time
 22 during a Tax Year it shall appear that Landlord has underestimated Tenant's Pro Rata Share of Real Estate
 23 Taxes, it may bill Tenant for any deficiency which may have accrued during such Tax Year and thereafter
 24 the monthly installment payable by Tenant shall also be adjusted. Within one hundred twenty (120) days
 25 after each calendar year, or such reasonable (in Landlord's determination) time thereafter, Landlord will
 26 notify Tenant of the amount of Real Estate Taxes for the Tax Year in question, and the amount of Tenant's
 27 Pro Rata Share thereof. Any overpayment or deficiency in Tenant's payment of its Pro-Rata Share of
 28 Real Estate Taxes for each Tax Year shall be adjusted between Landlord and Tenant, and Landlord and
 29 Tenant hereby agree that Tenant shall pay Landlord or Landlord shall credit to Tenant's account (or, if
 30 such adjustment is at the end of the Term, pay Tenant), as the case may be, within thirty (30) days of the
 31 aforesaid notification to Tenant, such amount necessary to effect such adjustment. The failure of
 32 Landlord to provide such notification within the time prescribed above shall not relieve Tenant of its
 33 obligations hereunto. Under no circumstances shall Tenant be liable for any interest, penalty or surcharge
 34 of any kind if Landlord has failed to timely pay such Real Estate Taxes.

36 As used herein, "Tenant's Pro-Rata Share" shall mean that fraction of which the
 37 numerator is the number of square feet of Floor Area in the Premises as set forth in Article 1 and the
 38 denominator of which is the total gross leasable square feet of buildings in the Shopping Center.

40 Such computation shall be made separately for each Tax Year. In the event any
 41 Real Estate Taxes may be paid in installments, Tenant shall pay its Pro-Rata Share of only those
 42 installments which shall be properly allocable to the term of this Lease had Landlord paid such Real
 43 Estate Taxes in installments over the longest period of time permitted by law. Any such installments due
 44 and payable in the years in which the term of this Lease commences or terminates shall be prorated. The
 45 estimated amount of Tenant's Pro-Rata Share of Real Estate Taxes for the first Tax Year is \$2.05 per
 46 square foot of Floor Area of the Premises.

48 The term "Tax Year" means each twelve (12) month period (deemed, for the
 49 purpose of this Section 7.1 to have 365 days) established as the real estate tax year by the taxing
 50 authorities having lawful jurisdiction over the Shopping Center.

52 7.2 Tenant shall pay, prior to delinquency, any and all personal property taxes levied
 53 against Tenant's leasehold improvements, fixtures, equipment, furniture and other personal property
 54 located within the Premises, and any taxes levied with respect to Tenant's leasehold interest in the
 55 Premises. In the event such taxes are levied against Landlord or together with personal property owned
 56 by Landlord, Tenant shall pay Tenant's just and proportionate share thereof within twenty (20) days after
 57 Tenant's receipt of a tax bill therefor and an itemized breakdown of the items included therein, together
 58 with a statement from Landlord as to the amount of Tenant's share thereof.

60 7.3 Any rebates, refunds or abatement of Real Estate Taxes received by Landlord
 61 subsequent to payment of taxes by Tenant shall be refunded to Tenant on a pro-rata basis net of
 62 Landlord's expense incurred in collecting such refund or abatement within twenty (20) days of receipt
 63 thereof by Landlord.

65 7.4 At Tenant's request, Landlord shall contest the validity or amount of Real Estate
 66 Taxes, failing which, Tenant shall have the right to contest the validity or amount of Real Estate Taxes
 67 with Landlord's full cooperation, but at no expense to Landlord. Any resultant refund, rebate or reduction

1 shall be used first to repay the expenses of contesting such taxes. Thereafter, Tenant shall be entitled to its
2 Pro Rata Share of the remaining refund, rebate or reduction.

3
4 7.5 Nothing contained in this Lease shall be deemed or construed to require Tenant
5 to pay or discharge any tax which may be levied upon the income, profits, rental, gross receipts or
6 business of Landlord or any personal property taxes, franchise, inheritance or estate taxes which may be
7 levied against the estate or interest of Landlord unless such tax is levied in lieu of all or a portion of
8 Landlord's Real Estate Taxes and the proceeds from such taxes are utilized by the taxing authority for the
9 same purposes as ad valorem taxes.

10 8. INSURANCE

11
12
13 8.1 Landlord shall maintain at all times during the term of this Lease a policy or
14 policies of Special Form Property Insurance on all buildings and other improvements in the Shopping
15 Center. Such insurance shall be in the full amount of one hundred percent (100%) replacement value,
16 without deduction for physical depreciation, against all risks normally covered by such a policy or
17 policies.

18
19 8.2 Landlord shall at all times during the term hereof keep in force a combined single
20 limit policy or policies of Commercial General Liability Insurance or an endorsement on a blanket
21 liability insurance policy or policies insuring against any and all damages and liability on account of, or
22 arising out of, injuries or damage to persons or property within the common areas of the Shopping Center,
23 in the amount of Three Million and 00/100 Dollars (\$3,000,000.00) on an occurrence basis.

24
25 8.3 Commencing on the Rent Commencement Date, Tenant shall reimburse
26 Landlord in equal monthly installments, payable on the first day of each calendar month, for its Pro Rata
27 Share of the premium costs of the insurance described in Sections 8.1 and 8.2 and any other insurance
28 reasonably carried by Landlord on the Shopping Center. In the event that in any year, Tenant's Pro Rata
29 Share of Landlord's Insurance shall exceed the amount paid by Tenant during the year, Tenant shall pay
30 to Landlord the amount of such deficiency within thirty (30) days after receipt of notice from Landlord.
31 In the event that the amount paid by Tenant as Tenant's contribution toward Landlord's insurance for any
32 calendar year shall be more than Tenant's Pro Rata Share, then Landlord shall, within thirty (30) days
33 after determining Tenant's Pro Rata Share, refund (or credit against the next succeeding Rent payment)
34 any excess amount paid by Tenant. Landlord's estimate of Tenant's Pro Rata Share of such insurance
35 premium for the first full calendar year of the term is \$0.22 per square foot of Floor Area within the
36 Premises.

37
38 8.4 Tenant shall at all times during the term hereof maintain in effect a policy or
39 policies of insurance covering, its leasehold improvements, trade fixtures, equipment, merchandise and
40 other personal property located within the Premises, together with storefront plate glass, in the full
41 amount of one hundred percent (100%) replacement value, without deduction for physical depreciation,
42 against any peril customarily covered by standard Special Form Property Insurance.

43
44 8.5 Tenant shall at all times during the term hereof keep in force a combined single
45 limit policy of Commercial General Liability Insurance, or an endorsement on a blanket liability
46 insurance policy or policies, insuring against any and all damages and liability on account of, or arising
47 out of, injuries or damage to persons or property in the Premises and/or resulting from acts or omissions
48 of Tenant, its agents or representatives in the Shopping Center, in the amount of at least Three Million
49 and 00/100 Dollars (\$3,000,000.00) on an occurrence basis.

50
51 8.6 For any such period of time as Tenant shall serve liquor or other alcoholic
52 beverages in or from the Premises, Tenant agrees to maintain minimum limits of coverage of at least two
53 million dollars covering "liquor law" liability (sometimes also known as "dram shop" insurance) which
54 shall insure Tenant, as the named insured, and Landlord, as the additional insured, and all those claiming
55 by, through or under Landlord, against any and all claims, demands or actions for personal and bodily
56 injury to, or death of, one person or multiple persons in one or more accidents, and for damage to
57 property, as well as for damages due to loss of means of support, loss of consortium, and the like so that
58 at all times Landlord will be fully protected against claims that may arise by reason of or in connection
59 with the sale and dispensing of liquor and alcoholic beverages in and from the Premises.

60
61 8.7 Tenant shall comply with the provisions of the applicable workers' compensation
62 laws and shall insure its liability thereunder.

63
64 8.8 Landlord and Tenant each agree to deliver to the other certificates of insurance
65 evidencing the existence in force of the policies of insurance described in this Article 8 upon the written
66 request of the other party. All of the policies of insurance required to be maintained hereunder shall be
67 issued by an insurer licensed to do business within the state in which the Premises are located, which

insurer is rated "A-X" or better in Best's Insurance Reports and which certificate shall provide that such insurance shall not be canceled or materially amended unless ten (10) days' prior written notice of such cancellation or amendment is given to the other party.

8.9 A. Tenant, on behalf of itself and its insurer(s), hereby waives and releases any and all right of recovery against Landlord, including Landlord's employees and agents, arising during the term of this Lease, for any and all loss or damage to the Premises or any property located within the Premises, which loss or damage arises from the perils required to be insured against by Tenant under Section 8.4 and 8.5 hereof.

B. Landlord, on behalf of itself and its insurer(s), hereby waives and releases any and all right of recovery against Tenant, including Tenant's employees and agents, arising during the term of this Lease, for any and all loss or damage to the Premises or Shopping Center, which loss or damage arises from perils actually insured or required to be insured against by Landlord under Section 8.1 or 8.2 hereof.

C. Landlord and Tenant shall give written notice to its insurers of the provisions of this waiver and release and have its insurance policies endorsed to prevent invalidation of insurance coverage by reason of this waiver and release.

9. UTILITIES

Tenant shall pay for all water, gas, power and electric current and all other utilities used by Tenant on the Premises, and shall cause all such utilities to be billed directly to Tenant in Tenant's name within ten (10) days after the Premises Ready Date. Landlord agrees that as of the Premises Ready Date the Premises shall be connected to electric, water, gas, telephone, sanitary sewer, and other utilities as described on Exhibit D and shall have the availability of refuse collection service. Refuse collection shall be obtained and paid for by Tenant. Tenant shall not bear any costs for capacity fees or connection. Tenant shall be responsible for all deposits required by the utility providers in connection with the commencement of services. Upon Landlord's request, Tenant shall deliver to Landlord receipts or other satisfactory evidence of payment of utility charges. Tenant shall not, without Landlord prior written approval, have any utility service disconnected prior to the expiration of the term.

10. PARKING AND COMMON AREAS

10.1 The Premises will be a part of the Shopping Center which includes parking areas, driveways, landscaping and other areas and facilities intended for the common use of the occupants of the Shopping Center and their agents, employees and customers. Landlord reserves the right with respect to the Shopping Center, subject to terms of Section 10.4 below, to modify, increase or decrease; the number, location, dimension, size, appearance and height of buildings and other improvements; the acreage of the Shopping Center; and, subject to the limitations of Section 10.5 and Section 24 hereof, the identity and types of other tenants. Tenant, as well as its agents, employees and customers, shall have the non-exclusive right to use all such areas which Landlord makes available from time to time, which shall herein be collectively referred to as "common areas". Landlord shall maintain all such common areas of the Shopping Center in a condition consistent with other similar centers in the vicinity of the Shopping Center, and free of any impediments to easy and safe movement, at reasonable rates and costs. During the term, Landlord's obligation shall, without limiting the generality thereof, include the following:

A. Resurfacing the parking areas and driveways, including striping and including keeping the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such first-class substitute which shall in all respects be equal in quality, use and durability;

B. Maintenance of the exterior and structural portions of any perimeter wall in good condition and repair;

C. Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines;

D. Maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping said areas at all times adequately irrigated, weeded, fertilized and planted;

E. Insuring the common areas of the Shopping Center;

F. Lighting the common areas, including maintaining such lighting; and

1 G. Sweeping the parking lot and sidewalks, keeping them free of dirt, trash,
2 snow and ice, and removal of trash, rubbish, garbage and other refuse.

3
4 10.2 Commencing on the Rent Commencement Date, and subject to the limitations set
5 forth below, Tenant shall pay Landlord Tenant's Pro-Rata Share (as defined in Section 7.1 above) of the
6 expenses incurred by Landlord from and after the Rent Commencement Date for the maintenance, repair,
7 replacement (subject to the limitations below), insuring, and operation of the common areas; provided,
8 however, if any other tenant or occupant of the Shopping Center directly performs or pays for any
9 maintenance of the common areas, then the amounts so paid by such tenant or occupant shall be excluded
10 from the common area maintenance costs and the gross leasable square feet of such tenant or occupant
11 shall be excluded in determining Tenant's Pro-Rata Share of such maintenance costs. Landlord shall
12 estimate common area charges based upon the prior year's actual expenses therefor (or, in the case of the
13 first year of the Lease term, upon Landlord's reasonably anticipated expenses) and thereafter Tenant shall
14 include one-twelfth (1/12th) of its annual Pro-Rata Share of such expenses with each ensuing Minimum
15 Annual Rent payment until actual expenditures are computed by Landlord. Landlord shall reconcile actual
16 expenditures and provide such accounting to Tenant within ninety (90) days of the close of each calendar
17 year. The computation of common area expenses shall be made in accordance with generally accepted
18 accounting principles. In the case of an under-payment, Tenant shall reimburse Landlord for such
19 difference within twenty (20) days after Tenant's receipt of such accounting and Landlord's itemized bill
20 therefor. In the case of an overpayment, Landlord shall reimburse Tenant for such difference together
21 with Landlord's accounting to Tenant. Landlord shall keep accurate records showing, in detail, all
22 expenses incurred for common area maintenance, together with copies of invoices therefor and evidence
23 of payment thereof for the most recent two (2) calendar years. At Tenant's election, these records shall,
24 upon at least ten (10) days' advance written notice, be made available during business hours at the office
25 of Landlord for inspection by Tenant, and/or upon Tenant's request, Landlord shall supply Tenant with
26 copies of invoices to support each year end accounting given to Tenant hereunder. If it is determined by a
27 review of Landlord's records that Tenant has been over billed for its Pro-Rata Share of common area
28 expenses after any reconciliation, then Landlord shall promptly pay the difference to Tenant.

29
30 10.3 Notwithstanding anything contained to the contrary in this Lease, in no event
31 shall Tenant's Pro-Rata Share of common area expenses include any of the following:

- 32 A. Reserves for future expenses or contingencies;
- 33
34 B. Structural improvements or other capital improvements, except that parking lot
35 repairs, re-sealing, and re-coating are not considered capital improvements for purposes of this
36 provision;
- 37
38 C. Landlord's overhead or administrative costs not directly related to management of
39 the Shopping Center which exceed 10% of the aggregate of the other common area costs;
- 40
41 D. Costs incurred in connection with the initial construction of the Shopping Center,
42 signs and pylon and/or monument sign panels which identify other tenants of the Shopping
43 Center (except that the cost of maintaining any Shopping Center pylon or monument sign other
44 than the individual tenant panels shall not be excluded), and initial landscaping thereof, or the
45 costs of repairing any defects in the design, materials, or workmanship of the Shopping Center;
- 46
47 E. Advertising or promotional expenditures or seasonal decorations;
- 48
49 F. Accounting and legal fees attributable to any matters concerning any other
50 tenant, prospective tenant, or other occupants of the Shopping Center;
- 51
52 G. Costs attributable to repairing or maintaining items which are covered by
53 warranties or insurance required to be maintained by Landlord;
- 54
55 H. Costs attributable to repairs or maintenance performed in another tenant's or
56 occupant's exclusive space which is not part of the common areas;
- 57
58 I. Costs which are reimbursed to Landlord by insurance or by other tenants as a
59 result of provisions contained in their specific leases or by third parties pursuant to law or
60 contract;
- 61
62 J. Depreciation or debt service for the Shopping Center;
- 63
64 K. Any and all of Landlord's payments for loan principal or interest, together with
65 expenses thereto related in connection with such financing or any refinancing during the term of
66 this Lease, and/or ground lease rental payments;
- 67

L. Any and all costs incurred in selling, exchanging or refinancing the Shopping Center;

M. Costs incurred due to violations by Landlord of any of the terms and conditions of any lease in the Shopping Center or of any governmental statute, regulation or ordinance;

N. Costs attributable to seeking and obtaining new tenants for, as well as retaining existing tenants in, the Shopping Center, including marketing fees, advertising expenses, brokerage commissions, rent or other rent concessions, vacancy costs, and/or to prepare space for such tenants;

O. Any and all of Landlord's costs to compel full performance under leases with all prior, existing, and prospective tenants in the Shopping Center, including without limitation all legal fees, costs and expenses to collect rent in arrears and recover possession;

P. Utility costs attributable to kiosks;

R. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by Landlord;

S. Cost of services paid to Landlord, or to subsidiaries or affiliates of Landlord for services in the Shopping Center to the extent the same exceeds the cost of such services rendered by unaffiliated third parties on a comparable competitive basis;

T. Any sales, use, income, excise, and/or franchise taxes;

U. Costs of sculptures, paintings or other art work in the common areas;

V. Costs of complying with any statutes, codes, ordinances or regulations which are in effect from time to time during the term of the Lease including, but not limited to any environmental or ADA matters; and

W. Costs of maintenance, repair and/or insurance of any portions of the Shopping Center which are separately maintained, insured and/or paid for by the users of such areas.

