

Fill in this information to identify the case:Debtor OTB Acquisition LLCUnited States Bankruptcy Court for the: Northern District of Georgia
(State)Case number 25-52416**Modified Official Form 410
Proof of Claim****12/24**

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

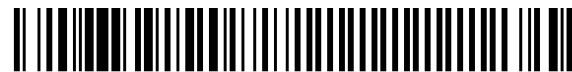
Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	1102 Walnut Street Cary NC LLC	
	Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom?	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? 1102 Walnut Street Cary NC LLC c/o Jasmine Pitt, Esq. Akerman LLP 100 North Main Street, Suite 2425 Winston-Salem, NC 27101 Contact phone <u>336-296-7108</u> Contact email <u>jasmine.pitt@akerman.com</u> Uniform claim identifier (if you use one):	Where should payments to the creditor be sent? (if different) 1102 Walnut Street Cary NC LLC Attn. Alan Ziess 841 Gilbert HWY Fairfield, CT 06824 Contact phone Contact email
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) Filed on MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing?	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?

☒ No

☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim?

\$ 249888.03

. Does this amount include interest or other charges?

☐ No

☒ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Lease of real property - see attached Addendum

9. Is all or part of the claim secured?

☒ No

☐ Yes. The claim is secured by a lien on property.

Nature or property:

☐ Real estate: If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.

☐ Motor vehicle

☐ Other. Describe:

Basis for perfection:

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property:

\$_____

Amount of the claim that is secured:

\$_____

Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$_____

Annual Interest Rate (when case was filed) _____ %

☐ Fixed

☐ Variable

10. Is this claim based on a lease?

☐ No

☒ Yes. Amount necessary to cure any default as of the date of the petition. \$ 83474.07

11. Is this claim subject to a right of setoff?

☐ No

☒ Yes. Identify the property: All setoff and recoupment rights reserved.



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check all that apply:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(3) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/05/2025
MM / DD / YYYY

/s/Alan Ziess
Signature

Print the name of the person who is completing and signing this claim:

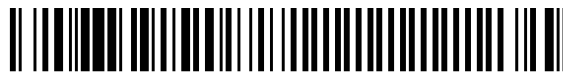
Name Alan Ziess
First name Middle name Last name

Title authorized signatory

Company 1102 Walnut Street Cary NC LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 841 Gilbert HWY, Fairfield, CT, 06824

Contact phone _____ Email _____



Verita (KCC) ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (888) 647-1744 | International (310) 751-2628

Debtor: 25-52416 - OTB Acquisition LLC District: Northern District of Georgia, Atlanta Division		
Creditor: 1102 Walnut Street Cary NC LLC c/o Jasmine Pitt, Esq. Akerman LLP 100 North Main Street Suite 2425 Winston-Salem, NC, 27101 Phone: 336-296-7108 Phone 2: Fax: Email: jasmine.pitt@akerman.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Disbursement/Notice Parties: 1102 Walnut Street Cary NC LLC Attn. Alan Ziess 841 Gilbert HWY Fairfield, CT, 06824 Phone: Phone 2: Fax: E-mail: DISBURSEMENT ADDRESS		
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Lease of real property - see attached Addendum	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 249888.03	Includes Interest or Charges: Yes	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: Yes, 83474.07 Subject to Right of Setoff: Yes, All setoff and recoupment rights reserved.	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	

Submitted By:

Alan Ziess on 05-May-2025 12:03:10 p.m. Pacific Time

Title:

authorized signatory

Company:

1102 Walnut Street Cary NC LLC

Optional Signature Address:

841 Gilbert HWY

Fairfield, CT, 06824

Telephone Number:**Email:**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:

Chapter 11

OTB ACQUISITION LLC,

Case No. 25-52416-sms

Debtor.

_____ /

**ADDENDUM TO PROOF OF CLAIM OF
1102 WALNUT STREET CARY NC LLC**

1. This claim (the "Proof of Claim") is made by 1102 Walnut Street Cary NC LLC ("1102 Walnut") for amounts owed to 1102 Walnut under the Lease dated October 2, 2017, as amended by the Amendment to Lease dated October 2020 (as amended and/or assigned, collectively, the "Lease"), between 1102 Walnut and OTB Acquisition LLC.

2. A true and correct copy of the Lease is attached hereto and incorporated herein as **Exhibit 1**.

3. On March 4, 2025 (the "Petition Date"), OTB Acquisition LLC and certain of its affiliates (together, the "Debtors") each filed their voluntary petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The cases are jointly administered under Case No. 25-52415.

4. No deadline for filing proofs of claim has been set yet.

5. As of the Petition Date, OTB Acquisition LLC was indebted and liable to 1102 Walnut pursuant to the Lease in the amount of **\$83,474.07**, which amount is comprised of the following:

Unpaid Base Rent (Nov 1, 2024 – Mar 2, 2025)	\$56,081.08
Unpaid Additional Rent (Taxes)	\$22,017.97
Late Fees for Unpaid Base Rent	\$2,804.06
Late Fees for Additional Rent	\$1,100.90
Interest for Unpaid Rent	\$1,138.28
Interest for Additional Rent	\$331.78
TOTAL	<u>\$83,474.07</u>

(the "Pre-Petition Claim").

6. On March 5, 2025, the Debtors filed the First Omnibus Emergency Motion for Entry of an Order (I) Authorizing (A) Rejection of Certain Unexpired Leases of Non-Residential Real Property Effective as of the Petition Date, (B) Abandonment of Any Remaining Personal

Property Located at the Leased Premises; (II) Fixing a Bar Date for Claims of Counterparties; and (III) Granting Relief (Doc. 16).

7. On April 1, 2025, the Court entered its Order (I) Authorizing (A) Rejection of Certain Unexpired Leases of Non-Residential Real Property Effective as of the Petition Date, (B) Abandonment of Any Remaining Personal Property Located at the Leased Premises; (II) Fixing a Bar Date for Claims of Counterparties; and (III) Granting Relief (Doc. 174). Accordingly, the Lease is deemed rejected as of the Petition Date.

8. 1102 Walnut is damaged in the amount of not less than **\$166,413.96** as a result of the Debtors' rejection of the Lease, as follows:

Rent for March 3, 2025 to October 31, 2025	\$109,491.67
Rent for November 1, 2025 to February 28, 2026	\$56,018.76
Rent for March 1-2, 2026	\$903.53
TOTAL	\$166,413.96

(the "Rejection Damages Claim").

9. Accordingly, as of the date of the filing of this Proof of Claim, 1102 Walnut has a total general unsecured claim against Debtor OTB Acquisition LLC in the amount of **\$249,888.03** (the "Total General Unsecured Claim").

10. This Proof of Claim may not include all amounts relating to all pre- and post-Filing Date interest, fees, costs, expenses, charges, and attorney and other professional fees and expenses as to which the Debtors are liable, including without limitation all costs and expenses incurred in enforcing and preserving 1102 Walnut's rights under the Lease. 1102 Walnut reserves all rights to (i) amend, clarify, modify, update or supplement this Proof of Claim at any time and in any respect, including without limitation to assert additional claims and requests for payment or additional grounds for 1102 Walnut's claims, and/or to specify the amount of 1102 Walnut's contingent, unmatured and/or unliquidated claims, if any, as they become non-contingent, matured and/or liquidated; (ii) file additional proofs of claim at any time and in any respect; (iii) file separate proofs of claim as: (a) permitted by any order entered in these cases establishing a deadline to file proofs of claim; (b) required or permitted by law; or (c) otherwise ordered by the Bankruptcy Court; and/or (iv) file a request for payment of an administrative expense or priority claim in accordance with 11 U.S.C. §§ 503(b) and 507(a). By virtue of the filing of this Proof of Claim, 1102 Walnut does not waive, and hereby expressly reserves, its rights to pursue any and all claims and requests for payment, including but not limited to, the claims and requests for payment described herein against the Debtors based on the facts and circumstances giving rise to the claims asserted in this Proof of Claim or any other alternative legal theories. In addition, certain of 1102 Walnut's claims cannot, at this time, be reasonably calculated or estimated. 1102 Walnut does not waive any of its rights to any and all such claims by not ascribing a specific dollar amount thereto at this time.

11. All reservations of rights and benefits set forth in this Proof of Claim apply to the indebtedness and claims set forth herein.

12. No judgment has been rendered on this Proof of Claim.

13. The execution and filing of this Proof of Claim is not and shall not be deemed or construed as: (a) a waiver or release of 1102 Walnut's rights against any person, entity, or property, which may be liable for all or any part of the claims asserted herein, including but not limited to guarantors or co-debtors; (b) a consent by 1102 Walnut to the jurisdiction or venue of the Bankruptcy Court with respect to proceedings, if any, commenced in the Debtors' Chapter 11 cases against or otherwise involving 1102 Walnut; (c) a waiver or release of 1102 Walnut's right to trial by jury in any proceeding as to any and all matters so triable herein, whether or not the same be designated legal or private rights or in any case, controversy or proceeding related hereto, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial right is pursuant to statute or the United States Constitution; (d) a waiver or release of 1102 Walnut's right to have any and all final orders in any and all non-core matters or proceedings entered only after de novo review by a United States District Court Judge; (e) a waiver of the right to move or to withdraw the reference with respect to the subject matter of this Proof of Claim, any objection thereto or other proceeding which may be commenced in the Debtors' Chapter 11 cases against or otherwise involving 1102 Walnut; (f) an election of remedies; or (g) a waiver or limitation of any procedural or substantive rights or defenses to any claim that may be asserted against 1102 Walnut by the Debtors, any official committee of unsecured creditors, trustee or examiner appointed in these cases or any subsequent cases, or any other party.

14. All notices concerning this Proof of Claim should be sent to 1102 Walnut Street Cary NC LLC, 841 Gilbert HWY, Fairfield, CT 06824 Attn.: Alan Ziess, with a copy to counsel for 1102 Walnut Street Cary NC LLC c/o Akerman LLP, 100 North Main Street, Suite 2425, Winston-Salem, NC 27101, Attn.: Jasmine Pitt, Esq.

15. All payments related to this Proof of Claim should be sent to 1102 Walnut Street Cary NC LLC, Attn.: Alan Ziess, 841 Gilbert HWY, Fairfield, CT 06824.

Exhibit 1

LAND AND BUILDING LEASE

between

**DB TRIPLE DIPPER RESTAURANT LLC,
a Delaware limited liability company,**

as LANDLORD

and

**OTB Acquisition LLC
a Delaware limited liability company**

as TENANT

October 2, 2017

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Schedule 1	Defined Terms
Schedule 2	Specified Trade Fixtures
Exhibit A	Location/Address/Legal Description of Demised Property
Exhibit B	Form of SNDA
Exhibit C	Form of Tenant's Estoppel Certificate
Exhibit D	Form of Memorandum of Lease

LAND AND BUILDING LEASE

THIS LAND AND BUILDING LEASE (this "Lease") is made and entered into as of the 2nd day of October, 2017 (the "Effective Date"), by and between DB TRIPLE DIPPER RESTAURANT LLC, a Delaware limited liability company ("Landlord") and OTB Acquisition LLC ("Tenant").