Tenant's Pro Rata Share of the expenses incurred for the maintenance of the common areas of the Shopping Center for the first full calendar year of the Term shall not be greater than \$2.03 per square foot of Floor Area within the Premises (exclusive of costs of ice and snow removal and common area utilities). Thereafter, in no event in subsequent calendar years, shall Tenant's Pro Rata Share of such expenses be greater than the lesser of (i) Tenant's actual Pro Rata Share for the applicable calendar year, or (ii) 104% of Tenant's Pro Rata Share of such expenses (exclusive of costs of ice and snow removal and common area utilities) for the previous calendar year.

10.4 Landlord may make modifications, alterations and other changes to the common areas as Landlord deems necessary or appropriate, subject to the terms of this Section 10.4. Landlord shall keep all walkways, driveways, doorways, Shopping Center parking areas, and other common areas open and accessible at all times, except for temporary closing to make alterations or repairs, maintain and resurface, or such closures as are necessary to prevent a public dedication. Notwithstanding the foregoing, Landlord shall give Tenant written notice of all such work no later than five (5) business days prior to the commencement of such work. Following the completion of the Redevelopment Work, in no event shall Landlord make material improvements to the Shopping Center parking or driveway areas that require a material closure of such areas during the months of October through January except in case of emergencies. Furthermore, in no event shall Landlord make improvements or alterations to the Shopping Center which: (a) reduce the number of standard striped parking spaces available for cars below the number required by applicable Legal Requirements; (b) cause any material, continuing interference in the access to the Premises from the abutting public thoroughfares and/or the common areas or any material reconfiguration of the parking areas or driveways of the Shopping Center from the Site Plan attached hereto as Exhibit A; and/or (c) cause any material, continuing impairment to the visibility of the Premises from the common areas and/or from the abutting public thoroughfares.

10.5 Tenant has entered into this Lease in reliance upon representations by Landlord that the Shopping Center as shown on Exhibit A is and will remain retail in character. Landlord consents and agrees that no part of the Shopping Center shall be used as a gymnasium, a health club, dance hall, billiard or pool hall (unless incidental to a restaurant), massage parlor (except that a first class day-spa, such as Massage Envy, shall be permitted), movie or live theater, bowling alley, skating rink, automobile dealership (except that an automobile rental establishment shall be permitted), car wash (except that the

1 washing of cars by an automobile rental establishment or a car wash located on an outparcel shall be
 2 permitted), assembly hall, entertainment or amusement facility (except in connection with a restaurant),
 3 night club, tavern or bar (except as part of a full service restaurant), flea market or adult bookstore [which
 4 is defined as a bookstore, a substantial portion of the inventory of which is not available for sale to
 5 children under eighteen (18) years of age because it explicitly deals with or depicts human sexuality].

6
 7 10.6 Following a violation of any provision of Sections 10.4 or 10.5, above, Tenant
 8 shall have the right, upon thirty (30) days' prior written notice to Landlord, if such violation is not cured
 9 within such period, to cease the payment of Minimum Annual Rent and Percentage Rent and in lieu
 10 thereof pay one-half (1/2) of Minimum Annual Rent ("Reduced Rent"). If Landlord cures the violation
 11 which is the subject of Tenant's notice, Tenant shall cease paying Reduced Rent and begin paying
 12 standard Minimum Annual Rent and Percentage Rent (if required) effective as of the following monthly
 13 rental payment date. Notwithstanding the foregoing, if a violation of Section 10.5 above is the result of a
 14 use conducted by another tenant of the Shopping Center in violation of such occupant's lease, sublease,
 15 license or other agreement, the Tenant's remedies under this Section 10.6 shall be temporarily suspended
 16 for a period not to exceed one hundred eighty (180) days so long as Landlord is using commercially
 17 reasonable efforts to cure such violation.

18 19 11. REPAIR AND MAINTENANCE

20
 21 11.1 Tenant shall, at its sole cost and expense, maintain the interior of the Premises
 22 and the storefront thereof (except to the extent some of the storefront maintenance is the obligation of
 23 Landlord under Section 11.2 hereof), in good repair and good condition, reasonable wear and tear and
 24 damage by casualty excepted, and will so deliver the Premises to Landlord at the expiration or earlier
 25 termination of this Lease. Tenant shall: (a) be responsible for the maintenance and replacement of all
 26 heating, ventilating, and air conditioning equipment and systems serving the Premises (the "HVAC
 27 Systems"); and (ii) enter into a maintenance contract with a reputable service company (the "Maintenance
 28 Contract"), pursuant to which Maintenance Contract such company shall institute a regularly scheduled
 29 program of preventive maintenance and repair of the HVAC Systems, including the grease elimination
 30 system, if any, that: (A) complies with the requirements of the applicable manufacturers', suppliers', and
 31 contractors' warranties; and (B) keeps and maintains such items in good order, condition, and repair at all
 32 times. Upon Landlord's request, Tenant shall forward to Landlord copies of all reports detailing the
 33 preventive and other maintenance and repair performed with respect to the HVAC Systems. Tenant shall:
 34 (a) maintain, repair and replace the grease interceptor servicing the Premises, if any; (b) enter into a
 35 maintenance contract with a reputable company, pursuant to which such company shall institute a
 36 regularly scheduled program of preventive maintenance and repair of such grease interceptor; and (c)
 37 promptly forward copies of all maintenance reports generated in connection with such maintenance of the
 38 grease interceptor to Landlord upon Landlord's request therefor. Upon Tenant's request to Landlord,
 39 Landlord will supply to Tenant and enforce for Tenant's benefit all available warranties by contractors,
 40 subcontractors, suppliers, manufacturers and materialmen for construction of that portion of the Premises
 41 which is Tenant's responsibility. Notwithstanding anything contained to the contrary herein, in no event
 42 shall Tenant have any obligation to repair any damage or defects caused by the negligent or tortious acts
 43 or omissions of Landlord or its agents or contractors.

44
 45 11.2 Landlord shall, at its sole cost and expense, not subject to reimbursement by
 46 Tenant, maintain, repair and replace the foundation, roof, exterior walls and structural elements of the
 47 Premises, gutters and downspouts. Landlord shall also repair at Landlord's cost any damage to the
 48 Building (including any sub-slab improvements) arising from groundwater or water vapor intrusion
 49 and/or stormwater drainage. Notwithstanding anything contained to the contrary herein, Tenant shall be
 50 obligated to reimburse Landlord for the reasonable cost to repair or replace any loss or damage to the
 51 property to the extent (a) the loss or damage to property occurred as a result of the negligent or tortious
 52 acts or omissions of Tenant or its agents or contractors. Landlord specifically reserves the right (and
 53 Tenant shall permit Landlord or its employees, agents or contractors reasonable access to the Premises for
 54 the purpose of exercising such rights), to inspect, install, maintain, repair and replace in the ceiling space
 55 and/or under the concrete slab in the Premises, all such electrical, plumbing, heating, ventilating and air
 56 conditioning systems, and other system components that may be required to service the common areas or
 57 other tenants in the Shopping Center, if any.

58
 59 Except in the event of an emergency, Landlord shall give Tenant at least forty-eight (48)
 60 hours prior written notice of any work it is required to perform pursuant to this Section 11.2 which may
 61 affect Tenant's use and/or occupancy of the Premises. All repairs and maintenance performed by Landlord
 62 pursuant to this Section 11.2 shall be performed at such time as to minimize the disruption to the conduct
 63 of Tenant's business and in the event such repairs or maintenance force Tenant to close for business,
 64 Tenant's Minimum Annual Rent obligations hereunder shall cease during the continuation of such repairs
 65 and maintenance. Landlord's repairs hereunder shall comply with all federal, state, county and municipal
 66 laws and ordinances and all rules, regulations and orders of duly constituted governmental authority
 67 having jurisdiction thereof. In the case of an emergency, if Landlord fails to promptly undertake to repair

1 or maintain the Premises as required under this Lease, after written notice from Tenant, Tenant may
 2 perform the repairs or maintenance in a good and workmanlike manner and Landlord shall reimburse
 3 Tenant for the reasonable actual costs thereof upon receipt of an invoice from Tenant accompanied by
 4 documentation evidencing such costs and final lien waivers, if applicable. If Landlord fails to reimburse
 5 Tenant for such costs within thirty (30) days after receipt of such invoice, Tenant may deduct such costs
 6 from the rentals next falling due hereunder (up to fifty percent (50%) of the rentals due each month), until
 7 the entire amount is absorbed.

8 9 12. ALTERATIONS

10
 11 Except as hereinafter provided, Tenant may make interior, non-structural alterations or
 12 improvements to or within the Premises in a good and workmanlike manner, and in conformity with all
 13 Legal Requirements, without Landlord's prior consent, provided that the cumulative cost of making such
 14 alterations or improvements is less than Fifty Thousand Dollars (\$50,000.00) and provided further that
 15 Tenant shall deliver to Landlord a written notice describing the proposed alteration or improvement with
 16 particularity, and shall provide to Landlord copies of any plans and specifications for the alteration or
 17 improvement. If, however, Tenant's alterations or improvements are part of a system-wide redesign,
 18 Landlord's consent to such interior nonstructural alterations or improvements shall not be required in the
 19 event that such alterations or improvements cost less than Two Hundred Fifty Thousand Dollars
 20 (\$250,000.00), but Tenant shall, nevertheless, deliver copies of the aforementioned plans to Landlord. All
 21 such alterations or improvements shall be performed with materials of quality equal to or better than those
 22 installed in the Premises by Landlord. In so altering or improving the Premises in connection with future
 23 operations conducted within the Premises, Tenant may remove all of the fixtures and equipment in the
 24 Premises. Tenant shall not make any alterations to the foundation, roof (including penetrations), exterior
 25 walls, gutters and downspouts, marquees or any structural or exterior portions of the Premises without
 26 first obtaining the written consent of Landlord, which shall not be unreasonably withheld. In the event
 27 that Tenant, its employees, contractors or agents cause any damage to the Shopping Center, Landlord
 28 shall repair same and Tenant shall pay to Landlord the reasonable cost of such repairs, plus interest
 29 thereon. Before making any alterations, improvements or additions to the Premises, Tenant shall (a)
 30 obtain all permits, licenses, and approvals necessary for the completion of the alterations, improvements
 31 or additions, and (b) deliver to Landlord copies of such permits, licenses and approvals and evidence
 32 reasonably satisfactory to Landlord that Tenant's contractor has procured all insurance required under this
 33 Lease. Upon termination of this Lease, Landlord will accept the Premises as altered without any further
 34 obligation upon Tenant to restore the Premises to its former condition.

35 36 13. MECHANICS' LIENS

37
 38 13.1 Tenant shall pay or cause to be paid prior to delinquency all costs for work done
 39 by it or caused to be done by it on the Premises and Tenant will keep the Premises and Shopping Center
 40 free and clear of all mechanics' liens and other liens on account of work done by or for Tenant relating
 41 thereto. Tenant shall hold Landlord harmless from and indemnify and defend Landlord against any and all
 42 liens, claims, demands, liability, loss, cost and expense (including, without limitation, reasonable
 43 attorneys' fees) on work performed for or materials or supplies furnished to Tenant. All liens suffered or
 44 caused by Tenant shall attached to Tenant's interest only, and Landlord's interest in all or any part of the
 45 Shopping Center shall not be subject to any lien for improvements made by Tenant.

46
 47 13.2 If any mechanic's or other lien is filed against the Premises, the Shopping Center,
 48 or any part thereof for work claimed to have been done for, or materials claimed to have been furnished
 49 to, Tenant, other than for the performance of Landlord's Work, then (a) Tenant shall cause such lien to be
 50 discharged within twenty (20) days after the filing of the claim of lien, or (b) if Tenant shall desire to
 51 contest any claim of lien, it shall pay a bond in such amount as is required under the applicable law or
 52 ordinance and to the reasonable satisfaction of Landlord within twenty (20) days after the filing of the
 53 claim of lien.

54
 55 13.3 Landlord shall keep the Premises free and clear of all mechanics' liens and other
 56 liens on account of work done by or for Landlord relating thereto. Landlord shall hold Tenant harmless
 57 from and indemnify and defend Tenant against any and all liens, claims, demands, liability, loss, cost and
 58 expense (including, without limitation, reasonable attorney's fees) on work performed for or materials or
 59 supplies furnished to Landlord, which relate to the Premises.

60 61 14. DAMAGE AND DESTRUCTION

62
 63 14.1 If the Premises shall be damaged or destroyed by fire or other casualty (any of
 64 such causes being referred to herein as a "Casualty"), but the Premises shall not be thereby rendered
 65 wholly or partially untenable (i.e. untenable meaning Tenant, in Tenant's reasonable judgment, is
 66 not able to conduct its regular business in the whole of the Premises without interruption or interference),
 67 Landlord shall diligently remove any resulting debris and repair/rebuild same to the condition existing

1 immediately prior to such Casualty and there shall be no abatement of Rent. If, as a result of a Casualty,
 2 the Premises shall be rendered wholly or partially untenantable (i.e. Tenant, in Tenant's reasonable
 3 judgment, shall not be able to conduct its regular business in the whole of the Premises without
 4 interruption or interference), then, Landlord shall, at Landlord's sole cost and expense, diligently remove
 5 any resulting debris and repair/rebuild same to the condition existing immediately prior to such Casualty.
 6 All Rent, including Minimum Rent, Percentage Rent, additional rent and other charges hereby reserved,
 7 shall be abated proportionately as to the portion of the Premises rendered untenantable during the period
 8 of such untenantability, and shall resume upon the earlier of to occur of: (a) sixty (60) days after
 9 Landlord's repair and restoration work is substantially completed and Landlord has delivered to Tenant
 10 all certificates of occupancy or municipal approvals required for Tenant to occupy, refixture and stock the
 11 Premises; or (b) the date that Tenant occupies the affected portion of the Premises for the conduct of
 12 business. Subject to force majeure, if Landlord (a) does not commence the repair and restoration work
 13 required pursuant to this Section 14.1 within the earlier to occur of: (i) ninety (90) days after the
 14 settlement of the insurance claims between Landlord and its insurance company and Landlord's securing
 15 all necessary building approvals from the applicable governmental authorities, or (ii) one hundred eighty
 16 (180) days after the date of such destruction, or (b) does not complete such work within three hundred
 17 sixty five (365) days after the commencement of construction then Tenant shall have the right prior to
 18 commencement or completion thereof, as the case may be, at Tenant's option, on sixty (60) days advance
 19 written notice to Landlord, to terminate this Lease, provided that such termination shall be null and void
 20 in the event that Landlord completes such work within such sixty (60) day period. Anything in this
 21 Section 14 to the contrary notwithstanding, Landlord shall not be required to repair or restore the
 22 Premises unless and until Tenant has agreed that Tenant shall reopen the Premise to the public within one
 23 hundred twenty (120) days following completion of Landlord's restoration, which agreement shall be
 24 provided by Tenant, if at all, prior to those dates upon which Landlord is required to commence its work
 25 under the terms of the previous sentence. Such agreement, however, shall not be deemed to require
 26 Tenant to continuously operate for any period of time after reopening. Notwithstanding anything
 27 contained in this Section 14 to the contrary, Landlord's repair and restoration work shall not include
 28 repairs to or replacement of Tenant's merchandise, signs, goods, trade fixtures, furnishings, equipment,
 29 furniture and other personal property, and upon Landlord's completion of repairs to the Premises, Tenant
 30 shall promptly repair and replace such items to a condition at least equal to its condition prior to its
 31 damage or destruction.