RECITALS

A. Landlord owns (i) good and indefeasible title in fee simple to the land described on Exhibit A attached hereto (collectively, the "Land") and (ii) all improvements and other structures located on the Land; any rights of way, easements, parking covenants, entitlements, privileges and other rights appurtenant to the Land, including regarding any street adjoining any portion of the Land and any air and development rights related to the Land and any and all fixtures at or on the Land, including all of the machinery, equipment and systems at or on the Land (collectively, "Building Equipment"), including the following (but specifically excluding those items listed on Schedule 2 attached hereto and any of the following that are not "fixtures" pursuant to applicable Law): built-in equipment; compressors; appliances; engines; electrical, plumbing, heating, ventilating, and air conditioning machinery; fire sprinklers and fire suppression equipment; lighting (including emergency lighting); security cameras and systems; paging and sound systems; walk-in coolers and grill hoods; built-in sinks; built-in shelving; awnings, and supports for signs (all of the foregoing in this clause (ii), collectively, "Improvements"). The Land and all Improvements thereon are collectively referred to herein as "Demised Property" and each individually as a "Demised Property."

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

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

ARTICLE 1 DEMISE OF PREMISES

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

ARTICLE 2 TERM

Section 2.01

(a) This Lease shall commence on October 2, 2017 (the "Commencement Date") and shall terminate on the fifteenth (15th) anniversary of the Commencement Date (the "Original Lease Term") unless sooner terminated as hereinafter set forth. The "Lease Term," as such term is used herein, means the Original Lease Term as extended (or as may be extended) pursuant to Section 2.02 below, unless sooner terminated as hereinafter set forth.

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

Section 2.02 Option Periods. Tenant shall have four (4) successive five (5) year options (each, an "**Option Period**", and collectively, "**Option Periods**") to extend this Lease for up to an additional twenty (20) years upon the same terms, covenants, conditions and rental as set forth herein. To validly extend the Lease Term for any Option Period for the Property, (i) Tenant must and shall deliver to Landlord an extension notice (Each, an "Extension Notice") not earlier than fifteen (15) months prior to the expiration of the Lease Term and not later than nine (9) months prior to the expiration of the Original Lease Term, and (ii) as of the date such Extension Notice is delivered to Landlord, and as of the date the Option Period is scheduled to commence, there shall be no existing Default or Event of Default under this Lease that is continuing.

ARTICLE 3 **RENT**

Section 3.01 Rent. Tenant shall pay all Base Rent and Additional Rent, from and after the Commencement Date and thereafter throughout the Lease Term, without offset, deduction, or abatement, except as may be otherwise expressly provided herein. Notwithstanding the foregoing, any amounts due by Tenant to Landlord hereunder for which no due date is expressly specified herein shall be due within fifteen (15) days following the delivery to Tenant by Landlord of written notice of such amounts due. Except as otherwise expressly provided herein, in the event of nonpayment by Tenant of any Rent, Landlord shall have the same rights and remedies in respect thereof regardless of whether such Rent is Base Rent or Additional Rent. All payments of Rent due to Landlord shall be paid to Landlord (at its election from time to time) in one of the following manners: (a) by electronic deposit into an account designated by Landlord (a "**Landlord's Account**"), (b) by mail at Landlord's address set forth in Article 17, or (c) by mail to any other place in the United States designated by Landlord upon at least thirty (30) days' prior written notice to Tenant.

[BALANCE OF PAGE INTENTIONALLY BLANK]

Section 3.02 Base Rent. Beginning on the Commencement Date, Tenant covenants and agrees to pay to Landlord One Hundred Sixty Thousand and No/100 Dollars (\$160,000.00) annually ("**Base Rent**"). All payments of Base Rent shall be paid in equal monthly installments paid monthly in advance, on the first (1st) business day of each month. If the Commencement Date is not the first day of a calendar month, Tenant shall pay to Landlord pro-rated Base Rent on the Commencement Date for the partial calendar month in which the Commencement Date occurs. Commencing on the first (1st) day of the second (2nd) Lease Year, and on each anniversary of such date thereafter during the Lease Term (including any Option Periods, to the extent exercised by Tenant), Annual Rent shall be increased by an amount equal to the previous year's Annual Rent multiplied by one and one-quarter percent (1.25%).

Section 3.03 Additional Rent.

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

(b) Tenant shall pay all Real Estate Taxes directly to the collecting authority no less than thirty (30) days prior to the delinquency date thereof and shall provide Landlord not less than ten (10) Business Days prior to such delinquency date a copy of the paid receipt for each installment of Real Estate Taxes so paid. Nothing in this Lease shall obligate Tenant to pay any estate, inheritance, franchise, net income or similar taxes of Landlord (other than any rental taxes imposed upon the Landlord that are measured by or based in whole or in part directly upon the Rent payable under this Lease, whether existing at the date hereof or hereinafter imposed by any Governmental Authority) nor shall any of same be deemed Real Estate Taxes, unless the same shall be specifically imposed in substitution for, or in lieu of, Real Estate Taxes. Notwithstanding the first sentence of this clause (b), upon the occurrence of both of the following events, Tenant shall pay Real Estate Taxes to Landlord no less than thirty (30) days prior to the delinquency date thereof (the "**RE Taxes Additional Rent**") in lieu of payment directly to the applicable collecting authority: (i) delivery to Tenant of a written request therefor from Landlord, and (ii) the occurrence and continuance of any Default under this Section 3.03(b) by Tenant, or the occurrence and the continuance of any Event of Default under any provision in this Lease (either event described in the foregoing clause (ii) is referred to herein as a "**RE Taxes Additional Rent Trigger**"). Funds paid by Tenant as RE Taxes Additional Rent shall be used only for the payment of Real Estate Taxes, and if and to the extent such sums are timely paid by Tenant to Landlord as provided in the immediately preceding sentence, Landlord shall pay such sums to the appropriate collecting authority prior to any applicable delinquency date. If Tenant fails to pay the appropriate party (Landlord or the collecting authority, as provided herein) all Real Estate Taxes when due hereunder, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and all penalties or interest, or portion thereof, paid or incurred by Landlord as a result of such nonpayment or late payment by Tenant.

(c) Tenant shall have the right to undertake an action or proceeding against the applicable collecting authority seeking an abatement of Real Estate Taxes or a reduction in the valuation of the Demised Property and/or contest the applicability of any Real Estate Taxes; provided, however, that Tenant delivers to Landlord prior written notice of any such action or proceeding by Tenant, and that Tenant has paid timely (and continues to pay timely) all Real Estate Taxes as provided in this Lease to the

extent required by applicable Law. In any instance where any such permitted action or proceeding is being undertaken by Tenant, (i) Landlord shall cooperate reasonably with Tenant, at no cost or expense to Landlord, and execute any and all documents approved by Landlord and reasonably required in connection therewith and (ii) Tenant shall provide Landlord with all information reasonably requested by Landlord with respect to such action or proceeding within five (5) Business Days after receipt of Landlord's written request. Tenant shall be entitled to any refund (after the deduction therefrom of all expenses incurred by Landlord in connection therewith) of any Real Estate Taxes (including penalties or interest thereon) received by Tenant or Landlord, whether or not such refund was a result of actions or proceedings instituted by Tenant.

(d) Tenant shall be solely responsible for, and shall pay directly to the applicable service providers, the cost of all utility services provided to the Demised Property throughout the Lease Term. If Tenant fails to pay the service providers, as provided herein, all such costs when due hereunder, then Tenant shall, without limiting any other remedies available to Landlord, reimburse Landlord for any and all penalties or interest, or portion thereof, paid or incurred by Landlord as a result of such nonpayment or late payment by Tenant.

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

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

ARTICLE 4 USE

Section 4.01 Tenant may use the Demised Property to operate an "On the Border" brand restaurant or any other restaurant or retail brand having at least fifty (50) locations ("**Permitted Use**"), or for any other lawful use.

Section 4.02 Notwithstanding any other provision of this Article, Tenant shall not use, or suffer or permit any Person to use, the Demised Property or any portion thereof for any purpose in violation of any applicable Law, or in violation of any covenants or restrictions of record. From the Commencement Date and thereafter throughout the Lease Term, Tenant shall conduct its business in a commercially reasonable and reputable manner with respect to the Demised Property and in compliance with the terms and provisions of this Lease. The character of the occupancy of the Demised Property is an additional consideration and a material inducement for the granting of this Lease by Landlord to Tenant. Further, neither the Demised Property, nor any portion thereof, shall be occupied by or used for: nude or semi-nude dancing or service; lingerie modeling; an "adult" or "x-rated" book or video store that sells or rents "adult" or "x-rated" material (which are defined as stores in which thirty percent (30%) or more of the inventory is not available for sale to children under eighteen (18) years old); the display for sale of pornographic or obscene materials (i.e., books, magazines, newspapers, video tapes, video discs, computer software or the like which would be considered obscene or pornographic under prevailing laws or community standards); an "adult" or "x-rated" movie theater; a so-called "head shop" selling or displaying drug paraphernalia; a clinic or health provider offering abortions as a part of its services; or, any use that is unlawful or that creates a legal nuisance

Section 4.03 Without limiting any other provision of this Lease, all obligations of Tenant under this Article 4 shall apply also to any subtenant of the Demised Property.

ARTICLE 5 PERFORMANCE OF OBLIGATIONS; ACCEPTANCE OF DEMISED PROPERTY

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

ARTICLE 6 ALTERATIONS

Subject to the provisions of this Article 6, Tenant shall have no right to make changes, alterations or additions (collectively, "**Alterations**") to the Improvements at the Demised Property that involve structural changes or that cost in the aggregate in excess of \$250,000, which amount shall be adjusted annually in proportion to increases in the CPI, in each case without prior written consent of

Landlord, which Landlord agrees it will not delay or withhold unreasonably; provided, however, in no event shall any Alterations be made that, after completion, would: (i) reduce the value of the Improvements as they existed prior to the time that said Alterations are made; or (ii) adversely affect the structural integrity of the Improvements. Tenant shall not install any underground storage tanks and any above ground storage tanks shall include secondary containment sufficient to prevent spills, overfills or tank ruptures from causing a release to the environment. Any and all Alterations made by Tenant shall be at Tenant's sole cost and expense. Prior to the commencement of construction, including Alterations that cost less than \$250,000, which amount shall be adjusted annually in proportion to increases in the CPI (but excluding Minor Projects), Tenant shall deliver promptly to Landlord detailed cost estimates for any such proposed Alterations, as well as all drawings, plans and other information regarding such Alterations (such estimates, drawings, plans and other information are collectively referred to herein as the "Alteration Information"). Landlord's review and/or approval (if required) of any Alteration Information shall in no event constitute any representation or warranty of Landlord regarding (x) the compliance of any Alteration Information with any applicable Law, (y) the presence or absence of any defects in any Alteration Information, or (z) the safety or quality of any of the Alterations constructed in accordance with any plans or other Alteration Information. Landlord's review and/or approval of any of the Alteration Information shall not preclude recovery by Landlord against Tenant based upon the Alterations, the Alteration Information, or any defects therein. In making any and all Alterations, Tenant also shall comply with all of the following conditions:

(a) No Alterations shall be undertaken until Tenant shall have (i) procured and paid for, so far as the same may be required, all necessary permits and authorizations of all Governmental Authorities having jurisdiction over such Alterations, and (ii) with respect to any structural Alterations (regardless of the cost therefor), or any non-structural Alterations the cost of which exceeds \$50,000 (which amount shall be adjusted annually in proportion to increases in the CPI), delivered to Landlord at least fifteen (15) days prior to commencing any such Alterations written evidence acceptable to Landlord, in its reasonable discretion, of all such permits and authorizations. Landlord shall, to the extent necessary (but at no cost, expense, or risk of loss to Landlord), join in the application for such permits or authorizations whenever necessary, promptly upon written request of Tenant.

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

(c) Except for Minor Projects, Tenant shall notify Landlord at least fifteen (15) days prior to commencing any Alterations, and Tenant shall permit Landlord access to the Demised Property in order to post and keep posted thereon such notices as may be provided or required by applicable Law to disclaim responsibility for any construction on the Demised Property. In addition, Landlord may require Tenant to file or record any such notices, or other similar notices, each in form and substance reasonably satisfactory to Landlord, in accordance with local law or custom.

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

such Hazardous Materials were handled in compliance with applicable Law. To the extent reasonably practicable, any and all Alterations shall be made and conducted so as not to disrupt Tenant's business.

(e) The cost of any and all Alterations shall be promptly paid by Tenant so that the Demised Property at all times shall be free of any and all liens for labor and/or materials supplied for any Alterations subject to the next succeeding sentence. In the event any such lien shall be filed, Tenant shall, within five (5) days after receipt of notice of such lien, deliver written notice to Landlord thereof, and Tenant shall, within thirty five (35) days after Tenant's receipt of notice of such lien, discharge the same by bond or payment of the amount due the lien claimant. Tenant may in good faith contest any such lien provided that within such thirty five (35) day period Tenant provides Landlord with a surety bond or other form of security reasonably acceptable to Landlord, protecting against said lien. Tenant shall provide Landlord promptly with evidence reasonably satisfactory to Landlord that all contractors, subcontractors or materialmen have been paid in full with respect to such Alterations and that their lien rights have been waived or released. In the event Tenant fails to either discharge such lien or protect against such lien in accordance with the foregoing, then Landlord shall have the option (but not the obligation) to pay such lien or post a bond to protect against such lien and pass through such costs to Tenant as Additional Rent.

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

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

ARTICLE 7 REPAIRS AND MAINTENANCE

Except as otherwise provided in this Article, Tenant, at its sole cost and expense, shall maintain the Demised Property and each part thereof, structural and non-structural, in good order and condition, ordinary wear and tear and damage by casualty excepted (subject to Article 11), including all areas outside of any buildings (including all sidewalks, driveways, landscaping, trash enclosures, and trash compacting and loading areas on the Demised Property), and including any roof on any buildings, in a neat and clean condition, and ensuring that debris from the operation of the restaurant on the Demised Property is cleaned and removed on a regular basis) and, subject to the terms and conditions of Article 6, shall make any necessary Repairs thereto, interior and exterior, whether extraordinary, foreseen or unforeseen, but subject to Article 11 and Article 12. Without limitation, (a) no Repairs shall result in any

structural damage to the Demised Property or any injury to any persons, (b) Tenant shall ensure that the quality of materials and workmanship of any Repairs meets or exceeds the quality of materials and workmanship of the Improvements prior to the need for such Repairs; (c) all Repairs shall fully comply with applicable Law, the requirements of any covenants, conditions, restrictions or other permitted encumbrances that are of record regarding the Demised Property, and any applicable repair standards and requirements promulgated by Tenant for its (or its subsidiaries' or Affiliates' or franchisees') properties. Landlord shall have no duty whatsoever to maintain, replace, upgrade, or repair any portion of the Demised Property, including any structural items, roof or roofing materials, or any aboveground or underground storage tanks, and Tenant hereby expressly waives the right to make Repairs at the expense of Landlord, which right may be provided for in any applicable Law now or hereinafter in effect. In addition to Landlord's rights under Section 15.05, if Tenant fails or neglects to commence and diligently proceed with all Repairs or fulfill its other obligations as set forth above within forty five (45) days after receipt of written notice of the need therefor describing the applicable Repair or other obligation, then Landlord or its agents may enter the Demised Property for the purpose of making such Repairs or fulfilling those obligations. All costs and expenses incurred by Landlord as a consequence of such Landlord's actions, plus an administrative charge of fifteen percent (15%) of such costs and expenses, shall be due to Landlord from Tenant within ten (10) Business Days after written demand from Landlord.

ARTICLE 8 COMPLIANCE WITH LAW

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

ARTICLE 9 DISCLAIMER AND INDEMNITIES

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

Section 9.01 shall not be applicable to any claim against a Landlord Party to the extent, and only to the extent, that such claim is directly attributable to the gross negligence or willful misconduct of such Landlord Party, as determined by a final nonappealable judgment (or by a judgment that such Landlord Party elects not to appeal) by a court of competent jurisdiction (provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to Landlord solely by reason of its interest in the Demised Property or the failure to act by Landlord or anyone acting under its direction or control or on its behalf, in respect of matters that are or were the obligation of Tenant under this Lease). Without limiting the foregoing, Tenant hereby waives any right to any consequential, indirect or punitive damages against any Landlord Parties arising out of any claim in connection with or related to this Lease or the Demised Property.

Section 9.02 In addition to any and all other obligations of Tenant under this Lease (including under any indemnity or similar provision set forth herein), to the extent permitted by applicable Law, Tenant hereby agrees to fully and forever indemnify, protect, defend (with counsel selected by Landlord) and hold all Landlord Parties free and harmless of, from and against any and Losses (including, subject to the terms of this Section, diminution in the value of the Demised Property, normal wear and tear excepted): (a) arising out of or in any way related to or resulting directly or indirectly from: (i) the use, occupancy, or activities of Tenant, its subtenants, agents, employees, contractors, invitees or lenders in or about the Demised Property; (ii) any failure on the part of Tenant to comply with any applicable Law, including any Environmental Laws; (iii) any Default or Event of Default under this Lease or any breach or default by Tenant or any other party (other than Landlord) under any other Transaction Document (including as a result of any termination by Landlord, following an Event of Default, of any sublease, license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Demised Property pursuant to Section 15.08), and including any additional fees and costs, or any increased interest rate or other charges imposed by any Landlord's Lender by reason of such Default or Event of Default (whether or not such Default or Event of Default is a default under any agreements with any Landlord's Lender); (iv) any other loss, injury or damage described in Section 9.01 above; (v) in connection with mold at the Demised Property; (vi) work or labor performed, materials or supplies furnished to or at the request of Tenant or in connection with obligations incurred by or performance of any work done for the account of Tenant in, on or about the Demised Property; and (b) whether heretofore now existing or hereafter arising out of or in any way related to or resulting directly or indirectly from the presence or Release at, on, under, to or from the Demised Property of Hazardous Materials. Without limiting the foregoing, (x) the indemnity set forth in this Section 9.02 includes direct or indirect compensatory, consequential, and punitive damages, (y) Tenant shall pay on demand all fees and costs of Landlord (including attorneys' fees and costs) in connection with any enforcement by Landlord of the terms of this Lease and any amendment to this Lease requested by Tenant, and (z) all of the personal or any other property of Tenant kept or stored at, on or about the Demised Property shall be kept or stored at the sole risk of Tenant. Notwithstanding the foregoing, the indemnity set forth in this Section 9.02 shall not be applicable to any claim against any Landlord Party to the extent, and only to the extent, such claim is directly attributable to the gross negligence or willful misconduct of such Landlord Party, as determined by a final nonappealable judgment (or by a judgment that such Landlord Party elects not to appeal) by a court of competent jurisdiction (provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to Landlord solely by reason of its interest in the Demised Property or the failure to act by Landlord or anyone acting under its direction or control or on its behalf, in respect of matters that are or were the obligation of Tenant under this Lease). Notwithstanding the foregoing, Tenant shall have no indemnity obligations under this Section 9.02 for any Losses caused by any event or circumstance occurring at the Demised Property entirely after Tenant loses possession or control of the Demised Property following a termination or expiration of this Lease or following an actual eviction of Tenant by Landlord pursuant to applicable Law such that Tenant has no legal right to possess or control the Demised Property; provided, however, that, without limitation, the

foregoing shall in no way limit (1) Tenant's obligations under this Section 9.02 for any such event actually caused by Tenant, its subtenants, agents, employees, contractors, invitees or lenders at the Demised Property, whether during any re-entry by any such Persons to collect or inspect Tenant's Property or otherwise (and whether or not such re-entry is expressly authorized by Landlord)), even where Tenant has previously lost possession or control of the Demised Property following a termination or expiration of this Lease or following an actual eviction of Tenant by Landlord pursuant to applicable Law such that Tenant has no legal right to possess or control the Demised Property, (2) Tenant's obligations under any other indemnity provision set forth in this Lease or any other Transaction Document, or (3) any event or circumstance occurring in whole or in part prior to Tenant losing possession or control of the Demised Property following a termination or expiration of this Lease (including any Losses arising out of or in any way related to or resulting directly or indirectly from such event or circumstance, including such Losses incurred after Tenant loses possession or control of such Property following a termination or expiration of this Lease or following an actual eviction of Tenant by Landlord pursuant to applicable Law such that Tenant has no legal right to possess or control the Demised Property).