32
 33 14.2 If the common areas of the Shopping Center that are applicable to the Premises
 34 shall, either previous to the beginning of the Lease Term or during the Lease Term, be damaged or
 35 destroyed, Landlord shall with due diligence remove any resulting debris and repair and/or rebuild the
 36 damaged or destroyed common areas in the Shopping Center applicable to the Premises to substantially
 37 the same condition which existed on the date immediately preceding the date of the Casualty. Until such
 38 time as such Common Areas are substantially repaired, rebuilt and put in good and tenantable order, the
 39 Minimum Rent, Percentage Rent, additional rent and other charges hereby reserved, or a fair and just
 40 proportion thereof according to the nature and extent of the damage sustained affecting the Premises, shall
 41 be abated. Subject to force majeure, if Landlord (a) does not commence the repair and restoration work
 42 required pursuant to this Section 14.2 within the earlier to occur of (i) ninety (90) days after the settlement
 43 of the insurance claims between Landlord and its insurance company and Landlord's securing all
 44 necessary building approvals from the applicable governmental authorities, or (b) one hundred eighty
 45 (180) days after the date of such destruction, or (b) does not complete such work within three hundred
 46 sixty five (365) days after the commencement of construction, then Tenant shall have the right, at
 47 Tenant's option, to either: (i) upon ten (10) days prior notice to Landlord, perform such repair/restoration
 48 work at the sole cost of Landlord, which cost Landlord shall pay to Tenant during the course of such
 49 repairs within thirty (30) days of invoice by Tenant; or (ii) terminate this Lease upon sixty (60) days
 50 advance written notice to Landlord, provided that such termination shall be null and void in the event that
 51 Landlord completes such work within such sixty (60) day period.

52
 53 14.3 Notwithstanding the provisions of Section 14.1 and Section 14.2 hereof, if
 54 during the last two (2) years of the Initial Term, or any renewal thereof, the Premises are damaged to the
 55 extent of twenty five percent (25%) or more of the replacement cost (exclusive of the land and
 56 foundations), then this Lease may be terminated at the election of either Landlord or Tenant, provided that
 57 notice of such election shall be delivered by the electing party to the other within thirty (30) days after the
 58 occurrence of such damage or destruction. Upon the exercise of such option to terminate by either party
 59 hereto, this Lease shall be deemed null and void, the parties shall be released from all further liabilities
 60 thereafter arising under this Lease, and all Rent and other charges paid by Tenant for periods after the
 61 date of destruction shall be promptly refunded. Notwithstanding the foregoing, however, if at the time of
 62 such damage or destruction Tenant has the right to extend the term of this Lease, as provided in Article 3
 63 hereof, then Tenant may elect to exercise such right within fifteen (15) days after receiving notice of
 64 Landlord's election to terminate pursuant to this Section 14.3, and in such event Landlord's notice of
 65 termination shall be void, and Landlord shall repair and restore the Premises or the Shopping Center as
 66 provided in Section 14.1 and Section 14.2 hereof.

67

14.4 In the event of any termination of this Lease as the result of the provisions of this Article 14, this Lease shall be deemed null and void, and the parties, effective as of such termination, shall be released, each to the other, from all liability and obligations thereafter arising under this Lease, and all Rent and other pre-paid charges paid by Tenant for periods after the date of termination as provided herein shall be promptly refunded.

15. EMINENT DOMAIN

If, during the term of this Lease, as a result of a condemnation proceeding or transfer in lieu thereof, a substantial or material portion of the Shopping Center or building of which the Premises form a part including, without limitation, any part of the Premises, is taken, Landlord or Tenant may, within thirty (30) days following the date of such taking, terminate this Lease upon written notice to the other party, which termination shall be effective as of the date of such taking. In the event of a taking of a portion of the Premises where Landlord or Tenant does not elect to terminate this Lease, Landlord shall promptly and diligently restore the Premises to as near their condition prior to such taking as is reasonably possible, and, as a result of the taking Tenant is unable to operate from any portion of the Premises, the Minimum Annual Rental and other charges due hereunder shall be proportionately reduced until the earlier of (i) sixty (60) days after written certification from Landlord's architect or contractor that the Premises have been substantially completed and are ready for occupancy by Tenant or (ii) the date on which Tenant re-opens for business in the portion of the Premises so affected. Minimum Annual Rent and any other charges due from Tenant under this Lease which are based upon the square footage of the Floor Area of the Premises shall thereafter be reduced in proportion to the square footage eliminated or taken from the Premises. Nothing herein contained shall prevent Landlord and Tenant from prosecuting claims in any condemnation proceedings for the value of their respective interests. Landlord shall be entitled to the entire condemnation award except that Tenant shall be entitled to the condemnation award attributed to the value of Tenant's leasehold interest hereunder and for the taking of its fixtures and equipment, leasehold improvements, relocation expenses, goodwill, loss of business or other award related to Tenant's interest. As used in Articles 14 and 15 of this Lease, a "substantial part" or "substantial portion" of the Premises, Shopping Center or common areas, as the case may be, means a portion of the applicable area, the taking or damage of which, in Tenant's good faith determination, may result in a material disruption of the conduct of Tenant's business on the Premises.

16. TENANT'S DEFAULT

16.1 If (i) Tenant fails to pay Minimum Annual Rent or other charges required of Tenant hereunder and such payment is not made within ten (10) days after Tenant receives written notice of such failure from Landlord (provided that Landlord shall not be obligated to give Tenant notice of late payment more than two (2) times in any consecutive twelve (12) month period, and on the third time a payment is late in such twelve (12) month period is shall be deemed an immediate Event of Default without notice or grace period); (ii) Tenant is in default under any provision of this Lease and remains so for a period of thirty (30) consecutive days (for non-monetary default) after written notice to Tenant of such default (or, if such default cannot reasonably be cured within said thirty (30) day period, such longer period of time as is reasonably necessary to cure such default, provided Tenant commences to cure such default within said thirty (30) day period and diligently continues to prosecute same to completion); (iii) Tenant files a petition of bankruptcy or reorganization or a third party files same against Tenant and such petition is not dismissed within thirty (30) days after such filing; (iv) Tenant makes a general assignment for the benefit of creditors; or (v) in any proceeding based upon the insolvency of Tenant, a receiver or trustee of all of the property of Tenant is appointed and is not discharged within thirty (30) days after such appointment, then Landlord may, by giving notice to Tenant, at any time thereafter during the continuance of such default (hereinafter an "Event of Default"), exercise any of the following remedies:

A. Subject to the terms of Section 16.3 with respect to monetary defaults, terminate this Lease, and all of the obligations and responsibilities of Landlord and Tenant under this Lease shall terminate except for liabilities described in Section 16.2 below and except that Tenant shall surrender the Premises to Landlord in accordance with Article 27.

B. Cure the default for the account of and at the expense of Tenant, and Tenant shall reimburse Landlord within thirty (30) days after demand for the reasonable cost of curing Tenant's default, plus interest at twelve percent (12%) per annum (the "Default Rate"). The performance by Landlord of any Tenant obligation hereunder shall not be construed either as a waiver of the Event of Default or any other right or remedy of Landlord with respect to such Event of Default or as a waiver of any term or condition of this Lease.

C. Re-enter and repossess the Premises by summary proceedings or otherwise, expel Tenant and remove all property therefrom, and lease them to any other person upon such terms as Landlord shall deem reasonable, for a term within or beyond the Term; provided, that any such reletting prior to termination shall be for the account of Tenant, and Tenant shall remain liable for (i) all

1 Rent, and other sums which would be payable under this Lease by Tenant in the absence of such
 2 repossession, less (ii) the net proceeds, if any, of any reletting effected for the account of Tenant after
 3 deducting from such proceeds all of Landlord's expenses, reasonable attorneys' fees, employees'
 4 expenses, alteration costs, expenses of preparation for such reletting and all costs and expenses, direct or
 5 indirect, incurred as a result of Tenant's breach of this Lease. Tenant's liability shall be calculated and
 6 paid monthly. If the Premises are, at the time of the Event of Default, sublet or leased by Tenant to
 7 others, Landlord may, as Tenant's agent, collect rents due from any subtenant or other tenant and apply
 8 such rents to the Rent and other amounts due hereunder without in any way affecting Tenant's obligations
 9 to Landlord hereunder. Such agency, being given for security, is hereby agreed to be irrevocable. No re-
 10 entry and/or taking of possession by Landlord of the Premises shall be construed as an election to
 11 terminate this Lease, or as an acceptance of a surrender of the Premises, unless a written notice of
 12 termination or acceptance of surrender is delivered by Landlord to Tenant. Notwithstanding any re-
 13 letting without termination, Landlord, at any time thereafter, may elect to terminate this Lease for the
 14 previous Event of Default.

15 D. Pursue any legal or equitable remedy allowed by applicable laws of the
 16 jurisdiction in which the Premises are located.

17 16.2 If this Lease is terminated under this Article 16, neither the Landlord nor the
 18 Tenant shall have any further rights or obligations under this Lease, except that Landlord shall have the
 19 right to recover from the Tenant the following:

20 (i) the worth, at the time of the award, of the unpaid Rent that has been
 21 earned at the time of termination of this Lease; and

22 (ii) the worth, at the time of the award, of the amount by which the unpaid
 23 Rent that would have been earned after the date of termination of this Lease until the time of the award
 24 exceeds the amount of rent that could have been obtained by Landlord using reasonable diligence to relet
 25 the Premises;

26 (iii) the worth, at the time of the award, of the amount by which the unpaid
 27 Rent for the balance of the then-current term of this Lease after the time of the award exceeds the amount
 28 of Rent that could have been reasonably obtained by Landlord using reasonable diligence to relet the
 29 Premises; and

30 (iv) any other amount and court costs necessary to compensate Landlord for
 31 all detriment directly caused by Tenant's failure to perform its obligations under this Lease (including,
 32 without limitation, reasonable costs and expenses incurred by Landlord in connection with taking
 33 possession of the Premises, costs and expenses incurred by Landlord in connection with making
 34 demolitions, alterations and repairs for the purpose of reletting the Premises, reasonable attorneys' fees
 35 incurred by Landlord, and leasing commissions); provided Tenant shall never have any liability or
 36 responsibility whatever for any consequential or indirect damages.

37 The following words and phrases as used in this Section 16.2 shall have the following
 38 meanings: the term "worth at the time of the award" as used in Section 16.2(i), (ii) and (iii) shall be
 39 computed by allowing interest at the Default Rate; and the term "time of the award" shall mean either the
 40 date upon which Tenant pays to Landlord the amount recoverable by Landlord as set forth above or the
 41 date of entry of any determination, order or judgment of any court, whichever first occurs.

42 16.3 A monetary default will not be deemed or considered to have occurred under this
 43 Lease by reason of Tenant's failure or refusal to pay any amount or charge that Landlord considers Rent if
 44 Tenant's failure or refusal is solely attributable to Tenant's good faith assertion stated in a timely notice to
 45 Landlord of any Rent offset or abatement right or remedy expressly provided in this Lease, provided that
 46 within ten (10) days after Landlord's request, Tenant seeks a judicial determination from a court of
 47 competent jurisdiction that such offset or abatement is due Tenant and agrees to deposit the sums in
 48 controversy with said court.

49 16.4 Landlord shall, in all instances, make reasonable efforts to mitigate damages.
 50 Landlord will not be obligated to prefer the Premises over other available space in the Shopping Center,
 51 but Landlord similarly will not give preferential treatment to other space over the Premises.

52 16.5 Landlord and Tenant shall and they hereby do waive trial by jury in any action,
 53 proceeding or counterclaim brought by either of the parties hereto against the other on any matters not
 54 relating to personal injury or property damage but otherwise arising out of or in any way connected with
 55 this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises and any
 56 non-compulsory statutory remedy.
 57

17. LANDLORD'S DEFAULT

If Landlord should be in default in the performance of any of its obligations under this Lease, which default continues for a period of more than thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default is of a nature to require more than thirty (30) days for remedy and continues beyond the time reasonably necessary to cure [unless Landlord has undertaken procedures to cure the default within such thirty (30) day period and diligently pursues such efforts to cure to completion], Tenant may incur any expenses necessary to perform the obligation of Landlord specified in such notice and deduct such expense from the Rent next falling due, until the entire credit is absorbed, in addition to any other remedies Tenant may have hereunder or at law or in equity.

18. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT

18.1 Tenant shall, within thirty (30) days after Landlord's request, subordinate this Lease by written agreement ("SNDA") to any lien placed by Landlord upon the Premises or the Shopping Center; provided, that such lien, by its terms or by separate written agreement with Tenant, provides that if Tenant is not then in default under this Lease, this Lease shall not terminate as a result of the foreclosure of such lien, or any deed or other transfer in lieu thereof and Tenant's rights under this Lease shall continue in full force and effect and Tenant's possession of the Premises shall be undisturbed except in accordance with the provisions of this Lease. Tenant will, upon request of the lienholder, be a party to an SNDA, if such SNDA does not alter or modify this Lease in any material way, and will agree that if such lienholder succeeds to the interest of Landlord, Tenant will attorn to said lienholder (or successor-in-interest of the lienholder) as its landlord under the terms of this Lease.

18.2 In the event as of the date hereof the Shopping Center and Premises are subject to a mortgage or deed of trust or other similar security instrument, Landlord shall, at Landlord's expense, use commercially reasonable efforts to obtain from said lender and/or lessor, within thirty (30) days after the execution of this Lease, an SNDA substantially similar to the form of SNDA attached hereto as Exhibit F.

19. ASSIGNMENT AND SUBLETTING

19.1 Tenant shall have the right to assign or sublet the Premises or any portion thereof, without the consent of Landlord:

- A. To any entity with which Tenant may merge or consolidate; or
- B. To any entity which acquires any of the following:
 - (i) majority of Tenant's other stores; or
 - (ii) all or substantially all of the shares of stock or assets of Tenant;

or

- C. To any entity which is a parent or subsidiary of Tenant; or

D. To any entity which is the successor corporation in the event of a corporate reorganization, provided that the survivor thereof shall have a net worth equal to or greater than the net worth of Tenant immediately prior to such corporate reorganization.

19.2 Except with respect to transfers pursuant to Section 19.1 above, Tenant shall not assign or sublet the Premises or any part thereof without Landlord's prior written consent which consent shall not be unreasonably withheld or delayed. In the event Landlord objects to any proposed assignment or sublease pursuant to this Section 19.2, Landlord shall deliver written notice to Tenant within fifteen (15) days after Landlord's receipt of Tenant's request for Landlord's consent to any proposed assignment or sublease (which notice shall specify the name of the proposed transferee and shall be accompanied by a current financial statement and operating history of the proposed transferee), which shall specify the reasonable grounds for Landlord withholding its consent and the reasonable terms and/or conditions pursuant to which Landlord would be willing to provide Landlord's consent to such assignment or sublease. Failure of Landlord to object to such proposed assignment or sublease as and when required above shall be deemed consent of Landlord to the proposed assignment or sublease.

19.3 For any transfer of Tenant's interest in this Lease:

- A. No assignment shall become effective until each assignee shall assume all obligation of Tenant under this Lease by executing, acknowledging and delivering to Landlord, before the effective date of such assignment, a written assumption agreement, in form and substance reasonably satisfactory to Landlord; and

1
2 B. No assignment, sublease or other transfer shall reduce or affect in any
3 way any of the obligations of Tenant hereunder, and all such obligations shall continue in full force and
4 effect as obligations of the principal, and not as obligations of a guarantor or surety, to the same extent as
5 though no assignment, sublease or other transfer had occurred. Tenant shall not be released from any of
6 its obligations under this Lease unless a release is given, in writing, by Landlord.

7
8 19.4 Landlord, at any time and from time to time, may assign its interest in this Lease.
9 Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any
10 and all liability hereunder accruing after the date of such assignment, if (a) Landlord assigns its interest in
11 this Lease; and (b) the assignee assumes all of the obligations of Landlord under the terms and conditions
12 of this Lease.

13
14 20. INDEMNIFICATION

15
16 20.1 With respect to its use, occupancy and maintenance of the Premises, Tenant shall
17 hold Landlord harmless from and indemnify and defend Landlord against any and all liens, claims,
18 demands, liability, loss, cost and expense (including, without limitation, reasonable attorneys' fees) to any
19 person or property caused or claimed to be caused by or resulting from an intentional or negligent act or
20 omission of Tenant or its employees, contractors or agents.

21
22 20.2 With respect to its maintenance of the Premises, its operation and maintenance of
23 the common areas and the manner of design and construction of the Shopping Center including, but not
24 limited to, the Premises, Landlord shall hold Tenant harmless from and indemnify and defend Tenant
25 against any and all liens, claims, demands, liability, loss, cost and expense (including, without limitation,
26 reasonable attorneys' fees) to any person or property caused or claimed to be caused by or resulting from
27 an intentional or negligent act or omission of Landlord or its employees, contractors or agents.