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

ARTICLE 10 INSURANCE

Section 10.01 As of the Commencement Date and throughout the Lease Term, Tenant shall, at its sole expense, obtain, pay for and maintain (or cause to be obtained, paid for and maintained), with financially sound and reputable insurers (as further described in Section 10.03), (a) comprehensive "all risk" insurance covering loss or damage to the Demised Property (including Improvements now existing or hereafter erected thereon) caused by fire, lightning, hail, windstorm, hurricane, tidal surge, explosion, vandalism, malicious mischief, leakage of sprinkler systems, and such other losses, hazards, casualties, liabilities and contingencies as are normally and usually covered by "all risk" or special property policies in effect where the Demised Property is located, endorsed to include all of the extended coverage perils and other broad form perils, including the standard "all risks" or special clauses, including building ordinance or law coverage sufficient to provide coverage for costs to comply with building and zoning codes and ordinances including demolition costs and increased cost of construction, (b) business income and interruption insurance to include loss of business at limits sufficient to cover 100% of the annual revenues at the Demised Property minus any non-fixed expenses payable by Tenant to Landlord with a period of indemnity not less than eighteen (18) months from time of loss (such amount being adjusted annually), and an extended period of indemnity of three hundred sixty five (365) days, (c) flood insurance for the Demised Property (and Tenant further agrees that any locations in a special flood hazard area (as identified by FEMA) must either maintain insurance through National Flood Insurance Program or under Tenant's blanket property policy with deductibles acceptable to Landlord in its sole discretion), and (d) terrorism insurance for the Demised Property. The policy(ies) referred to in clauses (a), (c) and (d) above shall be in an amount equal to one hundred percent (100%) of the full replacement cost of the

Improvements and the Building Equipment at the Demised Property (without any deduction for depreciation), and shall contain a replacement cost endorsement and an agreed amount or waiver of co-insurance provisions endorsement. The deductible under the policies referred to in clauses (a), (c) and (d) above shall not exceed an amount customarily required by institutional lenders for similar properties in the general vicinity of the Demised Property, but in no event in excess of \$100,000 or such greater amount as is approved by Landlord from time to time (and without limiting the parenthetical contained in clause (c) above). A separate named storm wind deductible of up to 5% of the total insurable value for the Demised Property will be accepted if the Demised Property is considered by Landlord to be in a "1st tier" hurricane county. If the Demised Property is located in area prone to geological phenomena, including sinkholes, mine subsidence, earthquakes, the insurance policies referred to in clause (a), (c) and (d) above shall cover such risks and in such amounts, form and substance, as Landlord shall reasonably determine.

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

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

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

(c) Commercial General Liability insurance covering claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Demised Property on an occurrence form and in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and shall provide coverage for premises and operations, products and completed operations and contractual liability with a deductible in an amount customarily required by institutional owners or institutional lenders (whichever is lower) for similar properties in the general vicinity of the Demised Property, but in no event in excess of \$150,000, and an umbrella liability policy in the amount of \$10,000,000. Liquor Liability insurance, in amounts and subject to terms reasonably approved by Landlord, shall also be maintained by Tenant if alcohol is sold or served at the Demised Property.

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

(e) Except as otherwise provided in Section 10.01, such other insurance (including increased amounts of insurance) and endorsements, if any, with respect to the Demised Property and the operation thereof as Landlord may reasonably require from time to time.

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

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

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

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

Section 10.07 The policies of insurance required to be maintained by Tenant under this Article 10 shall name Tenant as the insured and Landlord and Landlord's Lenders as additional insureds as their interests may appear, with primary coverage in favor of all additional insureds (and with provisions that any other insurance carried by any additional insured or Landlord shall be non-contributing and that naming Landlord and the additional parties listed above in this Section as additional insureds shall not negate any right Landlord or such parties would have had as claimants under the policy if not so designated). Notwithstanding the foregoing, there is no requirement hereunder that the business interruption insurance required pursuant to Section 10.01 name Landlord and Landlord's Lenders as loss payee. All insurance policies required under this Article 10 also shall provide that the beneficial interest of Landlord in such policies shall be fully transferable. In the event Tenant fails to procure or maintain any policy of insurance required under Article 10, or if the insurance company or coverages provided fail meet the requirements contained in this Article 10, and any such failure continues for ten (10) Business

Days after written notice thereof from Landlord to Tenant, Landlord may, at its option, purchase such insurance and charge Tenant all costs and expenses incurred in procuring and maintaining such insurance.

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

Section 10.09 Without limiting anything contained in Section 15.01(e), in the event Tenant fails to procure or maintain any policy of insurance required under Article 10, or if the insurance company or coverages provided fail to meet the requirements contained in this Article 10, and any such failure continues for five (5) Business Days after written notice thereof from Landlord to Tenant, Landlord may, at its option, purchase such insurance and charge Tenant all costs and expenses incurred in procuring and maintaining such insurance.

ARTICLE 11 DAMAGE OR DESTRUCTION

Section 11.01 If at any time during the Lease Term, the Demised Property or any part thereof shall be damaged or destroyed by fire or other casualty of any kind or nature, Tenant shall promptly apply for all necessary permits, but in any event not later than thirty (30) days after the first date of such damage or destruction, and upon issuance of such permits thereafter diligently proceed to repair, replace or rebuild the Demised Property as nearly as possible to its condition and character immediately prior to such damage with such variations and Alterations requested by Landlord as may be permitted under (and subject to the provisions of) Article 6 (the "**Restoration Work**").

Section 11.02 All property and casualty insurance proceeds payable to Landlord or Tenant (except (a) insurance proceeds payable to Tenant on account of Tenant's Property or Tenant's inventory; and (b) insurance proceeds payable from comprehensive general public liability insurance, or any other liability insurance) at any time as a result of casualty to the Demised Property shall be paid jointly to Landlord and Tenant for purposes of payment for the cost of the Restoration Work, except as may be otherwise expressly set forth herein. Landlord and Tenant shall cooperate in order to obtain the largest possible insurance award lawfully obtainable and shall execute any and all consents and other instruments and take all other actions necessary or desirable in order to effectuate same and to cause such proceeds to be paid as hereinbefore provided. The proceeds of any such insurance in the case of loss shall, to the extent necessary, be used first for the Restoration Work with the balance, if any, payable to Tenant. If insurance proceeds as a result of a casualty to the Demised Property are insufficient to complete the Restoration Work necessary by reason of such casualty, then Tenant shall be responsible for the payment of such amounts necessary to complete such work.

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

Section 11.04 Notwithstanding anything to the contrary contained herein, should the Demised Property be damaged or destroyed by fire or other casualty of any kind or nature within the last eighteen (18) months of the original term or of any Option Period of this Lease, then to the extent that the Demised Property are untenable or unsuitable, in Tenant's reasonable opinion, for continued use in the normal conduct of Tenant's business, Tenant shall have the right, exercisable by written notice to Landlord given within thirty (30) days after the date of such damage or destruction, to terminate this Lease effective upon the date of such damage or destruction. If Tenant terminates this Lease as thus provided Landlord shall be entitled to the insurance proceeds on the Demised Property as Landlord's interest may appear, but not to the proceeds of insurance carried by Tenant on Tenant's Property or business interruption regarding extra expense or loss of income; provided, however, Tenant shall not have the right to terminate this Lease unless (i) the damage or destruction of the Demised Property was caused by a peril which was insured against as required by the provisions of subsection (b) below; and (ii) at the time of such damage and destruction the said insurance policies required to be carried by Tenant were in the amounts required herein.

ARTICLE 12 EMINENT DOMAIN

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

Section 12.02 If any portion of the Demised Property, or existing access to or from the Demised Property, is taken for any public or quasi-public use under any statute or by right of eminent domain, or by purchase in lieu thereof, and such taking, in Landlord's reasonable determination (a) reduces the value of the Demised Property by thirty-three percent (33%) or more, or (b) prevents, and would prevent after reasonable repair and reconstruction efforts by Tenant, use of the Demised Property for its current permitted use under applicable zoning or other use regulations (including with respect to required parking and access), then this Lease shall terminate as of the date that title to the Demised Property, or portion thereof, actually transfers to the applicable authority.

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

(a) Landlord shall be entitled to the entire award for the condemned Demised Property.

(b) Tenant shall be entitled to any award that may be made for the taking of Tenant's leasehold interest, inventory and personal property, or costs related to the removal and relocation of Tenant's inventory and personal property, so long as none of the foregoing reduces Landlord's award.

Section 12.04 Except in the case of a termination of this Lease with respect to the Demised Property as described in Section 12.02, in case of a taking of any portion of the Demised Property, Tenant at its own expense shall proceed with diligence (subject to reasonable time periods for purposes of adjustment of any award and unavoidable delays) to repair or reconstruct (or cause to be repaired and reconstructed) the affected Improvements to a complete architectural unit, and all such repair or reconstruction work shall be performed in accordance with the standards and requirements for Alterations set forth in Article 6.

Section 12.05 In case of a taking of a portion of the Demised Property where this Lease does not terminate as described in Section 12.02, the Base Rent payable hereunder shall be reduced by the product of (a) the Base Rent immediately preceding such taking, multiplied by (b) the percentage reduction in value of the Demised Property caused by such taking (as reasonably determined by Landlord).

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

ARTICLE 13 REPORTING COVENANTS

Section 13.01 Tenant shall, within sixty (60) days after the end of each calendar year, provide Landlord with the gross sales figures for Tenant's operations on the Demised Property for the prior twelve (12) months (broken down by month), certified by an officer of Tenant to be true, correct, and complete in all material respects. In addition, Tenant shall, within sixty (60) days after the end of each calendar year, provide Landlord with statements of financial position of Tenant as of the end of the then most recently concluded calendar year (audited, if Tenant's statements of financial position are audited for the year in question), including a balance sheet, a statement of profits and losses, expenses and retained earnings, changes in financial position and cash flows for such calendar year, which statements shall be duly certified by an officer of Tenant to fairly represent the financial condition of Tenant, as of the date thereof, prepared by Tenant in accordance with GAAP, and, if such statements are not audited, such certification shall also confirm that audited statements of Tenant's financial position were not produced for the year in question (or confirm that audited statements will be provided to Landlord promptly upon completion). Landlord will not disclose any of the sales or financial information provided by Tenant except to: (x) Landlord's Affiliates, agents, trustees and beneficiaries, attorneys, consultants, and accountants; (y) in litigation between Landlord and Tenant, or as required by court order; or (z) any bona fide investor, purchaser or lender of Landlord or the Demised Property, provided such bona fide investor, purchaser or lender has entered into an agreement to buy the Property, or issued a loan commitment which loan shall be secured by the Property, as applicable, and executed a confidentiality agreement with respect to the Demised Property, Tenant's gross sales and financial statements.

ARTICLE 14 INTENTIONALLY OMITTED

ARTICLE 15 EVENTS OF DEFAULT

Without creating any obligation to deliver any notice to Tenant that is not expressly provided for in Section 15.01, Landlord agrees that any notice of Default delivered to Tenant pursuant to Section 15.01 shall contain the following caption at or about the top of such notice: "THIS IS A NOTICE OF DEFAULT UNDER THE LAND AND BUILDING LEASE".

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

(a) Nonpayment of Base Rent. Failure to pay any installment of Base Rent hereunder within five (5) Business Days after such payment is due; provided, however, that notwithstanding the foregoing, after the first instance in any twelve (12) month period during the Lease Term (but not any subsequent instance in any such twelve (12) month period) that Tenant fails to pay any installment of Base Rent when due hereunder, an Event of Default shall not occur as a result thereof unless and until Landlord delivers to Tenant written notice of such failure by Tenant, and Tenant fails to pay to Landlord such amount within five (5) Business Days after delivery of such written notice from Landlord to Tenant.