28
29 20.3. The obligations of Tenant and Landlord under this Section 20 arising by reason
30 of any occurrence taking place during the Term shall survive the expiration or earlier termination of this
31 Lease.

32
33 21. QUIET POSSESSION AND TITLE OF LANDLORD

34
35 21.1 Landlord covenants that upon Tenant's paying the rent and performing and
36 observing the agreements and conditions herein contained, Tenant shall peaceably and quietly have, hold
37 and enjoy the Premises during the term of this Lease without any manner of hindrance or interference
38 with its quiet enjoyment, possession of the Premises and use of the Premises as permitted herein.

39
40 21.2 Landlord represents and warrants that it is the fee owner of the Premises and that
41 Landlord has full right and lawful authority to enter into and perform Landlord's obligations under this
42 Lease.

43
44 22. SIGNS AND PROMOTIONS

45
46 22.1 Subject to Tenant's compliance with all applicable Legal Requirements, Tenant
47 shall have the right, at its own expense, to maintain within the interior of the Premises any signs and
48 advertising matter customary or appropriate in the conduct of Tenant's business. Tenant shall have the
49 exclusive right to the use of the exterior surface of the Premises for its exterior building sign, subject to
50 Landlord's prior written approval thereof, such approval not to be unreasonably withheld, and for such
51 other advertising matter, banners, lettering, decal signs or decorations as such may change from time to
52 time; provided however, that all such signs and advertising matter shall: (a) be professionally made in
53 good condition; (b) be consistent with those used in a majority of stores operated under the "Earth Fare"
54 trade name; (c) advertise only products sold or services offered within the Premises; (d) be in compliance
55 with all applicable Legal Requirements and matters of record; and (e) not contain profanity, pornography
56 or disparage Landlord or any other tenant in the Shopping Center. Tenant shall have the right, at its own
57 expense and subject to Tenant's compliance with all applicable Legal Requirements and any matters of
58 record, to utilize for no longer than thirty (30) days those portions of the common area designated by
59 Landlord during Tenant's grand opening for professionally prepared promotional balloons and banners
60 and such other advertising matter as is typically employed by Tenant in connection with a grand opening
61 at one of its new store locations.

62
63 22.2 Tenant shall have the right to have its trade name included on the Shopping
64 Center monument sign, as shown on Exhibit I. The location and size of Tenant's pylon sign panel(s) shall
65 be subject to Landlord's prior approval, not to be unreasonably withheld, and Tenant's compliance with
66 all applicable Legal Requirements. Tenant shall be responsible, at its sole cost and expense, for the
67 design, installation, maintenance, replacement and removal of its sign panels on such sign.

23. WARRANTY AGAINST EXCLUSIVES

Landlord warrants to Tenant that it has granted no exclusive use or prohibited use restrictions applicable to Tenant to any party except as may be shown on Exhibit J.

24. RESTRICTIVE COVENANT

As a material inducement for Tenant to execute this Lease, Landlord covenants, represents, warrants and agrees that subject to the rights of existing tenants of the Shopping Center as set forth in written leases in effect as of the date of this Lease, no portion of the Shopping Center (excluding the Premises), or any expansion thereof, as same is now and may hereafter be constituted, shall be used as or for the primary purpose of the operation of a grocery store, natural foods store, natural pharmacy, health food store, health food restaurant, delicatessen, or a store with a department selling groceries, meats, fish, fruits, vegetables, produce, dairy products, cosmetics, health care products, beer and/or wine and/or deli items, provided, however that this restrictive covenant shall not prohibit the operation of: (i) a Panera Bread, St. Louis Bread Company, or Paradise Bakery and Café, (ii) a Walgreens, CVS, or other similar retail drugstore, (iii) any quick-serve café, deli-sandwich shop or bakery with fewer than 2,500 square feet, (iv) any sit-down casual or formal dining restaurant with wait staff; (v) any restaurant specializing in the sale of ice cream and/or frozen yogurt; or (vi) any salon or spa.

The parties agree that in the event of any breach of this covenant at any time during the term of this Lease, the total actual damages proximately resulting to Tenant therefrom will be extremely difficult or impractical to ascertain. Therefore, if a violation of this Section 24 continues for a period of sixty (60) days after Tenant's written notice thereof to Landlord, then Tenant may, commencing on the expiration of such sixty (60) day period and continuing during the continuance of such violation, cease the payment of Minimum Annual Rent and in lieu thereof, pay the lesser of: (a) the then current Minimum Annual Rent; or (b) one and one-half percent (1.5%) of Tenant's Gross Sales until such violation is cured. Further, at the one year anniversary date of Tenant's notice, if the violation remains uncured, Tenant shall have the option, at Tenant's election, which shall be exercised, if at all, within thirty (30) days after such anniversary date, to terminate this Lease upon written notice to Landlord. Notwithstanding anything to the contrary contained herein, however, if this Lease is still in full force and effect and if Landlord cures the violation which is the subject of Tenant's notice to Tenant's reasonable satisfaction, Tenant shall begin paying standard Minimum Annual Rent and Percentage Rent (if required) effective as of the following monthly rental payment date.

Notwithstanding the foregoing, if such violation is the result of a use conducted by another tenant of the Shopping Center in violation of such occupant's lease, sublease, license or other agreement (a "Rogue Tenant Violation"), the Tenant's remedies shall be temporarily suspended for a period not to exceed one hundred eighty (180) days so long as Landlord is using commercially reasonable efforts to cure such breach.

25. COMPETITION

Neither Tenant, nor any person or entity controlled by, under common control with, or controlling Tenant, directly or indirectly shall own, operate, or be engaged in any other business that is: (a) the same, similar to, or competitive with the business operated by Tenant in the Premises (the "Competing Business"); and (b) located within a radius of five (5) miles from the outside boundary of the Shopping Center, without regard to actual travel distance (the "Five Mile Radius"). If Tenant directly or indirectly owns, operates, or is engaged in a Competing Business that is located within the Five Mile Radius, same shall be deemed an Event of Default hereunder.

26. HOLDING OVER

If Tenant shall remain in possession of the Premises or any portion thereof after the expiration of the term of this Lease then, in the absence of an agreement in writing between Landlord and Tenant, the party remaining in possession shall be deemed a tenant at sufferance, until acceptance of rent by Landlord, at which time the person in possession shall become a tenant from month-to-month at 125% of the same Minimum Annual Rent and under the same terms and conditions as existed immediately prior to the expiration of the Lease.

27. SURRENDER; REMOVAL OF FIXTURES AND PERSONAL PROPERTY

Tenant shall surrender and deliver up the Premises to Landlord at the expiration or other termination of this Lease or of Tenant's right to possession hereunder, without fraud or delay, in good repair and good condition, reasonable wear and tear and damage by casualty excepted. At any time during or at the expiration or other termination of the Term of this Lease, or any Options thereof, Tenant

1 shall have the absolute and unrestricted right to remove from the Premises any or all trademark items,
 2 trade fixtures, equipment (including without limitation audio-visual units, walk-up audio-visual units,
 3 signs, safes, racks, and removable partitions), furniture and other personal property or fixtures installed or
 4 paid for by Tenant, howsoever affixed to the Premises. Tenant shall repair any damage to the Premises
 5 resulting from the removal of such trade fixtures. Any personal property of Tenant or any subtenant
 6 which shall remain in or upon the Premises after Tenant has surrendered possession of the Premises shall
 7 be deemed to have been abandoned by Tenant and at the option of Landlord, such property: (a) shall be
 8 retained by Landlord as its property; (b) shall be disposed of by Landlord in such manner as Landlord
 9 shall determine, without accountability to any person or entity; or (c) shall be promptly removed by
 10 Tenant at Tenant's expense. Landlord shall not be responsible for any loss or damage occurring to any
 11 property owned by Tenant or any subtenant remaining in the Premises after Tenant surrenders possession
 12 thereof. The terms of this Section 27 shall survive the expiration or other termination of this Lease.

13 14 28. EMISSIONS AND HAZARDOUS MATERIALS

15
16 Tenant shall not, without the prior written consent of Landlord: (a) make, or permit to be
 17 made, any use of the Premises or any portion thereof which emits, or permits the emission of, an
 18 unreasonable amount of dust, sweepings, dirt, cinders, fumes or odors into the atmosphere, the ground or
 19 any body of water, whether natural or artificial (including rivers, streams, lakes, ponds, dams, canals,
 20 sanitary or storm sewers, or flood control channels), which is in violation of any Legal Requirements; (b)
 21 after commencing business in the Premises, create, or permit to be created, any sound level which will
 22 interfere with the quiet enjoyment of any real property by any tenant or occupant of the Shopping Center,
 23 or which will create a nuisance or violate any Legal Requirements; (c) transmit, receive, or permit to be
 24 transmitted or received, any electromagnetic, microwave or other radiation which is harmful or hazardous
 25 to any person or property in, on or about the Premises or the Shopping Center, or which interferes with
 26 the operation of any electrical, electronic, telephonic or other equipment wherever located, whether on the
 27 Premises or the Shopping Center; (d) after commencing business in the Premises, create, or permit to be
 28 created, any ground vibration that is discernible outside the Premises; (e) produce, or permit to be
 29 produced, any intense glare, light or heat except within an enclosed or screened area and then only in such
 30 manner that the glare, light or heat shall not be discernible outside the Premises.

31
32 Tenant shall be permitted to use and store those Hazardous Materials, as defined
 33 hereinafter, that are used in the normal course of Tenant's business in the Premises so long as such
 34 Hazardous Materials are used and stored in compliance with applicable Environmental Laws, as defined
 35 hereinafter. Subject to the exception contained in the preceding sentence, Tenant shall not, without the
 36 prior written consent of Landlord, cause or permit, knowingly or unknowingly, any Hazardous Material to
 37 be brought or remain upon, kept, used, discharged, leaked, or emitted in or about, or treated at the
 38 Premises or the Shopping Center. Tenant hereby agrees to indemnify, defend and hold Landlord harmless
 39 from and against all losses, damages, claims, judgments, liabilities, fines, penalties, fees, costs and
 40 expenses (including, without limitation, attorneys fees) which arise during or after the term of this Lease
 41 as a result of the presence or suspected presence of any Hazardous Materials in, on or under the Premises
 42 or Shopping Center in violation of applicable Environmental Laws which have been introduced by
 43 Tenant, its employees or contractors. Landlord hereby agrees to indemnify, defend and hold Tenant
 44 harmless from and against all losses, damages, claims, judgments, liabilities, fines, penalties, fees, costs
 45 and expenses (including, without limitation, attorneys fees) which arise during or after the term of this
 46 Lease as a result of the presence or suspected presence of any Hazardous Materials in, on or under the
 47 Premises or Shopping Center in violation of applicable Environmental Laws which have been introduced
 48 by Landlord, its employees or contractors. Notwithstanding any other provision in this Lease, in the
 49 event that any investigation, removal, remediation, clean-up or other action in connection with Hazardous
 50 Materials (as defined below), is required by any federal, state or local environmental, health and/or safety
 51 related law, regulation, standard, court decision, ordinance, rule, code, judicial or administrative order or
 52 decree, directive, guideline, permit or permit condition (collectively, "Environmental Laws") applicable
 53 to the Premises or the Shopping Center, during the term of this Lease, Landlord shall be responsible for
 54 promptly performing such required investigation, removal, remediation, clean-up or other action at
 55 Landlord's sole expense, no part of which expense shall be passed through to Tenant except if caused by
 56 the activities of Tenant or Tenant's employees, contractors or agents, in which case Tenant shall be solely
 57 responsible for such cost and expense. As used herein, the term "Hazardous Materials" means any
 58 chemical, substance, material, object, condition or waste, or combination thereof, which (a) is defined as a
 59 hazardous substance, hazardous material, hazardous waste, pollutant, toxic material or contaminant under
 60 any Environmental Law, (b) is a petroleum hydrocarbon, including crude oil or any fraction thereof, or (c)
 61 is regulated pursuant to any Environmental Law.

62 63 29. FORCE MAJEURE

64
65 In the event of any act of *Force Majeure*, the act of *Force Majeure* shall serve to extend
 66 performance by such party (specifically excluding Tenant's obligation to pay any and all amounts due
 67 under this Lease) for a period of time equal to such prevention, delay or stoppage, unless a shorter period

1 is specifically provided for in this Lease. As used in this Lease, the term "*Force Majeure*" shall include,
 2 but not be limited to, the prevention, delay or stoppage encountered by either party hereto due to an act or
 3 omission of the other party, fire or other casualty, bad weather, inability to secure materials, strikes or
 4 labor disputes (over which said party has no direct or indirect bearing, in the resolution thereof, or if
 5 either party hereto does have said bearing, said dispute occurs despite either party's attempt to resolve
 6 same via good faith bargaining) directly affecting the performance of the party's obligations under this
 7 Lease, acts of God, acts of the public enemy or other hostile governmental action, civil commotion, acts
 8 or omissions of governmental agencies and/or governmental restrictions, regulations or controls affecting
 9 the party obligated to perform (or of its contractors or subcontractors), or any other cause that is not
 10 within the control of the delay or prevented party.

11 12 30. NOTICE

13
14 Whenever under this Lease a provision is made for any demand, notice or declaration of
 15 any kind or where it is deemed desirable or necessary by either party to give or serve any such notice,
 16 demand or declaration to the other, it shall be in writing and served personally, or sent by registered mail
 17 or certified mail, return receipt requested, with postage prepaid, or sent by a nationally recognized
 18 overnight carrier with receipt signed therefore, addressed to Tenant or Landlord, as the case may be, at the
 19 address specified in Article 1 hereof. Either party may by like notice at any time and from time to time
 20 designate a different address to which notices shall be sent. Any notice shall be deemed given on the date
 21 received or the date of refusal of such receipt, as the case may be.

22 23 31. MISCELLANEOUS

24
25 31.1 Interest. Except as otherwise provided herein, any sum accruing to Landlord or
 26 Tenant under the provisions of this Lease which shall not be paid when due shall bear interest at the rate
 27 of twelve percent (12%) per annum from the date written notice specifying such non-payment is served
 28 upon the defaulting party.

29
30 31.2 Partial Invalidity/Severability. If any term, covenant, condition or restriction of
 31 this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder
 32 of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or
 33 invalidated thereby.

34
35 31.3 No Partnership. Nothing contained in this Lease shall be deemed or construed by
 36 the parties hereto or by any third person to create the relationship of principal and agent, or of partnership,
 37 or of joint venture, or of any other association between the parties other than Landlord and Tenant.

38
39 31.4 Term Definition. All references to the "term" of this Lease shall include any
 40 extension of such term.

41
42 31.5 Time of the Essence. Time is of the essence of the performance of each provision
 43 of this Lease.

44
45 31.6 Waiver. The waiver of performance of any covenant, term or condition of this
 46 Lease by Landlord or Tenant shall not be construed as a waiver of any subsequent breach of the same
 47 covenant, term or condition.

48
49 31.7 Gender and Captions. Words of gender used in this Lease shall be deemed to
 50 include other genders, and singular and plural words shall be deemed to include the other, as the context
 51 may require. Paragraph headings in this Lease are for convenience only, are not a part of the agreement of
 52 the parties, and shall not be used to interpret this Lease.

53
54 31.8 Successors. The terms, conditions and covenants herein contained shall inure to
 55 the benefit of and be binding upon the heirs, assigns and other successors-in-interest of the parties hereto.
 56 The benefits of this Lease and burdens of this Lease, shall inure to the benefit of and will be binding upon
 57 parties hereto and their successors, personal representatives, and assigns. The term "successors" is used
 58 herein in its broadest possible meaning and includes, but is not limited to, every person succeeding to any
 59 interest in this Lease or the Premises of Landlord or Tenant herein, whether such succession results from
 60 the act or omission of such party.

61
62 31.9 Accounting Terms. All accounting terms not specifically defined in this Lease
 63 shall be construed in accordance with generally accepted accounting principles ("GAAP") and
 64 interpretations of the American Institute of Certified Public Accountants or its successors, consistently
 65 applied, as in effect from time to time, including, without limitation, applicable statements, bulletins and
 66 interpretations issued by the Financial Accounting Standards Board and bulletins, opinions,

1 interpretations and statements issued by the American Institute of Certified Public Accountants or its
2 committees.

3
4 31.10 Headings. Paragraph headings, numbers and underscoring have been set forth
5 herein for convenience only, do not define or limit the provisions hereof, and have no significance
6 whatsoever. The order in which the paragraphs appear in this Agreement has no significance whatsoever.

7
8 31.11 References. References in this Lease to "Sections", "Subsections", "Paragraphs",
9 "Subparagraphs", "Exhibits", and "Schedules" are to sections, subsections, paragraphs, subparagraphs,
10 exhibits and schedules herein and hereto unless otherwise indicated. References to agreements and other
11 contractual instruments shall be deemed to include all subsequent amendments and other modifications
12 thereto. References to statutes or regulations are to be construed as including all statutory and regulatory
13 provisions consolidating, amending or replacing the statute or regulation.

14
15 31.12 Consent. Wherever in this Lease Landlord or Tenant is required to give its
16 consent or approval to any action on the part of the other, such consent or approval shall not be
17 unreasonably withheld or delayed.

18
19 31.13 Intentionally omitted.

20
21 31.14 Attorney's Fees. If either party hereto shall file any action or bring any
22 proceeding against the other party arising out of this Lease or for the declaration of any rights hereunder,
23 the prevailing party therein shall be entitled to recover from the other party all costs and expenses,
24 including reasonable attorneys' fees, incurred by the prevailing party as determined by the court, an
25 arbitrator or by settlement.

26
27 31.15 Estoppels. Within fifteen (15) days after a request by Landlord or Tenant, as the
28 case may be, Landlord or Tenant shall execute and deliver a to the other, or to such party as the other may
29 designate, an estoppel statement. Such statement shall include representations (i) that this Lease is in full
30 force and effect, (ii) the Rent Commencement Date, (iii) that there are no uncured defaults in the other
31 party's performance hereunder, or stating those known and claimed, provided that, in fact, such facts are
32 accurate and ascertainable; (iv) that Rent is paid currently without any off-set or defense thereto; (v) that
33 not more than one (1) monthly installment of the Minimum Annual Rent has been paid in advance; and
34 (vi) any other information reasonably requested. Tenant may satisfy its obligations under this Section by
35 delivering to Landlord a completed Estoppel Certificate substantially in the form as attached hereto as
36 Exhibit G.

37
38 31.16 Site Plan. At any time throughout the term of this Lease within thirty (30) days
39 after Tenant's written request therefore, not to be made more frequently than once per twelve (12)
40 consecutive month period, Landlord shall provide Tenant with a copy of the most current available site
41 plan of the Shopping Center, which shall reflect: (a) the square footage of each individual premises
42 currently leased therein; and (b) the trade names and locations of the respective tenants thereof; and (c)
43 those premises in the Shopping Center, if any, which are not then currently occupied and open for
44 business. If the circumstances existing shall be the same as existing at the time of the prior request, then
45 Landlord shall certify that the state of events remain unchanged.

46
47 31.17 Change of Ownership. Landlord shall promptly notify Tenant in writing of any
48 change in the ownership of the Shopping Center or of the Premises, and shall give the name and address
49 of the new owner and instructions regarding the payment of rent. In the event of any change in or transfer
50 of title of Landlord in and to the Shopping Center or the Premises, whether voluntary or involuntary, or
51 by act of Landlord or by operation of law, Tenant shall be under no obligation to pay rents thereafter
52 accruing to the new owner until Tenant shall have been duly notified of such change and given
53 satisfactory proof thereof. In the event of any such transfer, the transferor shall be freed of all liability
54 thereafter accruing hereunder provided that the new landlord shall assume all of the obligations on
55 Landlord's part to be performed hereunder and a copy of such assumption is delivered to Tenant.

56
57 31.18 Memorandum of Lease. The parties hereto agree that neither shall record this
58 Lease, but each shall execute the Memorandum of Lease attached hereto as Exhibit H, which either party
59 may record at the recording party's sole cost and expense in the land records of the County where the
60 Premises are located. Upon the expiration or termination of this Lease, Tenant will, at Landlord's
61 request, execute and deliver to Landlord a release of such Memorandum of Lease.

62
63 31.19 Brokers and Consultants. Landlord and Tenant hereby represent and warrant that
64 neither party has employed the services of a real estate broker in connection with the lease transaction
65 created hereby and that there are no claims for brokerage commissions or finder's fees in connection
66 with the execution of this Lease. Tenant has retained Danielle Harris of Hourglass Development as a site
67 consultant with respect to this Lease and Landlord has retained KRG Development, LLC as its consultant

with respect to this Lease. Landlord shall pay the consulting fee due Danielle Harris with respect to this Lease pursuant to the terms of a separate written agreement and shall also pay all fees and costs due KRG Development, LLC. Except as stated herein, each party hereby holds the other harmless from and shall indemnify and defend the other against any and all liens, claims, demands, liability, loss, cost and expense (including, without limitation, reasonable attorneys' fees) in connection with any claim for such commissions or fees by any third party.

31.20 Preparer of the Lease. This Lease has been prepared by Tenant, and its professional advisors, and reviewed by Landlord and its professional advisors. Landlord, Tenant, and their separate advisors believe that this Lease is the product of all of their efforts, that it expresses their agreement, and that it should not be interpreted in favor of either Landlord or Tenant or against either Landlord or Tenant merely because of their efforts in preparing it.

31.21 Entire Agreement. Any agreements, warranties or representations not expressly contained herein shall in no way bind either Landlord or Tenant, and Landlord and Tenant expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Lease. This Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, whether written or oral, between Landlord and its agents and Tenant and its agents with respect to the Premises, building, common areas, Shopping Center, or this Lease. This Lease constitutes the entire agreement between the parties hereto and no addition to, or modification of, any term or provision of this Lease shall be effective until and unless set forth in a written instrument signed by both Landlord and Tenant.

31.22 Choice of Law. This Lease shall be construed and enforced in accordance with the laws of the State in which the Premises are located. Any dispute over this Lease shall be brought in a court of competent jurisdiction in the State in which the Premises are located.

31.23 Landlord's Exculpatory Clause. It is specifically understood and agreed that there shall be no personal liability of Landlord in respect to any of the covenants, conditions or provisions of this Lease. In the event of a breach or default by Landlord of any of its obligations under this Lease which results in a monetary judgment against Landlord, Tenant shall look solely to any right of offset allowed by law against any amount due from Tenant hereunder or to the equity of Landlord in the Shopping Center for the satisfaction of such judgment. This exculpation provision shall not, however, limit Tenant's right to pursue other remedies against Landlord, including equitable rights, which may be available pursuant to the terms of this Lease.

31.24 OFAC Compliance. Landlord and Tenant hereby each warrants for itself that it is in compliance with all Laws applicable to Tenant and all beneficial owners of Tenant, including, without limitation, the requirements of Executive Order No. 133224, 66 Fed Reg. 49079 (September 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury ("OFAC") and in any enabling legislation or other Execution Orders in respect thereof (collectively, the "Orders"). Each party covenants for itself that neither it nor any beneficial owner of it is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders.

31.25 Limitation of Liability. Landlord and Tenant hereby waive all claims for incidental, consequential, special, punitive or exemplary damages arising from this Lease, whether in contract, tort or otherwise.

31.26 Authority. The person executing this Lease on behalf of Landlord represents and warrants that: (a) he or she has been duly authorized to execute and deliver this Lease; and (b) this Lease is the valid and binding agreement of Landlord, enforceable in accordance with its terms. The person executing this Lease on behalf of Tenant represents and warrants that: (a) he or she has been duly authorized to execute and deliver this Lease; and (b) this Lease is the valid and binding agreement of Tenant, enforceable in accordance with its terms.

31.27 No Offer. The submission of this Lease for examination does not constitute an offer to lease, or a reservation or option for the Premises, and shall have no binding force or effect. This Lease shall be effective only upon execution and delivery hereof by both Landlord and Tenant.

31.28 Confidentiality. Landlord and Tenant, and each of their principals, agents, employees and attorneys, agree to use reasonable efforts to keep the terms of this Lease confidential, and shall use reasonable efforts to not disclose, directly or indirectly, those terms to any other person or entity without first obtaining the prior written consent of the other party hereto; provided, however, that such other party's consent shall not be required for any disclosure: (a) to such party's officers, directors,

1 employees, lenders, accountants, consultants, advisers, attorneys or current or potential investors in or
2 purchasers of such party's business; (b) compelled by applicable laws, regulations or court orders; (c) of
3 information that is now or hereafter becomes part of the public domain; (d) of information known by any
4 third party prior to the Effective Date; (e) of information that is or becomes available to either party on a
5 nonconfidential basis; or (f) of information hereafter disclosed by a third party who has no duty of
6 confidentiality to such other party. Notwithstanding the foregoing, Landlord upon full execution and
7 delivery of this Lease, Landlord shall be permitted to announce the name of Tenant and the existence of
8 this Lease.

9
10 31.29 Limited Publicity License. Tenant hereby grants Landlord a limited license in its
11 trademarks, wordmarks, copyrights and likenesses for the express purpose of promoting the Shopping
12 Center or other centers in which Tenant is located pursuant to other agreements with Landlord. Landlord
13 hereby represents that any such use of Tenant's intellectual property under this Section 31.29 will be
14 limited to promotional materials including, but not limited to, print, radio, television, Internet and
15 billboard promotion of the Shopping Center. Landlord reserves the right to change the name of the
16 Shopping Center from time to time during the term of this Lease. Tenant shall include the name and
17 address of the Shopping Center in any advertising done in local media by Tenant for or in respect of the
18 business being conducted in the Premises.

19
20
21 [SIGNATURE PAGE TO FOLLOW]
22

SIGNATURE PAGE
FOR LANDLORD

Dated this ^{15th} day of May, 2012

"LANDLORD"
KRG CENTRE, LLC, an
Indiana limited liability company

Stacey Teeters
WITNESS
[Signature]
WITNESS
Ken Price

BY: [Signature]
us: Chairman & CEO
R/S
KP
MTX
BUB

LANDLORD'S ACKNOWLEDGMENT

STATE OF Indiana)
COUNTY OF Marion) ss:

On this 15 day of May, 2012, before me, a Notary Public, in and for said
county, personally appeared John A. Kite, on behalf of KRG Centre, LLC, an Indiana
limited liability company.

Stacey D. Teeters
Notary Public



SIGNATURE PAGE
FOR TENANT

Dated this 14th day of May, 2012

"TENANT"
EARTH FARE, INC., a North Carolina Corporation

[Signature]
WITNESS

BY: [Signature] (SEAL)

[Signature]
WITNESS

ITS: [Signature]

TENANT'S ACKNOWLEDGMENT

STATE OF NORTH CAROLINA)
COUNTY OF HENDERSON) ss:

On this 14th day of May, 2012, before me, a Notary Public, in and for said County,
personally came Gary Jones, the CFO of EARTH FARE, INC., a
North Carolina corporation, on behalf of the corporation.

[Signature]
Notary Public

EXHIBIT A

SITE PLAN OF THE SHOPPING CENTER

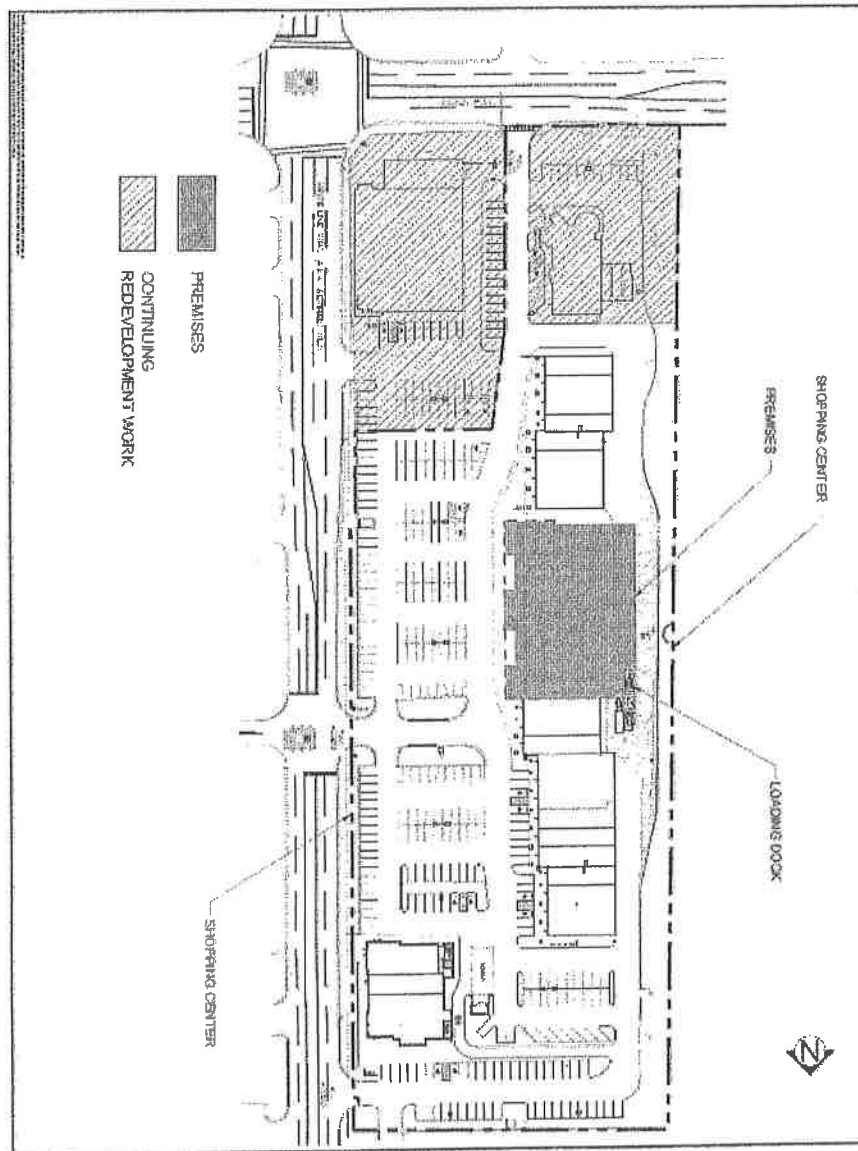


EXHIBIT B

LEGAL DESCRIPTION OF THE SHOPPING CENTER,

Part of the Southeast Quarter of Section 36 Township 18 North, Range 3 East in Hamilton County, Indiana more particularly described as follows:

Commencing at the Southeast corner of the Southeast Quarter of Section 36, Township 18 North, Range 3 East in Hamilton County, Indiana; thence North 89 degrees 20 minutes 15 seconds West (assumed being) on the South line of Southeast Quarter 198.00 feet thence North 00 degrees 00 minutes 00 seconds parallel with the East line of said Southeast Quarter 35.00 feet to the South of the Real Estate described in Deed Record 354, pages 231-233 in the Hamilton County Recorder's Office and the True Point of Beginning for the tract herein described; thence North 00 degrees 00 minutes 00 seconds parallel to the East line of said Southwest 214.85 feet; thence South 89 degrees 20 minutes 15 seconds East parallel with the South line of said Southeast Quarter 153.00 feet to the East line of the Real Estate described in Deed Record 351, page 231: thence North 00 degrees 00 minutes 00 seconds 201.05 feet (this and the next eight (8) courses are on the boundary of said Real Estate); thence North 89 degrees 20 minutes 15 seconds West 4.00 feet thence North 00 degrees 00 minutes 00 seconds East 8.53 feet; thence North 90 degrees 00 minutes 00 seconds 9.00 feet; thence North 00 degrees 00 minutes 22 seconds 602.82 feet; thence North 90 degrees 00 minutes 00 seconds West 5.00 feet; thence North 00 degrees 00 minutes 00 seconds 10.00 feet thence North 90 degrees 00 minutes 00 seconds East 5.00 feet thence North 00 degrees 00 minutes 00 seconds 10.00 feet; thence North 90 degrees 00 minutes 00 seconds East 5.00 feet; thence North 00 degrees 00 minutes 00 seconds 25.58 feet; thence North 89 degrees 20 minutes 15 seconds West parallel to the South line of said Southeast Quarter 328.33 feet to the West line of the Real Estate described in Deed Record 354, pages 231-233 thence South 00 degrees 49 minutes 00 seconds West 1020.33 feet (this and the next four (4) courses are on the boundary of said Real Estate); to the point of curvature of a tangent curve whose radius point bears North 89 degrees 11 minutes 00 seconds West 2804.79 feet from the point of curvature; thence southerly on said curve an arc distance of 44.00 feet; thence South 89 degrees 20 minutes 15 seconds East 84.20 feet, thence North 00 degrees 39 minutes 45 seconds east 2.00 feet; thence North 89 degrees 20 minutes 15 seconds East 101.60 feet to the True Point of Beginning for the tract herein described containing 7.395 acres, more or less.