(b) Nonpayment of Additional Rent. Failure to pay any amount of Additional Rent hereunder within five (5) Business Days after such payment is due; provided, however, that notwithstanding the foregoing, after the first instance in any twelve (12) month period during the Lease Term (but not any subsequent instance in any such twelve (12) month period) that Tenant fails to pay any amount of Additional Rent when due hereunder, an Event of Default shall not occur as a result thereof unless and until Landlord delivers to Tenant written notice of such failure by Tenant, and Tenant fails to pay to Landlord such amount within five (5) Business Days after delivery of such written notice from Landlord to Tenant.

(c) Bankruptcy and Insolvency. If at any time during the Lease Term, (i) Tenant files a Petition, (ii) any creditor or other Person that is an Affiliate of Tenant files against Tenant any Petition, or any creditor or other Person (whether or not an Affiliate of Tenant) files against Tenant any Petition where Tenant or an Affiliate of Tenant, cooperates or colludes with such creditor or other Person in connection with such Petition or the filing thereof, (iii) any creditor or other Person that is not an Affiliate of Tenant files a Petition against Tenant, where none of Tenant or an Affiliate of Tenant, cooperates or colludes with such creditor or other Person in connection with such Petition or the filing thereof, and such Petition is not vacated or withdrawn within ninety (90) days after the filing thereof, (iv) a trustee or receiver is appointed to take possession of the Demised Property, or of all or substantially all of the business or assets of Tenant, and such appointment is not vacated or withdrawn and possession restored to Tenant within ninety (90) days thereafter, (v) a general assignment or arrangement is made by Tenant for the benefit of creditors, (vi) any sheriff, marshal, constable or other duly-constituted public official takes possession of the Demised Property, or of all or substantially all of the business or assets of Tenant by authority of any attachment, execution, or other judicial seizure proceedings, and if such attachment or other seizure remains undismissed or undischarged for a period of sixty (60) days after the levy thereof, (vii) Tenant admits in writing its inability to pay its debts as they become due; or (viii) Tenant files an answer admitting or failing timely to contest a material allegation of any Petition filed against Tenant.

(d) Misrepresentation. The discovery by Landlord that any representation, warranty or financial statement given to Landlord by Tenant, or any Affiliate of Tenant, was materially false or misleading when given.

(e) Use; Insurance; Reporting; Environmental; Patriot Act. Any default by Tenant under Section 4.01, Article 10, Article 13, Article 29, or Article 39(c).

(f) Delivery of Notices and Other Documents. The failure by Tenant to deliver any of the notices or other documents required to be delivered to Landlord under this Lease, or the notice to any lender with a security interest in any of Tenant's Property required in Article 21, or the notice to any equipment lessor that owns any of Tenant's Property required in Article 21, in each case within the time periods required herein (other than any such notices or other documents addressed in another clause of this Section 15.01, for which Tenant will have the grace periods (if any) and notice rights (if any) set forth in such other clause), provided, however, that if no time period is stated in this Lease for the delivery by Tenant of any notice or other document to Landlord, then Tenant shall have a grace period of ten (10) days after the date of the event or occurrence first giving rise to the obligation to deliver such notice or other document to Landlord.

(g) Liens. Any claim of lien is recorded against the Demised Premises and such claim of lien continues for thirty five (35) days after Tenant receives notice thereof without discharge (by bonding or other means available pursuant to applicable Law), or satisfaction being made by or on behalf of Tenant.

(h) Other Obligations. The failure by Tenant to timely perform any obligation, agreement or covenant under this Lease, other than those matters specified in Section 15.01(a)-(d) above, and such failure continuing for a period of thirty (30) days after written notice of such failure is delivered to Tenant, or such longer period, up to but not exceeding an additional one hundred fifty (150) days, as is reasonably necessary to remedy such default.

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

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

(a) Termination. Landlord shall have the right, with or without notice or demand, immediately upon expiration of any applicable grace period specified herein, to terminate this Lease (or Tenant's possession of the Demised Property), and at any time thereafter recover possession of all or any portion of the Demised Property or any part thereof and expel and remove therefrom Tenant and any other Person occupying the same by any lawful means, and repossess and enjoy all or any portion of the Demised Property without prejudice to any of the remedies that Landlord may have under this Lease. If Landlord elects to terminate this Lease (or to terminate Tenant's right of possession), Landlord shall also have the right to reenter the Demised Property and take possession of and remove all personal property of Tenant, if any, in the Demised Premises. If Landlord elects to terminate this Lease and/or Tenant's right to possession, or if Tenant's right to possession is otherwise terminated by operation of law, Landlord may recover as damages from Tenant the following: (i) all Rent then due under this Lease through the date of termination; (ii) the Rent due for the remainder of the Lease Term in excess of the fair market

rental value of the Demised Property for the remainder of the Lease Term, including any and all Additional Rent (each discounted by the discount rate of the Federal Reserve Bank of San Francisco plus one percent (1%)); (iii) the cost of reletting the Demised Property (which costs shall be limited to repairing and restoring the Improvements to a leasable white box condition, prevailing brokerage fees and reasonable attorney's fees, ("**Reletting Costs**"), including the anticipated period of vacancy until the Demised Premises can be re-let at their fair market rental values by Landlord to mitigate any damages caused by any Event of Default (or Tenant's Default under this Lease) shall not waive Landlord's right to recover damages under the foregoing provisions (provided, however, that to the extent Landlord actually mitigates any damages caused by any Event of Default (or Tenant's Default under this Lease), the amount of damages Landlord may recover from Tenant under clause (ii) of this Section 15.02(a) shall be reduced by the amount of such mitigation (less all fees, costs and expenses incurred by Landlord in connection therewith)).

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

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

Section 15.03 Indemnification. Subject to the terms hereof, Tenant's obligation to indemnify, defend, protect and hold harmless Landlord and the other Landlord Parties under this Lease (including under Article 9 and Article 29), shall survive the termination or expiration of this Lease.

Section 15.04 Late Fee. In addition to any interest charged to Tenant under Section 15.07, if any payment of Base Rent or Additional Rent is not received by Landlord from Tenant within five (5) Business Days after such payment is due to Landlord hereunder, such payment shall be deemed delinquent and cause Tenant to incur a late fee of five percent (5%) of each such delinquent payment (the "**Late Fee**"), due and payable immediately with the delinquent Base Rent or delinquent Additional Rent, as the case may be.

Section 15.05 Interest. Tenant hereby acknowledges that late payment by Tenant of Base Rent or Additional Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, in addition to any Late Fee due from Tenant hereunder,

any sum due by Tenant under this Lease that is not paid when due shall bear interest at the lesser of ten percent (10%) per annum of such sums, or the maximum rate allowed under applicable Law, from the date such sum becomes due and payable by Tenant hereunder until paid, unless otherwise expressly provided in this Lease.

Section 15.06 Tenant's Subleases. If Landlord elects to terminate this Lease on account of any Event of Default, then Landlord may terminate any sublease and any license, concession, or other consensual arrangement for possession entered into by Tenant and affecting the Demised Property (subject to the terms of any applicable nondisturbance agreement executed by Landlord), or choose to succeed to Tenant's interest in any such arrangement. Absent a nondisturbance agreement between Landlord and any such subtenant, no payment by a subtenant with respect to a sublease shall entitle such subtenant to possession of the Demised Property after termination of this Lease and Landlord's election to terminate the sublease. If Landlord elects to succeed to Tenant's interest in such arrangement, then Tenant shall, as of the date of notice given by Landlord to Tenant of such election, have no further right to, or interest in, any rent or other consideration due under that arrangement.

Section 15.07 Form of Payment After Default. Without limiting any other obligation of Tenant under this Lease, if Tenant fails, on two or more occasions within any calendar year, to pay any amount due to Landlord under this Lease within the applicable notice and cure periods set forth in this Lease, or if Tenant attempts to pay any such amount by drawing a check on an account with insufficient funds, then Landlord shall have the right to require that any and all subsequent amounts paid by Tenant to Landlord under this Lease (to cure a default or otherwise) be paid in the form of cashier's or certified check drawn on an institution acceptable to Landlord, or any other form approved by Landlord in its sole and absolute discretion, notwithstanding that Landlord may have previously accepted payments from Tenant in a different form.

Section 15.08 Acceptance of Rent Without Waiving Rights. No endorsement or statement by Tenant on any check or any letter accompanying any payment by Tenant to Landlord will be deemed an accord and satisfaction of any amount in dispute between Tenant and Landlord or otherwise. No statement on a payment check from Tenant or in a letter accompanying a payment check shall be binding on Landlord. Landlord, may, with or without notice to Tenant, negotiate such check without being bound to the conditions of such statement. Landlord may accept any and all of Tenant's payments without waiving any right or remedy under this Lease, including but not limited to the right to commence and pursue an action to enforce rights and remedies under a previously served notice of default, without giving Tenant any further notice or demand.

Section 15.09 Licenses and Permits. In connection with any repossession of the Demised Premises by Landlord or its designee, Tenant and its Affiliates shall reasonably cooperate with Landlord in transferring to Landlord or its designee any licenses or permits then held or maintained by Tenant or its Affiliates and required by applicable Law in order to operate the Demised Property for the Permitted Use (but not as an "On the Border" brand restaurant), including any such licenses or permits required in order to serve alcoholic beverages at the Demised Premises.

Section 15.10 Remedies Cumulative. All rights, privileges, elections, and remedies of Landlord are cumulative and not alternative with all other rights and remedies hereunder, at law or in equity to the fullest extent permitted by applicable Law. The exercise of one or more rights or remedies by Landlord shall not impair Landlord's rights to exercise any other right or remedy to the fullest extent permitted by applicable Law.

Section 15.11 Affirmance of Lease. In the event that, following the filing of any Petition regarding Tenant, under applicable Law, the trustee in bankruptcy or Tenant has the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant shall, within such time period as may be permitted by the bankruptcy court having jurisdiction, so affirm this Lease, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease, and provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations under this Lease.

Section 15.12 Survival. The remedies available to Landlord pursuant to this Article shall survive expiration or termination of this Lease.

ARTICLE 16 FORCE MAJEURE

If either party is prevented or delayed from timely performance of any obligation or satisfying any condition under this Lease by any event or circumstance beyond the control of such party, exclusive of financial inability of a party, but including any of the following if beyond the control of (and not caused by) such party: strike, lockout, labor dispute, civil unrest, inability to obtain labor, materials or reasonable substitutes thereof, acts of God, present or future governmental restrictions, regulations or control, insurrection, and sabotage, then the time to perform such obligation or satisfy such condition shall be extended by the delay caused by such event or circumstance, but only for a reasonable period of time not to exceed, in any event, ninety (90) days. The provisions of this Article shall in no event operate to delay the Commencement Date or to excuse Tenant from the payment of all Rent as and when due under this Lease.