EXHIBIT C

PROHIBITED USES

(1) Any use or activity which emits or results in strong, excessive, unusual or offensive odors, fumes, litter, dirt, dust or vapors, is a public or private nuisance, emits noise or sounds which are excessive or objectionable due to intermittence, beat, frequency, shrillness or loudness (including any music or sound which is materially audible inside other premises when all doors are closed), creates a hazardous condition, permits vibrations to be felt outside of the premises, generates, stores or uses hazardous substances.

(2) Any operation primarily used as a storage or warehouse facility and any assembling, manufacturing, refining, smelting, agricultural, industrial, drilling, or mining operation;

(3) Any "second hand" store, "surplus" store, or store selling overstocked goods, closeout goods or goods in odd lots;

(4) Any mobile home park, trailer court, lot for sale, lease, show or repair of new or used automobiles, trucks, trailers, boats, or recreational vehicles, labor camp, employment agency, governmental unemployment agency, service or commission, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

(5) Any dumping, disposing, incineration, or reduction of garbage (exclusive of trash compactors or trash containers located near the rear of any building to the extent same are used solely for handling or reducing such waste produced on the premises from authorized uses and, in such latter event, only if handled in a reasonably clean and sanitary manner);

(6) Any fire sale, bankruptcy sale (unless pursuant to a court order and not exceeding 90 days in duration), or auction house operation;

(7) Any central laundry, dry cleaning plant, or laundromat (except that a dry cleaner that performs all dry cleaning outside the Shopping Center);

(8) Any living quarters, sleeping apartments, rooming and/or boarding houses, or lodging rooms;

(9) Any "Pornographic Use", which shall include, without limitation: (a) a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational (provided, however, that this restriction shall not apply to a general bookstore or other retail business offering such items for sale if such items are discretely displayed and comprise less than ten percent (10%) of its inventory); or (b) a store primarily offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto; (c) a topless/strip bar; (d) a massage parlor, (e) a sexually oriented business, (f) an adult entertainment business, or (g) a bathhouse;

- (10) Any so-called "head shop", or other establishment for selling or exhibiting drug-related paraphernalia;
- (11) Any flea market, flea circus, ballroom, music hall or dance hall;
- (12) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor or establishment; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall, establishment or parlor;
- (13) Any unlawful or dangerous use;
- (14) Any pawn shop, gun shop, shooting range or gallery, gun or firing range, or tattoo parlor or shop;
- (15) Any fraternal lodge;
- (16) Any lawn mower repair shop;
- (17) Any carnival, amusement park, circus, or outdoor entertainment use;
- (18) any unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks);
- (19) a fire station;
- (20) engraving service; and
- (21) substance abuse treatment center.

EXHIBIT D

Landlord's Work

Retail Supermarket

Specifications of Earth Fare Inc.
General Building Requirements

SHOPPING CENTER: The Centre

LOCATION: Carmel, IN

PREMISES: Space #:

SIZE: 25,000Sq.Ft. + or -

Landlord shall perform the following Landlord's Work at Landlord's expense. The costs incurred by Landlord in performing the work described in A (Landlord's Cost) below, shall not be included in the Actual Cost used to determine any adjustment in Minimum Annual Rent as provided in Section 6.5 of the Lease. The costs incurred by Landlord in performing the work described in B (Landlord's Construction) below, shall be included in the Actual Cost of Landlord's Work used to determine any adjustment in Minimum Annual rent as provided in Section 6.5 of the Lease.

The specifications set forth herein are a general description of the work to be performed by Landlord in connection with Tenant's store. Landlord's Work shall be defined by the plans and specifications prepared and reviewed by Landlord and Tenant pursuant to the terms of this Lease and in the event that this Exhibit D and such plans be inconsistent, the approved plans shall control. The parties shall use their reasonable good efforts to prepare and review plans in accordance with Exhibit E to this Lease. Landlord shall prepare all plans (and revisions thereto and final "as-built" plans) for Landlord's Work at Landlord's expense.

A) Landlord's Cost

1) Site Requirements: Site Requirements:

A) Parking field shall be of asphalt construction maintaining normal standards for a retail Shopping Center.

B) Parking area shall contain the number and size of parking spaces required by applicable Legal Requirements, including all variances and waivers thereto.

C) Landlord shall perform all site work complete with proper site drainage, storm water removal, retention if required, and landscaping.

D) Landlord shall be responsible for bringing all utilities to tenants building.

2) **Exterior Lighting:** Landlord shall provide and maintain the exterior parking lot lighting to provide an average illumination level of four to five (5) foot-candles PSF minimum (provided such illumination may be reduced at the boundary of the Shopping Center to comply with Legal Requirements). Parking & security lighting shall be photocell initiated and time clock terminated.

B) Landlord's Construction**1) Building Structure:**

- A) Building shall be of masonry and steel structure and be so constructed to accommodate an interior open structure height of 19' to bottom of joist at the lowest point assuming the roof slopes drains to the rear of the building.
- B) Building size shall be approximately 25,000 Sq.Ft. The roof shall be a metal deck with a mechanically fastened single ply membrane type roof. The roof shall be insulated to achieve a minimum of an R-30 insulation value or as required per local code. All exterior walls shall maintain an insulation value of no less than R-19 or as required per local code.
- C) The building shall incorporate proper gutters and down spouts as required.
- D) The building shall include an interior ladder and hatch to access the roof per tenant's plans.

E) Receiving Area Options:**The facility shall incorporate the following receiving dock option:**

The building shall incorporate a single bay receiving dock accessing the rear stock room located as the site dictates. This dock shall have two mechanical dock levelers and be no higher than 50" above grade. The truck approach shall be no less 24' wide x 65' long, constructed of properly engineered concrete with no more than a 2% slope and shall include a properly engineered retaining wall and truck well drainage if site requirements dictate. The dock doors shall be a commercial grade overhead metal door with a clear opening of 8' high

1) x 8' wide. The dock shall be equipped with proper dock bumpers and weather seal. The building shall also include one grade level commercial grade overhead metal door with a clear opening of 8' high x 6' wide to accommodate on grade deliveries. Receiving area shall also include one metal man door 3' wide x 7' high. And one metal compactor door of approximately 3'x3'.

Building front and entrance shall be protected by no less than a 12' wide canopy overhang a minimum of 12' high running the entire width of the building. Under canopy area shall be lighted to achieve no less than 30-foot candles of illumination at 3 feet above the walkway along building front (provided such illumination may be reduced if required by Legal Requirements).

F) The building shall incorporate a decorative façade of approximately 32 feet +/- AFF at its highest point. Building elevations to be approved by tenant prior to construction.

G) The building shall be painted on all four sides (where there is not an abutting building) at a minimum with colors mutually acceptable to both tenant & landlord or must be covered with a suitable finish to meet local codes.

H) The building shall include all ramps, clearances, etc. to meet all ADA compliance.

- 2) **Restroom(s):** Landlord shall provide four (4) new restrooms located in accordance with Tenant's Plans to include all walls sheet rocked, taped, spackled and painted; finished ceramic tile walls, finished tile floor, acoustical ceiling tile & grid, sinks, electric hand dryers, water closets, and urinals, ADA hardware, six (6) gallon water heater, exhaust fans, adequate light fixtures and one (1) duplex electrical outlet, all per Plans or as required by code. All work to meet code including the Americans with Disabilities Act (ADA). Landlord shall provide for completion of any additional Restrooms if required by code.
- 3) **Mechanical Platform:** Provide a raised mechanical platform approximately 10' AFF capable of supporting 200lbs PSF approximately 24' x 36' for tenant's refrigeration system, water heaters and other mechanical systems. Head room of a minimum of 90" from platform floor to bottom of roof joist. Provide steel frame work mounted to the building structural steel extending a minimum of

24" above the roof deck to support tenant's remote refrigeration condensers.

4) **Interior offices and Break Room:**

Provide approximately 700sq.ft of interior rooms to be used as offices and break room.to include all walls sheet rocked, taped, spackled and painted,, finished tile floor, acoustical ceiling tile & grid, exhaust fans, adequate light fixtures and solid wood doors with metal frames and quality hardware.

5) **H.V.A.C Systems including all ductwork:**

a.) Main System

Landlord shall provide and install new HVAC equipment sufficient to provide a minimum of one (1) ton of cooling per four hundred (400) square feet of sales area and (1) CFM per square foot of sales area with supply air and air returns as required per the Plans and to meet Tenant's approval. (With open structure ceilings painted, insulated ducts or fabric Duct Sox will be required!) The HVAC must maintain a temperature of 75 degrees Fahrenheit and a relative humidity level between 45% & 50% in the sales area year round. HVAC design shall accommodate Tenant's heat reclamation coil. (Heat reclaim coil supplied by tenant unless specified otherwise!) Gas furnace shall be supplied where natural gas is available. Supply suspended Modine type heaters at dock and stock room to maintain no less than sixty- five (65) degrees during heating season. Receiving Dock shall not be air-conditioned. **Controls:** Adequate quantity and quality to meet specifications above, and located per the Plans. Units to be rooftop mounted per the Plans and to meet Tenant's Approval. **Equipment Type:** "Seasons Four" or equivalent. Package units to be Lennox or equivalent.. Equipment shall be supplied with Natural Gas when available.

b.) Package Units

Landlord shall provide and install new HVAC package units sufficient to provide a minimum of one (1) ton of cooling per four hundred (350) square feet of area and (1) CFM per square foot of area with supply air and air returns as required per the Plans and to meet Tenant's approval for all enclosed office areas or dedicated preparation areas. Mini split system by Daiken or equivalent are acceptable in conditioned rooms under 200sq.ft.

c) Kitchen Hoods

Landlord shall provide and install Kitchen hoods, make up air systems and treated air systems per Tenant's plans and specs. Equipment Type; Captive Air, Greenheck or equivalent.

d) Air Curtain Fans

Automatic entrances shall be equipped with air curtain fly fans on exterior and interior doors, Units to be Mars or Burner or equivalent. Overhead receiving doors and all pass doors to the outside other than legal exits shall be equipped with air curtain fly fans.

Tenant reserves the right to purchase HVAC gear and furnish to landlord at cost if necessary to meet budget. Landlord will not provide HVAC to mezzanine area but shall provide ventilation fans to the mezzanine area.

7) Ceilings, Sales Area:

a.) Open Structure

Sales area shall be an open structure-ceiling cavity with a clear height between floor slab and deck of no less than twenty feet, six inches (20' 6") or nineteen feet (19'-0") at the lowest point at structure, (sloped roof design) and shall otherwise be governed by structural design per code and in accordance with the Plans and to meet Tenant's approval. All exposed deck, structure and mechanical components shall be painted. Any exposed HVAC duct shall be metal duct, with interior insulation

and shall be painted. Fabric duct sox acceptable in some locations.

8) Electrical Service: Landlord shall furnish electric service to Tenant's individual meter. Landlord shall furnish 800 amp, 277/480 volt, 3 phase service with all switch gear and proper distribution panels to: All HVAC equipment, all interior and exterior lighting and signage, all building equipment, all of tenants fixtures and equipment. Wiring and electrical distribution systems shall include both line voltage and low voltage wiring systems. Tenant reserves the right to purchase all switch gear and sell to landlord if necessary to meet budget.

9) Lighting Fixtures:

a) Grocery Sales Area

Lighting type fluorescent T-5 high bay fixtures to achieve no less than 70 foot candles ambient with LED track fixtures and specific aisle lighting to achieve 120 fc on product displays.

b) Exterior security lighting.

Building shall be equipped with security lighting on all sides of the building where there is not an abutting building.

b) Stock Room

Fluorescent Fixtures:

Furnish & install adequate fluorescent lighting in storeroom to render an illumination level of no less than 50-foot candles. Lamps shall be protected by a metal guard or cage. All fixtures shall meet Local, State & Federal standards.

Tenant reserves the right to purchase Lighting package and furnish to landlord at cost if necessary to meet budget.

10) Floor Construction: Floors shall be of concrete slab (smooth finish) on grade, no less than 5" thick: finished as to allow floor coverings by Landlord per the Plans.

11) Floor Finishes:

• **Sales Area:**

Floor finish in sales area (approx. 17,000sq.ft) shall be polished, stained concrete per tenants plans.

• **Prep areas:**

Shall be finished in quarry tile or a two-part epoxy such as "Stone Hard", Dura flex or equivalent.

• **Stock Room:**

Stock room shall be bare concrete with three coats urethane based concrete sealer

12) Walls: Shall be sheet rocked with sound batten, taped & spackled, with two coats of semi-gloss latex paint per tenant's specification. Walls in prep area shall be sheet rocked with water proof sheet rock to a minimum of 4' AFF. And finished with a combination of ceramic tile and ,or FRP.

13) Plumbing: Landlord shall supply total plumbing package as follows:

A) All under floor sanitary lines with the man discharge trunk being no less than six inches (6") in diameter with properly engineered slope and separate grease line system running to a exterior grease trap.

B) Approx. 40 four inch (4") Condensate drains for tenant's refrigeration equipment located per plan. (Actual count may vary per plan!)

- C) Four inch x four to sixteen ft. trench drains with strainer and proper floor slope to drain located in each of tenant's Meat, Produce, Deli, Bakery, and Seafood Prep Rooms per plan. Sewer and water supply with necessary back flow preventors for t (12) tenant supplied prep sinks! Incoming domestic water supply line shall be no less than a 2" line.
- D) Exterior 1500 gallon Grease trap with separate grease drainage system where required by code.
- E) Two thirty six inch by thirty six inch (36"x 36") floor mounted janitor's sink installed with faucet & hardware.
- F) 120-gallon gas fired water heater. (Electric acceptable where gas service not available.)
- G) Tempering valves on all hand sinks as required by code.
- H) All materials and installation to accommodate restrooms as outlined in paragraph 3.
- I) Two exterior frost proof hose bibs with security handles located per plan. One exterior frost proof hose bibs with security handles located per plan at rear of store adjacent to trash compactor.

14) **Store Front:** Storefront to be +/- 80' of glass with 3'-6" knee-wall. Landlord shall provide Tenant with plans and storefront elevations for Tenant's approval prior to construction.

a) **Vestibule:**

Supply an air conditioned/heated weatherproof vestibule approximately 12' deep x 32' long (Specific floor plans may have two smaller vestibules.) with four sets of automatic entrances including all aluminum and glass work. Doors shall be bi-parting sliders (minimum of 5' clear opening) with electronic door operators and motion detectors and fly fan over each door per Tenant's Plans and applicable code.

15) **Exit Door(s):** Provide exit doors with hardware and closure as per the Plans and applicable codes. Emergency doors shall be provided with Detex/Hardware security devices as per the Plans and specifications and applicable codes.

16) **Fire Protection/Emergency Lighting, Exit Signs:** Landlord will provide all Sprinkler work, Emergency Lighting, and Exit Signs in accordance with the Plans, and any other related fire protection work as per local and state codes.

17) **Free-Span Premises/Utility Conduits:** Any utility conduits (electrical, HVAC, water, etc.) installed for the benefit of any tenant and running through the Leased Premises shall be installed above Tenant's lowered ceiling or along under side of roof deck and located as close to the back wall of the Leased Premises as possible. Landlord shall provide for unobstructed clear height for suspended ceiling of no less than twelve feet (12') for Tenant's Sales area and full clear height in Tenant's Stock Area or to meet Tenant's approval.

18) **Utilities /Assessments:** All utilities shall be individually metered to Tenant's Leased Premises by applicable utility company, however, water may be sub-metered at Landlord's expense. Landlord shall be responsible for any assessment, (special or otherwise) or related costs for service, permits, water and sewer rents, rates, charges, fees and impact fees, including water and sewer connection and/or hook-up charges; provided, however, if any such charges caused by Tenant's negligence shall be paid by Tenant.