ARTICLE 17 NOTICES

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

To Tenant:	OTB Acquisition LLC 2201 West Royal Lane, Suite 240 Irving, Texas 75063 Attention: Phil Slyby Facsimile: (469) 718-3565
with a copy to:	Argonne Capital Group, LLC 3060 Peachtree Road, NW, Suite 400 Atlanta, Georgia 30305 Attention: Karl Jaeger Facsimile: (404) 364-2985
and a copy to:	McGuireWoods LLP 1230 Peachtree Street, NE, Suite 1230 Atlanta, Georgia 30309 Attention: Josiah A. Bancroft, Esq. Facsimile: (404) 443-5688

To Landlord: DB Triple Dipper Restaurant LLC
c/o Drawbridge Special Opportunities Fund LP
1345 Avenue of the Americas, 46th Floor
New York, New York 10105
Attention: Constantine M. Dakolias, President
Facsimile: (646) 224-8716

with a copy to: DB Triple Dipper Restaurant LLC
c/o Drawbridge Special Opportunities Fund LP
10250 Constellation Boulevard, Suite 2350
Los Angeles, CA 90067
Attention: Joshua Pack
Facsimile: (310) 228-3031

and a copy to: DB Triple Dipper Restaurant LLC
c/o Fortress Investment Group LLC
5221 N. O'Connor Boulevard, Suite 700
Irving, Texas 75039
Attention: Andrew Osborne
Facsimile: (972) 532-4335

and a copy to: DB Triple Dipper Restaurant LLC
c/o Fortress Investment Group LLC
One Market Plaza, 42nd Floor
San Francisco, CA 94105
Attention: General Counsel, Credit Funds

and a copy to: SPP Net Lease Real Estate Fund, LLC
221 Pine Street, 4th Floor
San Francisco, CA 94104
Attention: David Moore
Facsimile: (415) 616-5141

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

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

ARTICLE 18 ACCESS

Landlord and its designees shall have the right upon not less than twenty-four (24) hours' prior written notice to Tenant (except in the event of an emergency, where no prior notice shall be required) to enter upon the Demised Property at reasonable hours to inspect the Demised Property or, during the period commencing one year prior to the end of the Lease Term, for the purpose of exhibiting same to prospective tenants and posting "for lease" or similar signage at the Demised Property, all in Landlord's discretion. Any such entry and/or inspection by Landlord shall not unreasonably interfere with Tenant's ability to conduct its business operations at the Demised Property.

ARTICLE 19 SIGNS

Tenant may, at Tenant's sole cost and expense, install or erect, at or on the Demised Premises, signs of any height or dimensions and bearing such inscriptions as Tenant shall reasonably determine; provided, however, that no sign shall be installed or erected by Tenant at or on the Demised Premises until all governmental approvals and permits required therefor have been obtained, all fees pertaining thereto have been paid by Tenant, and Tenant has delivered written evidence of such approvals, permits and payment to Landlord. Upon the termination of this Lease following an Event of Default or upon a rejection of this Lease in any bankruptcy or similar proceeding, Landlord shall have the right, at its sole option, to retain and use the signage structures (other than the On the Border name, trademarks and/or logo thereon which shall be covered or removed by Landlord at Tenant's sole cost and expense) in the future operation of the Demised Property without payment of any compensation to Tenant, or to require Tenant to remove such signage structures at Tenant's sole cost and expense (and, if such removal is not accomplished by Tenant promptly after notice from Landlord, Landlord may undertake such removal at Tenant's sole cost and expense). This Article shall survive termination of this Lease.

ARTICLE 20 IMPROVEMENTS, BUILDING EQUIPMENT AND TENANT'S PROPERTY

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

Section 20.02 During the Lease Term, Tenant shall be entitled to use the Building Equipment in Tenant's operations at the Demised Property. Tenant shall keep the Building Equipment in good working order and repair, shall not remove the Building Equipment from the Demised Property (subject to the terms of this Section) and shall not permit any lien or other encumbrance to attach to Building Equipment except as may be caused by Landlord, and except any such liens that are being contested by Tenant in good faith by appropriate proceedings and that have been bonded over by Tenant to the reasonable satisfaction of Landlord or for which Tenant provides alternative security to the reasonable satisfaction of Landlord. Tenant shall keep (or cause to be kept) the Building Equipment insured and shall be responsible for any casualty or other loss to Building Equipment or occasioned by Building

Equipment. Tenant shall at all times have a system in place to identify the Building Equipment from Tenant's Property or any of Tenant's personal property, and any items of equipment not so identified shall conclusively be presumed to be Building Equipment and shall be the property of Landlord. Tenant may, from time to time, retire or replace Building Equipment with new items of equipment of equal or greater value purchased by Tenant, in which event such replaced equipment shall constitute Building Equipment; provided, however that Tenant shall provide Landlord prompt written notice after any such replacement together with reasonable evidence as to the value and quality of the new Building Equipment. All Building Equipment shall be the property of Landlord, and Tenant shall execute such instruments and documents as Landlord may require to evidence such ownership by Landlord.

Section 20.03 Tenant shall also keep Tenant's Property located in the Demised Property in good working order and repair, and shall not remove Tenant's Property from the Demised Property, except to the extent it is replaced by equipment of equal or greater quality and utility; provided, however, that Tenant shall at all times maintain sufficient Tenant's Property at each Demised Property to be able to fully operate under Permitted Use at each Demised Property. In the event of any replacement of any Tenant's Property with new items of equipment, such new items of equipment shall thereafter constitute Tenant's Property. Tenant shall keep Tenant's Property fully insured and shall be responsible for any casualty or other loss to any Tenant's Property or occasioned by any Tenant's Property.

ARTICLE 21 END OF TERM; HOLDING OVER

Section 21.01 Upon the expiration or earlier termination of this Lease, Tenant shall peaceably and quietly quit and surrender the Demised Property, and all Alterations that are then part of the Demised Property, broom clean and in good order and condition. Tenant shall within thirty (30) days prior to the expiration of this Lease (or within thirty (30) days after written notice from Landlord upon any earlier termination of this Lease) transfer to Landlord all plans, drawings, other Alteration Information, and technical descriptions of the Demised Property, and shall assign (without warranty) to Landlord all assignable permits, licenses, authorizations and warranties necessary for the operation of the Demised Property (in each case to the extent not previously transferred or assigned to Landlord). Upon the expiration or earlier termination of this Lease, Tenant shall have the obligation to remove all Tenant's Property, trade fixtures and personal property from the Demised Property, except that, with the prior written consent of Landlord (which consent Landlord may withhold in its sole discretion), Tenant may elect to abandon any such Tenant's Property, trade fixtures and personal property. Subject to the rights of Tenant's Lender, any Tenant's Property, trade fixtures or personal property that are not removed upon the expiration or earlier termination of this Lease within the time periods set forth above in this Section 21.01 shall be deemed abandoned and may be removed, stored, disposed of or used by Landlord without payment of any compensation to Tenant (and any costs incurred by Landlord in connection with any such removal, storage or disposal shall be paid by Tenant to Landlord immediately upon demand).

Section 21.02 If Tenant holds over in possession after the expiration of the Lease Term, then such holding over shall not be deemed to extend the Lease Term or renew this Lease, but rather the tenancy thereafter shall continue as a tenancy at sufferance pursuant to the terms and conditions contained in this Lease, at one hundred thirty percent (130%) of the Base Rent otherwise then applicable (in addition to all Additional Rent); and Tenant shall be responsible for the consequences of any unauthorized holdover and shall indemnify, defend, protect (with counsel selected by Landlord) and hold Landlord Parties wholly free and harmless from any and all Losses arising therefrom.

Section 21.03 This Article 21 shall survive the expiration or termination of this Lease.

ARTICLE 22 TENANT ASSIGNMENT AND SUBLETTING

Section 22.01

(a) Except as otherwise explicitly provided in this Article 22 and Article 23, neither Tenant, nor Tenant's successors or assigns, shall assign or transfer, in whole or in part, by operation of law or otherwise, this Lease, or sublet the Demised Property, in whole or in part, or permit the Demised Property or any portion of any of them to be used or occupied by others, or enter into a management contract or other arrangement whereby the Demised Property shall be managed or operated by anyone other than the owner of the Tenant's leasehold estate, without the prior written consent of Landlord in each instance, which Landlord will not unreasonably delay, condition or withhold. Without limitation, any of the following shall be deemed an assignment of this Lease: (i) any assignment or transfer of any direct or indirect ownership interest in Tenant, in whole or in part, by operation of law or otherwise, regardless of the number of tiers of ownership, in one or more transactions, in such a manner that the ultimate beneficial owners of Tenant transfer control of Tenant¹, and (ii) any encumbrance, pledge or hypothecation, in whole or in part, by operation of law or otherwise, of this Lease or any interest in the leasehold estate created by this Lease, or of any direct or indirect ownership interest in Tenant, regardless of the number of tiers of ownership. As used in the immediately preceding sentence, "control" means ownership of voting securities sufficient to elect a majority of the board of directors of a corporation, or analogous ownership interests of non-corporate entities, or otherwise having the power to direct the policies or operations of such corporation or non-corporate entities.

(b) After any assignment or sublease permitted by Landlord hereunder, and except as expressly provided herein, (i) Tenant shall remain liable for all its obligations under this Lease and shall execute and deliver to Landlord a guaranty in form and substance reasonably acceptable to both Landlord and Tenant, whereby Tenant explicitly guarantees all of the assignee's or subtenant's obligations under this Lease, and (ii) Landlord may condition its consent to any sublease regarding the Demised Property upon the sublease containing the following provisions, in form and substance acceptable to Landlord and Landlord's Lender (collectively, the "Subordination and Attornment Provisions"): (A) that the sublease is subordinate in all respects to this Lease; (B) that in the event of the cancellation or termination of this Lease for any reason whatsoever or of the surrender of this Lease by operation of law prior to the expiration date of the sublease, at Landlord's sole and absolute discretion (1) the subtenant shall make full and complete attornment to Landlord under either the terms of this Lease (with a base rent for the applicable Demised Property equal to the greater of (y) the sublease base rent, for the balance of the term of the sublease and (z) the fair market rent for the Demised Premises as reasonably determined by Landlord, for the balance of the term of the sublease) or the terms of the sublease, or (2) the sublease shall terminate; (C) that subtenant waives the provisions of any Law then or thereafter in effect that may give subtenant any right of election to terminate the sublease or to surrender possession of the Demised Property in the event any proceeding is brought by Landlord to terminate this Lease; and (D) that all of the foregoing provisions in (A) through (C) are for the benefit of both Tenant and Landlord and Landlord is a third party beneficiary thereof. Notwithstanding the foregoing, upon the written request of Landlord or Landlord's Lender, Landlord, Tenant and the subtenant shall execute and deliver to each other a separate subordination and attornment agreement regarding the sublease, in form and substance reasonably acceptable to Landlord and Landlord's Lender. Tenant shall submit current financial statements of any proposed assignee or sublessee together with Tenant's request for Landlord's approval of any proposed assignment or sublease. Tenant shall reimburse Landlord for all costs and expenses actually paid by Landlord in connection with any requested assignment or sublease; including, but not

limited to, legal fees and costs in reviewing sublease or assignment documents and in preparing or reviewing consents.

(c) If this Lease is assigned or transferred, or if all or any part of the Demised Property is sublet or occupied by any party other than Tenant, Landlord may collect rent from the assignee, transferee, subtenant or occupant, and apply the net amount collected to the Rent reserved in this Lease, but no such assignment, subletting, occupancy or collection shall be deemed a waiver of any covenant or condition of this Lease, or the acceptance of the assignee, transferee, subtenant or occupant as tenant, or a release of Tenant from the performance or further performance by Tenant of its obligations under this Lease.

(d) Without limiting the generality of the forgoing, Tenant expressly acknowledges and agrees that, in the event of any assignment of this Lease (except as provided in Section 22.03 hereof), Tenant shall remain jointly and severally liable with the assignee for all of the obligations under this Lease, and in all other cases of any transfer of Tenant's interest under this Lease, Tenant shall remain primarily liable for such obligations. Subject to the foregoing, the consent by Landlord to any assignment, transfer, management contract or subletting shall not in any way be construed to relieve Tenant from obtaining the express written consent of Landlord in each instance to any subsequent similar action that Tenant may desire to take.

Section 22.02 Notwithstanding anything contained in Section 22.01, Tenant may sublease Demised Property without Landlord's consent provided that all of the following conditions are satisfied: (a) the subtenant is commercially and financially sound; (b) the permitted use under the sublease is limited to the operation of a quick-serve restaurant (with any change in use subject to the prior written consent of each of Landlord and Tenant, which approval each may withhold in its reasonable discretion), (c) the sublease contains a covenant whereby the subtenant agrees not to cease operations at the Demised Property for more than 120 consecutive days (except as may be reasonably required in order to repair, replace or restore the Demised Property following a casualty or condemnation, or, with Landlord's and Tenant's reasonable approval, in order to complete any alterations), that this covenant of continuous operation is an additional consideration and a material inducement for Tenant to enter into the sublease, and that subtenant shall deliver written notice to Tenant and Landlord within ten (10) days after ceasing operations at the subleased Demised Property, which notice shall specify the first date when such operations ceased; (d) the sublease contains the Subordination and Attornment Provisions and prohibits the subtenant from effecting or permitting any Alterations (other than a Minor Project) without the prior written consent of Tenant and Landlord; (e) the term of the sublease, including any extension options, does not (and cannot) extend beyond the scheduled Lease Term; and (f) the subtenant has delivered to Landlord and any Landlord's Lender, upon request, a subordination and attornment agreement in form and substance reasonably acceptable to Landlord and any Landlord's Lender.

Section 22.03 Notwithstanding anything to the contrary contained in Section 22.01, Tenant may assign all, but not less than all, of its interest in this Lease without Landlord's prior written consent, and Tenant shall be released from any liability accruing under this Lease after the date of such assignment, provided that (a) (i) as of the date of assignment, the assignee has an S&P Credit Rating of BBB- or higher, and a Fitch Credit Rating of BBB- or higher, and a Moody's Credit Rating of Baa3 or higher; or (ii) as of the date of the assignment, the assignee has an aggregate net worth, as reasonably determined by Landlord in accordance with GAAP, of at least \$30,000,000; (b) the assignee assumes all of Tenant's obligations under this Lease (any assignee that fulfills the conditions set forth in clauses (a) and (b) of this sentence is referred to herein as a "Credit Assignee"); and (c) Tenant delivers to Landlord (i) not less than thirty (30) days' prior written notice of any such assignment, together with documents reasonably requested by Landlord regarding same; and (ii) not less than ten (10) Business Days after any

such assignment, documents reasonably acceptable to Landlord evidencing the satisfaction of the conditions set forth in clauses (a) and (b) of this sentence. As used in the immediately preceding sentence, "**S&P Credit Rating**" means the credit rating assigned by Standard & Poor's Rating Group to the highest rated publicly issued debt securities of the assignee, "**Fitch Credit Rating**" means the credit rating assigned by Fitch Ratings, Inc. to the highest rated publicly issued debt securities of the assignee, and "**Moody's Credit Rating**" means the credit rating assigned by Moody's Investors Service to the highest rated publicly issued debt securities of the assignee.

Section 22.04 Upon any sublease or assignment permitted as provided in this Article 22, Tenant shall deliver to Landlord copies of such sublease or assignment agreement in form and substance reasonably satisfactory to Landlord (including assumption language reasonably satisfactory to Landlord in any assignment agreement) promptly after the execution thereof by Tenant. An assignment made with Landlord's consent or as otherwise permitted hereunder shall not be effective until Tenant delivers to Landlord an executed counterpart of such assignment containing an agreement, in recordable form, executed by the assignor and the proposed assignee, in which the assignee assumes the performance of the obligations of the assignor under this Lease throughout the Lease Term. In no event shall Tenant be entitled to amend, extend or otherwise modify any sublease or assignment agreement without the prior written consent of Landlord, which consent Landlord may withhold in its reasonable discretion.

Section 22.05 Subject to the terms of this Lease, this Lease shall be binding upon, enforceable by, and inure to the benefit of the parties hereto and their respective heirs, successors, representatives and assigns.

ARTICLE 23 FINANCINGS

Section 23.01 This Lease shall be subject and subordinate to all present and future ground or underlying leases of the Demised Property and to the lien of any mortgages or trust deeds, now or hereafter in force against the Demised Property, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages or trust deeds, or the lessors under such ground or underlying leases, require in writing that this Lease be superior thereto; and Tenant covenants and agrees in the event any proceedings are brought for the foreclosure of any mortgage or deed of trust to which this Lease is subordinate, or in the event of any termination of any ground or underlying lease to which this Lease is subordinate, to attorn, without any deductions or set-offs whatsoever, to the purchaser upon any such foreclosure sale, if so requested to do so by such purchaser, and to the ground or underlying lease lessor, if so requested to do so by such ground or underlying lease lessor, and to recognize such purchaser, or ground or underlying lessor, as the case may be, as the lessor under this Lease; provided, however, that the foregoing subordination to future ground or underlying leases of the Demised Property and to the lien of any future mortgages or trust deeds in force against the Demised Property shall be conditioned upon Landlord providing Tenant with a subordination, non-disturbance and attornment agreement in favor of Tenant in the form attached hereto as Exhibit B, or other commercially reasonable form requested by Landlord that provides, without limitation, that this Lease and the rights of Tenant hereunder shall survive any foreclosure proceeding brought under such mortgage or deed of trust, or termination of such ground or underlying lease (as applicable), provided Tenant is not in default or breach of its obligations under this Lease (either, an "**SNDA**"). Without limiting the foregoing, (a) as of the Commencement Date, each of Landlord, Landlord's Lender, and Tenant shall execute and deliver to each other a subordination, non-disturbance and attornment agreement in the form attached hereto as Exhibit B, and (b) Tenant shall, and shall cause any subtenant, from time to time, within five (5) days after any request by Landlord, to execute and deliver such other instruments or assurances as Landlord may reasonably deem necessary to evidence or confirm the subordination or

superiority of this Lease (at Landlord's election) to any such mortgages, trust deeds, ground or underlying leases (including, at Landlord's election, one or more additional SNDAs requested by Lender).

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

Section 23.03

(a) Notwithstanding Section 22.01 above, but subject to the terms of this Article, Landlord agrees that Tenant shall have the right to encumber, pledge or hypothecate Tenant's interest in the leasehold estate created by this Lease. All proceeds from any Leasehold Mortgage shall remain the property of Tenant. Landlord shall not be obligated to subordinate any or all of Landlord's right, title or interest in and to the Demised Property and this Lease to the lien of any Leasehold Mortgage. A Leasehold Mortgage shall encumber only Tenant's leasehold interest in the Demised Property, and shall not encumber Landlord's right, title or interest in the Demised Property. Landlord shall have no liability whatsoever for the payment of any obligation secured by any Leasehold Mortgage or related obligations. A Leasehold Mortgage shall be, and hereafter shall continue at all times to be, subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and junior, subject and subordinate, in each and every respect, to all rights and interests of any Landlord's Mortgagee now or hereafter affecting the Demised Property. Should there be any conflict between the provisions of this Lease and the provisions of any Leasehold Mortgage, the provisions of this Lease shall control. No Leasehold Mortgage shall be for a term longer than the Original Lease Term. Either prior to or concurrently with the recordation of any Leasehold Mortgage, Tenant shall cause a fully conformed copy thereof and of the financing agreement secured thereby to be delivered to Landlord and Landlord's Mortgagee, together with a written notice containing the name and post office address of Tenant's Lender. Without limiting anything contained in this Section, Tenant acknowledges and agrees that notwithstanding the grant by Tenant of any Leasehold Mortgage to any Tenant's Lender, neither Tenant's Lender nor any other Person shall have the right to acquire Tenant's interest under this Lease by foreclosure, transfer in lieu of foreclosure or otherwise unless the Person succeeding to the interest of Tenant would qualify as a Credit Assignee at the time it acquires such interest. Upon written request from Tenant, Landlord agrees to deliver an estoppel certificate in favor of Tenant's Lender regarding this Lease, in form and substance

reasonably acceptable to Landlord and Tenant's Lender. Tenant agrees that a condition precedent to its granting a Leasehold Mortgage to any Tenant's Lender shall be the execution and delivery by such Tenant's Lender to Landlord and Landlord's Lender of a subordination, non-disturbance and attornment agreement, in form and substance reasonably acceptable to Landlord and Landlord's Lender. Tenant hereby acknowledges and agrees (a) that it is Landlord's intent to pledge the Demised Property to Landlord's Lender on or after the Commencement Date, (b) that any instruments effecting or evidencing such pledge shall at all times be prior in interest to any Leasehold Mortgage and (c) if requested by Landlord's Lender, Tenant shall cause Tenant's Lender to enter into an agreement in form and substance reasonably acceptable to Landlord's Lender confirming that Tenant's Lender has no interest in the Demised Property other than in Tenant's interest under this Lease and that any Leasehold Mortgage is subject and subordinate to any such instruments effecting or evidencing such pledge. In addition, in the event that any Landlord's Lender requires that the Leasehold Mortgage be terminated of record and re-recorded in order to ensure priority of any such instrument effecting or evidencing such pledge, Tenant shall cause the same to occur promptly after written request, and at Landlord's expense. Tenant hereby agrees not to grant any Leasehold Mortgages against the Demised Property unless and until instruments securing or evidencing Landlord's pledge of the Demised Property to Landlord's Lender are recorded against the Demised Premises. If Landlord delivers to Tenant a Default notice under this Lease, Landlord shall notify any Tenant's Lender (without any liability for failure to provide such notification) that has delivered to Landlord a prior written request for such notice, and Landlord shall recognize and accept the performance of any obligation of Tenant hereunder by Tenant's Lender (provided said performance occurs within the same cure periods as provided to Tenant under this Lease); provided, however that nothing contained herein shall obligate Tenant's Lender to take any such actions. Any act by Tenant or Tenant's Lender in violation of this Section 23.03 shall be null and void and of no force or effect. This Section shall survive termination of this Lease.