19) [Intentionally Deleted]

20) **Construction & Design Criteria:** Landlord will provide to Tenant: (a) any related Construction & Design criteria; and (b) "As Built" plans for any portion of the Leased Premises including store front and shopping center elevations. Landlord shall also provide current contact information and account information of all related services including utilities, telephone, and related municipalities or governing agencies.

21) **Building Permits:** Landlord shall obtain all building permit(s).

22) **Tenant Procurement:** The tenant reserves the right to purchase certain leasehold materials or systems direct and sell same back to the landlord as part of the "Actual Costs" if the tenants cost is better than the landlord's sources.

EXHIBIT E
TIMELINE OF CRITICAL ACTIONS

Defined terms used in this Exhibit E shall have the meanings ascribed to them in the foregoing Lease.

Action Step	
No later than the date of full execution of the Lease, Landlord shall supply scaled site plans with a preliminary 25,000 sq.ft building sized to fit the site with designated receiving dock and front entrance area.	
Tenant and Landlord shall work together to develop a final site plan and building configuration no later than 14 days after the effective date.	
Tenant shall supply Tenants requirement plans and equipment specification sheets to Landlord's Architect and Project Engineers no later than 45 days after final site plan has been approved and delivered to Tenant by landlord.	
Landlord's Architect shall deliver complete stamped Architectural, Civil and Engineering plans (A,C & MEP plans) for Tenants review and approval no later than 45 days after receipt of Tenant's requirement plans.	
Tenant shall review and approve or submit comments on Landlord's plans within 7 days of receiving Landlord's A,C & MEP plans	
Landlord's Architect shall submit revised A, C & MEP plans based on Tenants comments within 5 days of receiving mark ups and/or comments.	
Tenant shall review and approve or submit comments on revised plans within 5 days of receiving Landlord's revised A,C & MEP plans.	
Landlord shall put plans out for bid and submit for permitting within 7 days of receiving final plan approvals from Tenant.	
Bid time and Permit time estimated at 35 days. Permit time is variable.	
Landlord shall construct building and turnover to Tenant for stocking no longer than 240 days after receiving all necessary building permits. Landlord shall obtain a final Occupancy Permit prior to turnover to Tenant.	
Tenants Stocking Period shall be no longer than 25 days after turnover from Landlord.	
Note: The time frames expressed above are the outside target completion times for each step. All parties will make their best effort to perform faster where feasible.	

EXHIBIT F

SUBORDINATION NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is executed as of the ____ day of _____, 20____, by and between EARTH FARE, INC, a North Carolina corporation, whose address is 145 Cane Creek Industrial Park Drive, Suite 150, Fletcher, NC 28732 (the "Tenant") and _____, whose address is _____ (the "Lender").

WITNESSETH:

WHEREAS, Lender has made or will make a mortgage loan to _____, a _____ (the "Borrower") which will be secured by a Deed of Trust, Security Agreement and Fixture Financing Statement from Borrower to Lender (the "Mortgage") covering that certain parcel of land, with improvements now or hereafter constructed thereon, described more fully on Exhibit "A" attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Tenant has entered into a Lease Agreement with Borrower dated _____, 20____, a Memorandum of which has been or will be recorded in the Office of the _____ for _____ County, _____ (collectively, the "Lease"), wherein and whereby Borrower has leased certain space within the Property to Tenant as more fully described in the Lease (the "Demised Premises"); and

WHEREAS, Tenant and Lender wish to set forth herein certain agreements hereinafter pertaining to the various rights of said parties with respect to the Property, the Mortgage, and the Lease.

NOW, THEREFORE, in consideration of the mutual covenants set forth hereinafter, Tenant and Lender hereby agree as follows:

1. **Consent.** Lender hereby consents to, approves, accepts and recognizes the Lease and the terms thereof, including without limitation all renewal and extension rights and options set forth therein, and covenants and agrees that the exercise by Tenant of any of the rights, remedies and options therein contained shall not constitute a default under the Mortgage.

2. **Subordination.** Tenant agrees that the Lease shall at all times be subject and subordinate to the lien of the Mortgage, and to any modifications, extensions or renewals of the Mortgage, with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease and without regard to the order of priority of recording the Mortgage; subject, however, to the provisions of this Agreement. Tenant shall take such steps and execute such documents from time to time hereafter as Lender may reasonably request in order to carry into effect the provisions and intent of this Agreement and to confirm the subordination of Lease to the lien of the Mortgage, upon and subject to the terms of this Agreement.

3. **Notice And Right To Cure.** Before exercising any remedies available to it under the Lease, Tenant shall, simultaneously with the giving of any notices to Borrower, send copies to Lender, at its address above and in the manner provided in the Lease, of all written notices pursuant to which Tenant asserts that Borrower has defaulted or is in default under the Lease. Lender shall have the right, but not the obligation, to cure any such default on the part of Borrower under the terms of the Lease, and Tenant

agrees to accept any performance by Lender on behalf of Borrower which shall cure such default or claimed default on the part of Borrower under the terms of the Lease. In no event shall Lender be deemed to have assumed or become personally liable to Tenant or otherwise for any obligations of Borrower for which Lender attempts to effectuate a cure.

4. No Lease Prepayments Or Modifications. Tenant agrees that Lender shall not be bound by Tenant's prepayment of any rent to Borrower for more than one (1) month in advance of accrual thereof, nor by any amendment of or modification to the Lease, without in any instance Lender's prior written approval.

5. Non-Disturbance. So long as Tenant is not in default under the Lease beyond any applicable cure period set forth therein, Lender agrees that Tenant's possession of the Demised Premises under the Lease shall not be disturbed, affected or impaired by, nor will the Lease or Tenant's rights thereunder be otherwise affected, by any foreclosure of the Mortgage or deed in lieu thereof, or by any judicial or non-judicial sale or execution of the Property pursuant to the Mortgage, or by any other suit, action or proceeding upon the Mortgage or any obligation secured thereby. Lender further agrees that in the event of any foreclosure of the Mortgage or deed in lieu thereof, Lender or the successful purchaser of the Property, as the case may be, shall accept the attornment of Tenant thereafter upon and subject to the terms and provisions set forth herein, unless and until Tenant be thereafter in default beyond any applicable cure period set forth in the Lease. Except as may be procedurally required by law, Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for the foreclosure of the Mortgage or to enforce any rights under the Mortgage or any other obligations secured thereby. Neither the Mortgage nor any other security instrument executed in connection therewith shall cover or be construed as subjecting in any manner to the lien thereof, any trade fixtures, equipment, inventory or other personal property at any time furnished or installed by or for Tenant in the Demised Premises unless the same shall be permanently affixed to the Property; provided, that Tenant agrees that upon removal of any of its trade fixtures, equipment, inventory or other personal property at any time furnished or installed by or for Tenant in the Demised Premises, Tenant shall at its expense repair all damage to the Demised Premises caused by such removal.

6. Attornment. So long as Tenant is not in default under the Lease, Lender agrees that in the event it or any other person or entity acquires possession and/or title to the Property pursuant to the exercise of any remedy provided in the Mortgage, or by virtue of any deed in lieu of foreclosure or otherwise, the Lease shall not be terminated or affected by such foreclosure, conveyance or sale of the Property or by any other proceeding; the Lease shall continue in full force and effect as a direct Lease between Tenant and Lender or such purchaser upon all of the terms, covenants and conditions set forth therein; and Tenant shall attorn to and accept such person or entity as its landlord under the Lease for the balance then remaining on the term of the Lease (including any extensions or renewals, if exercised) upon all terms and conditions set forth therein.

7. Casualty Insurance Proceeds. So long as Tenant is not in default under the Lease, Lender agrees that in the event of a casualty loss the casualty insurance proceeds shall be applied for restoration as and to the extent required in the Lease.

8. Notices. All notices, requests, demands and other communications allowed, made or required to be made pursuant to the terms of this Agreement shall be in writing. The Effective Date of Notice shall be the date upon which such notice is given or made when personally delivered (including personal delivery by Federal Express or other comparable overnight private courier service) or when deposited in the United States Mail registered or certified, postage prepaid, return receipt requested, addressed in any such event to the party to whom such communication is directed at such address as is set forth for such party hereinabove or at such other address as may hereafter be designated in writing by the

respective parties hereto.

9. Binding Effect. This Agreement shall bind and inure to the benefit of the successors in interest of the parties hereto and the agreements of Lender shall specifically be binding upon any person or entity who may acquire title to the Property as a result of any exercise of the rights or remedies of Lender under the terms of the Mortgage.

Executed by and among the parties hereto on the day and year first written above.

EARTH FARE, INC.,
a North Carolina corporation

BY: _____

ITS: _____
as Tenant

STATE OF NORTH CAROLINA)
COUNTY OF HENDERSON)

ACKNOWLEDGEMENT

I, _____, a Notary Public in and for the County and State aforesaid,
certify that _____, the duly authorized _____ of EARTH FARE, INC., a
North Carolina corporation, the Tenant, personally appeared before me this day and acknowledged the
execution of the foregoing instrument on its behalf.

WITNESS my hand and official stamp or seal this ____ day of _____, 20__.

Notary Public for _____

My Commission Expires: _____

Executed by and among the parties hereto on the day and year first written above.

BY: _____

TITLE: _____
as Lender

STATE OF _____)

COUNTY OF _____)

ACKNOWLEDGMENT

I, _____, a Notary Public in and for the County and State aforesaid,
certify that _____, the duly authorized _____ of
_____, the Lender, personally appeared before me this day
and acknowledged the execution of the foregoing instrument on its behalf.

WITNESS my hand and official stamp or seal this ____ day of _____, 20__.

Notary Public for _____
My Commission Expires: _____

Exhibit A

EXHIBIT G

ESTOPPEL CERTIFICATE

This Estoppel Certificate is made this ___ day of _____, 20_____, by EARTH FARE, INC. ("Tenant").

Tenant hereby acknowledges that it is the tenant of certain premises described on Schedule "A" attached hereto (the "Premises") located in Huntersville, North Carolina pursuant to a lease dated May __, 2010 (the "Lease") by and between Tenant and _____, a _____ ("Landlord").

Tenant understands that for purposes of transferring its interests in the property of which the Premises is a part, (the "Property"), or for purposes of securing a new lender on the Property, Landlord has requested the following representations and certification by Tenant:

1. The Lease is in full force and effect in accordance with its terms and has not been modified, amended, supplemented, or changed in any respect, except as set forth on Schedule "A" attached hereto.

2. The present term of the Lease commenced on _____ and will expire on _____. The Lease provides Tenant with _____ (_____) consecutive options to renew the Lease for _____ (_____) years each.

3. To the best of Tenant's current actual knowledge, Landlord is not in default under the Lease as of the date hereof and no notice of default has been given which has not been cured, except as set forth on Schedule "A" attached hereto.

4. The current monthly installment of Minimum Annual Rent payable by Tenant to Landlord as of this date is \$_____.

5. All Minimum Annual Rent, percentage rent, and any additional rent or charges due Landlord from Tenant pursuant to the Lease have been paid through the payment period last ending prior to the date hereof, except as set forth on Schedule "A" attached hereto. No rent or charge has been paid more than thirty (30) days in advance of its due date.

IN WITNESS WHEREOF, the undersigned has executed this Estoppel Certificate as of the date and year above written.

TENANT:

EARTH FARE, INC.,
a North Carolina corporation

BY: _____

ITS: _____

EXHIBIT H

MEMORANDUM OF LEASE

Instrument Prepared And Recording Requested By:

Marion M. Goodyear, P.A.
101 N. Main Street, Suite 1502
Greenville, SC 29601
Attention: Marion M. Goodyear, Esq.

After Recording, Return to:

Marion M. Goodyear, P.A.
101 N. Main Street, Suite 1502
Greenville, SC 29601
Attention: Marion M. Goodyear, Esq.

MEMORANDUM OF LEASE AGREEMENT dated _____, _____, by and between _____, an _____ ("Landlord"), and EARTH FARE, INC., a North Carolina corporation ("Tenant"), covering certain premises (the "Premises") located in _____ (the "Shopping Center") located in the City of _____, County of _____, State of _____, which Shopping Center is more particularly described on Exhibit A, attached hereto and made a part hereof by reference. The Premises is depicted on the Site Plan of the Shopping Center attached hereto as Exhibit B.

AGREEMENT

1. For good and valuable consideration, Landlord leases the Premises, together with all easements, rights, improvements and appurtenances thereto, to Tenant and Tenant hires the same from Landlord for the term and under the provisions contained in the unrecorded Lease dated _____, _____ between Landlord and Tenant (the "Lease").
2. The terms, provisions, covenants, conditions and agreements set forth in said Lease are by this reference incorporated herein.
3. As a material inducement for Tenant to execute this Lease, Landlord covenants, represents, warrants and agrees that subject to the rights of existing tenants of the Shopping Center as set forth in written leases in effect as of the date of this Lease, no portion of the Shopping Center (excluding the Premises), or any expansion thereof, as same is now and may hereafter be constituted, shall be used as or for the primary purpose of the operation of a grocery store, natural foods store, natural pharmacy, health food store, health food restaurant, delicatessen, or a store with a department selling groceries, meats, fish, fruits, vegetables, produce, dairy products, cosmetics, health care products, beer and/or wine and/or deli items, provided, however that this restrictive covenant shall not prohibit the operation of: (i) a Panera Bread, St. Louis Bread Company, or Paradise Bakery and Café, (ii) a typical drugstore, such as Walgreens or CVS, (iii) any self-serve café, deli-sandwich shop or bakery with fewer than 2,500 square feet, (iv) any sit-down casual or formal dining restaurant with wait staff, (v) any restaurant specializing in the sale of ice cream and/or frozen yogurt; or (vi) salon or spa.

No part of the Shopping Center shall be used as a gymnasium, health club, dance hall, billiard or pool hall (unless incidental to a restaurant), massage parlor (except that a first class day-spa, such as Massage Envy, shall be permitted), movie or live theater, bowling alley, skating rink, automobile dealership (except that an automobile rental establishment shall be permitted), car wash (except that the washing of cars by an automobile rental establishment or a car wash located on an outparcel shall be permitted), assembly hall, entertainment or amusement facility (except in connection with a restaurant), night club, tavern or bar (except as part of a full service restaurant), flea market or adult bookstore [which is defined as a bookstore, a substantial portion of the inventory of which is not available for sale to children under eighteen (18) years of age because it explicitly deals with or depicts human sexuality].

4. The term of the Lease commenced on _____, 20____ and shall continue for a period ending on the last day of the month after the day which is _____ years after the Rent Commencement Date (_____, 20____). Tenant has the right to extend the term of the Lease for _____ (_____) consecutive options of _____ (_____) years each.

5. This Agreement is executed for recording purposes only and is not intended to be a summary of the Lease, and is subject to the terms of that said Lease. In the event of conflict between this Agreement and the said Lease, the said Lease shall control.

6. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

LANDLORD:

TENANT:

a _____

EARTH FARE, INC.,
a North Carolina corporation

By: _____

BY: _____

BY: _____

ITS: _____

[ALL SIGNATURES REQUIRED HEREON MUST BE NOTARIZED]

LANDLORD'S ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) ss:

On this _____ day of _____, 20____, before me, a Notary Public, in and for
said county, personally appeared _____, the _____ of
_____, on behalf of the limited liability company.

Notary Public

TENANT'S ACKNOWLEDGMENT

STATE OF NORTH CAROLINA)
COUNTY OF HENDERSON) ss:

On this _____ day of _____, 20____, before me, a Notary Public, in and for said County,
personally came _____, the _____ of _____,
a(an) _____ corporation, on behalf of the corporation.

Notary Public

EXHIBIT A
The Shopping Center

To be inserted

EXHIBIT B
The Premises

EXHIBIT I
MONUMENT SIGN

THE CENTRE	

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EXHIBIT J
EXISTING EXCLUSIVES

Old National Bank Lease dated 10/4/02
Exclusive
Tenant has the exclusive right to conduct the business of a Full Service Bank with ATM facilities. "Full Service Bank" shall mean a bank that provides checkin and savings accounts and loans (regardless of type) to customers initiated or closed from or on the Premises. The exclusive shall not apply to the space occupied by OSCO Drug Store, whether or not OSCO Drug Store occupies such space. The exclusive use clause does not prohibit tenants who engage in financing or loaning money, including, but not limited to finance companies, check cashing companies, auto loan companies and mortgage companies, as long as they are not a full service bank and do not offer ATM Services.
Morellis Cleaners Lease dated 2/19/90
Exclusive
Throughout the term of the Lease, provided that Tenant is not in default under the lease, and with the exception of Osco Drug, Inc. and/or its assigns, Tenant shall have the exclusive right to a dry cleaning and/or laundry business in the Building. § 8.1.
Frame Decor Lease dated 9/15/88
Exclusive
Tenant shall have the exclusive right to do custom framing and "do it yourself" framing at the Centre with the exception of Osco Drug or its assignees. § 3 of First Lease Addendum. Except for Osco Drugs, their sublessors and assigns, and subject to the rights of existing tenants in the Centre Shopping Center, Landlord shall not lease space to anyone whose primary business is framing art. For purposes of this section, Primary Business is defined as a minimum of 50% of one's gross sales separated from the sale of framed art. § 3 of Second Addendum to Lease.
Griffon Fabrics Lease Dated 9/9/04
Exclusive
Except for the space leased to ONB, Osco Drugs, Porter Paint, their successors, sulessees or assigns, Landlord will not lease space to anyone who's primary business is the sale of upholstery and drapery fabrics on rols or bolts as received from the Fabric Manufacturer Suctom Bed Coverings, and Custom Draperies. Primary business is defined as exceeding 40%. This exclusive will no effect any existing Tenant's who have the right to sell any of these items under their existing Lease. § 24.18.
Pizza Hut (LaRaza Pizza) Lease dated 8/29/06
Exclusive
Prohibits another tenant in the center, with the exception of Osco Drugs or existing tenants at the time of this lease execution of prior to Lease Commencement, their subtenants and assignees, whose primary business (defined as 10% or greater of gross sales) is the sale of Pizza, Pasta or any type of fired or baked chicken wings. S 24.18.

Maid Pro Lease dated 9/6/06
Exclusive
Prohibits a professional maid service business, so long as Tenant is not in default beyond applicable cure period. Albertson, Inc. d/b/a osco Drugs and Old National Bank and their assignees and subtenants are excluded from this exclusive use clause. § 24.18.
BoRics Lease dated 1/1/92
Exclusive
Prohibits, except for the space now occupied by Osco, John & Friends and Waldenbooks, and their assignees, sublessors, or successors, space in the building which is to be used as a discount hair salon. During the prime term of the Lease, a discount hair salon is defined to be one that offers a basic hair cut for less than \$11.00. During the option term a discount hair salon is defined to be one that offers a basic hair cut for less than \$13.00. § 8.2.
Creative Escape Lease dated 11/3/10
Exclusive
Prohibits another tenant at the Centre whose primary business is "paint your own pottery." Primary business is defined as more than 25% of sales coming from "paint your own pottery business." § 8.1.
Verizon Wireless (The Cellular Connection)
Exclusive
Prohibits another tenant whose Primary Business is selling wireless communication devices and/or satellite television products and services. "Primary Business" is defined as generating more than 20% of the total revenue at its premises within the Shopping Center from the sale of wireless communication devices and/or satellite television products and services. This exclusive does not apply to any existing tenants or any future tenants occupying in excess of 10,000 square feet. § 51.

EXHIBIT K

RULES

Any term used herein which is not specifically defined in this Exhibit K shall have the meaning ascribed thereto in the Lease.

Deliveries.

1. Tenant shall advise and cause its vendors to deliver all merchandise before noon on Mondays through Fridays, not at other times. Tenant shall not permit the loading or unloading or the parking or standing of delivery vehicles outside any area designated therefore, nor permit any use of vehicles which will interfere with the use of any portion of the Shopping Center.
2. Tractor trailers which must be unhooked or parked shall use steel plates under dolly wheels to prevent damage to the asphalt paving surface. In addition, wheel blocking must be available for use. Tractor trailers are to be removed from the loading areas after unloading. No parking or storing of such trailers shall be permitted in the Shopping Center.
3. Merchandise being delivered to Tenant shall immediately be moved into the Premises and not be left in the service or receiving areas.

Trash. Tenant shall be responsible for storage and removal of its trash, refuse and garbage from the Premises, and covenants that it shall store garbage, trash, rubbish and other refuse in rat proof and insect proof containers with adequate screening to hide such garbage, trash, rubbish and refuse from view on the Premises, and shall remove the same from the Premises frequently and regularly, all at Tenant's cost. Tenant shall not dispose of the following items in sinks or commodes: plastic products (plastic bags, straws, boxes); sanitary napkins; tea bags; cooking fats; cooking oils; any meat scraps or cutting residue; petroleum products (gasoline, naphtha, kerosene, lubricating oils); paint products (thinner, brushes); or any other item which the same are not designed to receive.

Advertisements.

1. Other than as permitted under the provisions of the Lease, Tenant shall not permit or suffer any advertising medium to be placed upon any portion of the Shopping Center, including, but not limited to, exterior windows, on the sidewalks or on the parking lot areas or light poles. No permission, expressed or implied, is granted to exhibit or display any banner, pennant, sign, or trade or seasonal decoration of any size, style, or material outside the Premises.
2. Tenant shall not permit or suffer the use of any advertising medium which can be heard or experienced outside of the Premises, including, without limiting the generality of the foregoing: flashing lights, searchlights, loud speakers, phonographs, radios or television.

Exterior Devices. No radio, television, or other communication antenna equipment or device is to be mounted, attached, or secured to any part of the roof, exterior surface, or anywhere outside the Premises, except as otherwise permitted under the Lease.

Use of the Premises. Tenant shall not permit or suffer any portion of the Premises to be used for the following:

1. Any operation primarily used as a storage warehouse operation or any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.
2. Any use which causes objectionable odors to emanate or be dispelled from the Premises.
3. Any flea market, pawn shop, clearance, outlet, off-price, or second-hand, surplus or discount store, provided that nothing in this Section is intended to affect Tenant's pricing policies.
4. Any dumping, disposing, incineration or reduction of garbage, except in areas specifically designated by Landlord for such use.
5. Any public or private auction or sale that would indicate to the public that Tenant: (i) is bankrupt; (ii) is going out of business, or (iii) has lost or is preparing to terminate its possession of the Premises.
6. Any use which would in any way tend to: (i) create or permit waste or nuisance upon the Premises; (ii) disturb any other tenant in the Shopping Center or the occupants of neighboring property; or (iii) injure the reputation of the Shopping Center. The Premises shall not be used except in a manner consistent with the general high standards of merchandising in the Shopping Center and not in a disreputable or immoral manner or in violation of any Laws.

Use of the Common Areas. Tenant shall not, upon any portion of the Shopping Center:

1. Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever.
2. Distribute any circular, booklet, handbill, placard or other material.
3. Solicit membership in any organization, group or association or contribution for any purpose.
4. Permit or suffer merchandise of any kind at any time to be placed, exhibited or displayed outside the Premises, including, but not limited to, vending machines. Tenant shall not use the exterior sidewalks or exterior walkways of the Premises to display, store or place any merchandise. No sale of merchandise by tent sale, truck load sale or the like, shall be permitted on the parking lot or other Common Areas.
5. Use any portion of the Shopping Center for promotional activities, including but not limited to rides, carnival type shows, entertainment, outdoor shows, automobile or other product shows.
6. Deface, damage or demolish any sign, light standard or fixture, landscaping materials or other improvement within the Shopping Center, or the property of customers, invitees or employees situated within the Shopping Center.

Signs. Tenant shall cause its exterior storefront signage to be illuminated at all time that the Common Areas are illuminated, or such other times as may be required by Landlord.

Employee Parking Designation. Landlord may designate portions of the parking areas within the Shopping Center for parking by employees of Tenants and Tenant shall direct its employees to park in such areas while at the Shopping Center for Tenant's business.

EXHIBIT L

Walgreens Restrictions

No part of the Premises will be used for any one or combination of the following:

(i) the operation of a drug store or a so-called prescription pharmacy or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind;

(ii) the operation of a medical diagnostic lab or the provision of treatment services (other than as part of a medical, dental, physician, surgical or chiropractic office[s], which office[s] shall not be restricted by this subclause [ii], and which offices shall be allowed to provide free samples of medications to patients as well as providing medicines to patients for on-premises care;

(iii) the sale of so-called health and beauty aids or drug sundries (provided, however, that the sale of such items by a business not primarily engaged in the sale of such items, in an area not to exceed the lesser of 100 square feet of floor area or 10% of the total square footage of such business, shall not be prohibited hereunder);

(iv) the operation of a business whose primary business is the sale of alcoholic beverages for consumption off the premises; provided, however, that an otherwise permitted restaurant may offer and sell alcoholic beverages for off-premises consumption, such as a brew pub or similar business;

(v) the operation of a business in which photofinishing services (including, without limitation, digital photographic processing or printing, or the sale of any other imaging services, processes or goods) or photographic film are offered for sale (provided, however, (i) the sale of photographic film in an area not to exceed the lesser of 25 square feet of floor area or 10% of the total square footage of such business shall not be prohibited hereunder; (ii) the sale of photographic or digital film by a business primarily engaged in the sale of photo equipment shall not be prohibited hereunder; (iii) the provisions of photocopy services is not restricted hereunder; (iv) one (and only one) business on the Adjacent Parcel may offer passport photo services; and (v) one (and only one) business on the Adjacent Parcel shall be permitted to have not more than one (1) self-service digital film kiosk;

(vi) the operation of a business in which greeting cards or gift wrap are offered for sale; (provided, however, that the sale of such items by a business not primarily engaged in the sale of such items, in an area not to exceed the lesser of 100 square feet of floor area or 10% of the total square footage of such business, shall not be prohibited hereunder); and

(vii) the operation of a business in which prepackaged food items for off premises consumption are offered for sale except that such merchandise may be offered for sale and sold by businesses having dine-in, take-out and/or food delivery operations, grocery stores, video stores, or hardware stores, and the foregoing restriction shall not prohibit the operation in the Adjacent Parcel of a restaurant or bar. This exclusive (vii) shall not apply to the operation of restaurants, including, without limitation, sit-down family style or fast food restaurants.

The foregoing restrictions in (iii), (v), (vi) and (vii) above shall not apply to:

(w) one, and only one, grocery store of not less than 20,000 square feet;

(x) a hair or beauty salon, day spa, therapeutic massage establishment, or medical spa, which business may also engage in the sale of specialty health and beauty aids or drug sundries, provided, however, the sale of such items shall be limited to the lesser of 100 square feet of floor area or 10% of the total square footage of such business;

(y) a Sally Beauty Supply which does not exceed 1,500 square feet; and

(z) a business providing weight loss advice and assistance, such as Jenny Craig, Weight Watchers, and Medi-fast, including the sale of food products and nutritional supplements to their customers.

The exclusions in all events shall prohibit the operation of a so-called "convenience store" such as a 7-11, Village Pantry or gas station mini-mart on any part of the Premises. For purposes hereof, teas and herbs shall not be deemed to be "health and beauty aids or drug sundries".

(b) In addition, Tenant shall not use the Premises or any portion thereof for purposes of a disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, an outdoor carnival, amusement park or circus, a theater of any kind, adult book store, adult theatre, adult amusement facility, an adult-oriented massage parlor, or any facility selling or displaying pornographic materials or having such displays, second hand store, odd lot, closeout or liquidation store, auction house, flea market, blood bank, funeral home, sleeping quarters or lodging, the outdoor housing or raising of animals (provided, that the foregoing shall not prohibit a pet store which may provide the housing of pets), the sale, leasing or storage of automobiles, boats or other motor vehicles, any industrial use (including, without limitation, any manufacturing, smelting, rendering, refining, chemical manufacturing or processing, or other manufacturing uses, any mining or mineral exploration or development except by non-surface means, an assembly hall, off track betting establishment, bingo hall, any use involving the use, storage, disposal or handling of hazardous materials or underground storage tanks, a church, temple, synagogue, mosque, or other house of worship, any facility for the sale of paraphernalia intended for use with illicit drugs, office use, or any use which creates a nuisance.

(c) Tenant shall not use any part of the Premises for purposes of a cocktail lounge, bar, any other establishment that sells alcoholic beverages for on-premises consumption, children's play or party facility, day spa, salon, chiropractor's office, or other establishment that offers therapeutic massage services, "Goodwill" or "Salvation Army" store or quality antiques dealer, educational or training facility (including, without limitation, a beauty school, barber college, school or other facility catering primarily to students or trainees rather than customers, a martial arts studio and a business providing tutoring services, such as Sylvan Learning Centers), gymnasium, sport or health club or spa, brewing of beer or other beverages, an auto parts store which offers simple auto repairs or has an oil exchange and/or automobile lubrication program, a business providing services to the public, such as a, real estate sales office, travel agency, title insurance agency, tax form preparation business, insurance agency, and/or optometrist's office.

EXHIBIT M

IRR Calculations

(attached at following page)

[illegible]

EXHIBIT D

CM Inquiry Report for
Sorted by Date for Open / Closed Charges.

From 11/1/2019 to 2/6/2020

Master Occupant ID:		Balance Forward::	0.00
Address Id::		Charges (Debit)::	177,969.12
Building ID:	4113	Receipts (Credit)::	-44,492.28
Lease ID:	1747	Prepaid::	0.00
Income Category::	All	Net:	133,476.84
Receipt Type Id:	All	Security Deposit:	0.00
Receipt Descriptor:	All		

Cat	Date	BatchID	Building ID	Lease ID	Src Description	Charges (Debit)	Receipts (Credit)	Receipt Type Id	Receipt Descriptor	Balance
Cat	11/1/2019	76483		4113	1747 CH AUTOCHRG @T11/30/2019	4,582.90	0.00			4,582.90
CAM	11/1/2019	76483		4113	1747 CH AUTOCHRG @T11/30/2019	926.29	0.00			5,509.19
INS	11/1/2019	76483		4113	1747 CH AUTOCHRG @T11/30/2019	32,479.17	0.00			37,988.36
RNT	11/1/2019	76483		4113	1747 CH AUTOCHRG @T11/30/2019	6,453.92	0.00			44,442.28
RTX	11/1/2019	76483		4113	1747 CH AUTOCHRG @T11/30/2019	50.00	0.00			44,492.28
SPS	11/1/2019	76483		4113	1747 CH AUTOCHRG @T11/30/2019	0.00	-44,492.28	CHK	410144	0.00
INS	11/14/2019	77504		4113	1747 CR Receipt	4,582.90	0.00			4,582.90
CAM	12/1/2019	77667		4113	1747 CH AUTOCHRG @T12/31/2019	926.29	0.00			5,509.19
INS	12/1/2019	77667		4113	1747 CH AUTOCHRG @T12/31/2019	32,479.17	0.00			37,988.36
RNT	12/1/2019	77667		4113	1747 CH AUTOCHRG @T12/31/2019	6,453.92	0.00			44,442.28
RTX	12/1/2019	77667		4113	1747 CH AUTOCHRG @T12/31/2019	50.00	0.00			44,492.28
SPS	12/1/2019	77667		4113	1747 CH AUTOCHRG @T12/31/2019	4,582.90	0.00			49,075.18
CAM	1/1/2020	78593		4113	1747 CH AUTOCHRG @T1/31/2020	926.29	0.00			50,001.47
INS	1/1/2020	78593		4113	1747 CH AUTOCHRG @T1/31/2020	32,479.17	0.00			82,480.64
RNT	1/1/2020	78593		4113	1747 CH AUTOCHRG @T1/31/2020	6,453.92	0.00			88,934.56
RTX	1/1/2020	78593		4113	1747 CH AUTOCHRG @T1/31/2020	50.00	0.00			88,984.56
SPS	1/1/2020	78593		4113	1747 CH AUTOCHRG @T1/31/2020	4,582.90	0.00			93,567.46
CAM	2/1/2020	79689		4113	1747 CH AUTOCHRG @T2/29/2020	926.29	0.00			94,493.75
INS	2/1/2020	79689		4113	1747 CH AUTOCHRG @T2/29/2020	32,479.17	0.00			126,972.92
RNT	2/1/2020	79689		4113	1747 CH AUTOCHRG @T2/29/2020	6,453.92	0.00			133,426.84
RTX	2/1/2020	79689		4113	1747 CH AUTOCHRG @T2/29/2020	50.00	0.00			133,476.84
SPS	2/1/2020	79689		4113	1747 CH AUTOCHRG @T2/29/2020					
						177,969.12	-44,492.28			