ARTICLE 24 ESTOPPEL CERTIFICATE

Each of Tenant and Landlord shall, without charge to the other party, at any time and from time to time, within ten (10) Business Days after any request by the other party, deliver to the requesting party or any other Person specified by such requesting party, duly executed and acknowledged, a completed estoppel certificate, (a) if to be delivered by Tenant, in substantially the form as set forth on Exhibit C attached hereto or, at Landlord's sole option, other commercially reasonable form confirming such information regarding this Lease and Tenant as Landlord may reasonably request, and (b) if to be delivered by Landlord, in a commercially reasonable form confirming such information regarding this Lease and Landlord as Tenant may reasonably request (either, an "Estoppel Certificate"). Landlord's or Tenant's failure to deliver to the requesting party any Estoppel Certificate requested as and when provided in this Article shall be deemed conclusive against the party to whom the request is made as to the truthfulness of the items stated in such Estoppel Certificate.

ARTICLE 25 RECORDING

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

ARTICLE 26 APPLICABLE LAW; WAIVER OF JURY TRIAL

This Lease shall be construed in accordance with, and this Lease and all matters arising out of or relating to this Lease (whether in contract, tort or otherwise) shall be governed by, the laws of the State where the Demised Property is located without regard to conflicts of law principles. If any provision of this Lease or the application thereof shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by applicable Law.

TENANT AND LANDLORD, EACH HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY AND STATE WHERE THE DEMISED PROPERTY IS LOCATED, AND EACH IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS LEASE SHALL BE LITIGATED IN SUCH COURTS. TENANT AND LANDLORD EACH ACCEPTS, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS (EXCEPT AS PROVIDED ABOVE IN THIS PARAGRAPH) AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS, AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS LEASE.

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

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

ARTICLE 27 LIABILITY OF PARTIES

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

Section 27.02 The obligations of Tenant under this Lease are not personal obligations of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant. Landlord shall not seek recourse against the assets of the individual members, partners, directors, officers, shareholders, agents or employees of Tenant. If more than one Person is named as Tenant hereunder, the obligations under this Lease of all such Persons as Tenant shall be joint and several.

ARTICLE 28 ATTORNEYS' FEES; EXPENSES

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

(a) If any party to this Lease shall bring any action or proceeding for any relief against the other, declaratory or otherwise, arising out of this Lease, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs incurred in bringing or defending such action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs, separate from the judgment, incurred in enforcing such judgment. The prevailing party shall be determined by the trier of fact based upon an assessment of which party's major arguments or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues; provided, however, that the parties agree that in no event shall Tenant be deemed a prevailing party if an Event of Default then exists under this Lease. For the purposes of this clause, attorneys' fees shall include fees incurred in the following: (i) post-judgment motions; (ii) contempt proceedings; (iii) garnishment, levy, and debtor and third party examinations; (iv) discovery; and (v) bankruptcy litigation. This clause is intended to be expressly severable from the other provisions of this Agreement, is intended to survive any judgment and is not to be deemed merged into the judgment.

(b) Tenant agrees to pay or, if Tenant fails to pay, to reimburse, Landlord upon receipt of written notice from Landlord for all reasonable costs and expenses (including reasonable attorneys' fees and costs) incurred by Landlord in connection with (i) Tenant's ongoing performance of and compliance with its agreements and covenants contained in this Lease and the other Transaction Documents on its part to be performed or complied with, including confirming compliance with environmental and insurance requirements, and determining whether defaults or Events of Default may exist under any of the Transaction Documents; (ii) any request by Tenant to Landlord, including Landlord's actions in response thereto; (iii) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Lease and the other Transaction Documents and any other documents or matters requested by Landlord in accordance with the terms of the Transaction Documents; (iv) securing Tenant's compliance with any requests made pursuant to the provisions of this Lease or other Transaction Documents; and (v) enforcing any obligations of or collecting any payments due from Tenant under this Lease, the other Transaction Documents or with respect to the Demised Premises.

ARTICLE 29 ENVIRONMENTAL

Section 29.01 Tenant acknowledges that Landlord makes no warranties or representations of any kind, or in any manner or in any form whatsoever, as to the status of Environmental Conditions or Hazardous Materials at the Demised Property. Tenant shall conduct at its own expense any and all investigations regarding Environmental Conditions of the Demised Property and will satisfy itself as to the absence or existence of Hazardous Materials contamination of the Demised Property. Tenant's entry into this Lease shall be made at its sole risk.

Section 29.02 Tenant shall comply with all Environmental Laws and cause and ensure the Demised Property and all operations thereon comply with all applicable Environmental Laws. Tenant shall not suffer or permit any loss, on, at, under or affecting the Demised Property of any source if the

same pose a health or safety risk to invitees or employees. From and after the Commencement Date, Tenant shall not be entitled to the Use of any Hazardous Materials at the Demised Property other than De Minimis Amounts, which shall be performed in full compliance with all Environmental Laws and any other applicable Laws. Tenant shall be prohibited from conducting or allowing the Release of Hazardous Materials onto, on, about, under or from the Demised Property, the exception being sewer or other permitted discharges or Releases or other De Minimis Amounts, in full compliance with all Environmental Laws and any other applicable Laws. From and after the date of this Lease, Tenant covenants to, and shall, undertake all Remedial Activities necessary to comply with Environmental Laws and address any Use or Release of Hazardous Materials after the date of this Lease, by Tenant or its agents, employees, representatives, invitees, licensees, subtenants, customers or contractors ("Other Parties"), or otherwise adversely affecting the Demised Property at Tenant's sole cost and expense, and shall give immediate written notice of same to Landlord, including the abatement of any mold or fungi that constitute Hazardous Materials, even if no applicable Law compels such abatement. If any Remedial Activities are required to be performed at any location other than the Demised Property, Tenant shall use its best efforts to obtain any required access agreements from third parties.

Section 29.03 In addition to any other obligation herein, Tenant shall indemnify, defend, protect and hold Landlord Parties free and harmless from any and all Losses and other obligations of any kind whatsoever that may be made against or incurred by Landlord Parties in connection with (a) the violation of any Environmental Law, or (b) Hazardous Materials or Environmental Conditions at, on, under, about or from the Demised Property during the Lease Term (and in the event of any holding over by Tenant, during any period that Tenant occupies the Demised Property) whether or not the same constitute a violation of any Environmental Law, including any and all costs and fees of attorneys or experts incurred by Landlord in defending against same. This and any other right of Landlord under this Lease shall inure to the benefit of Landlord's successors and assigns, as well as Landlord's Lenders and Landlord's Mortgagees and their respective successors and assigns as third party beneficiaries. This Section shall survive termination of this Lease.

Section 29.04 Tenant shall promptly inform Landlord in writing of (a) any and all enforcement actions, initiation of Remedial Activities where no Remedial Activities are currently being conducted upon receipt of such notification, or other governmental or regulatory actions (excluding routine actions such as permit renewals) instituted, completed or threatened pursuant to any Environmental Laws affecting the Demised Property; (b) all claims made or threatened by any third Person against Tenant or the Demised Property relating in any way whatsoever to Hazardous Materials or Environmental Conditions (the matters set forth in clauses (a) and (b) are hereinafter referred to as "Environmental Claims"); (c) Tenant's knowledge of any material Release of Hazardous Materials at, on, in, under to or from the Demised Property or on, in or under any adjoining property. Tenant shall also supply to Landlord within three Business Days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings, asserted violations or other communications relating in any way to the matters described in this Section.

Section 29.05 In addition to any other obligations herein, Tenant shall be solely responsible for and shall indemnify, protect, defend, and hold harmless all Landlord Parties from and against any and all Losses directly or indirectly arising out of or associated in any manner whatsoever with Tenant's Use or the presence of Hazardous Materials or Release of Hazardous Materials at, on, under, about or from the Demised Property during the Lease Term (and in the event of any holding over by Tenant, during any period that Tenant occupies the Demised Property). Tenant's indemnity and release includes: (a) the costs associated with Remedial Activities, including all necessary plans and reports, incurred by the U.S. Environmental Protection Agency, or any other federal, state or local governmental agency or entity or by any other Person, incurred pursuant to the CERCLA, RCRA, or any other applicable Environmental

Laws; (b) any oversight charges, fines, damages or penalties arising from the presence or Release of Hazardous Materials, and any related Remedial Activities, incurred pursuant to the provisions of CERCLA, RCRA, or any other applicable Environmental Laws; (c) any liability to third parties arising out of the presence or Release of Hazardous Materials for personal injury, bodily injury, or property damage arising under any statutory or common law theory, including damages assessed for the maintenance of a public or private nuisance, the costs of Remedial Activities, or for the carrying on of an abnormally dangerous activity; (d) all direct or indirect compensatory, consequential, or punitive damages arising out of any claim based on the presence or Release of Hazardous Materials or damage or threatened damage to Environmental Conditions; (e) any and all reasonable costs, fees and expenses of attorneys, consultants and experts incurred or sustained in making any investigation on account of any claim, in prosecuting or defending any action brought in connection therewith, in obtaining or seeking to obtain a release therefrom, or in enforcing any of the agreements herein contained; (f) Rent during any period of Remedial Activities equal to the Base Rent then in effect, or if this Lease has terminated, the Base Rent that was in effect on the Termination Date; and (g) any action or omission or use of the Demised Property by any subtenant. The foregoing indemnity shall apply to Tenant's Use of Hazardous Materials irrespective of whether any of Tenant's activities were or will be undertaken in accordance with Environmental Laws or other applicable Laws. This indemnity is intended to be operable under 42 U.S.C. 9607(e)(1). Tenant specifically agrees that it shall not sue or seek contribution from any Landlord Party in any matter relating to any Hazardous Material liability. All costs and expenses paid or incurred by Landlord for which Tenant is obligated to indemnify Landlord under this Section shall be paid promptly by Tenant to Landlord. This Section shall survive termination of this Lease.

Section 29.06 Notwithstanding the foregoing in this Article 29, Tenant shall have no indemnity obligations under this Article 29 for any Losses caused by any event or circumstance occurring at the Demised Property entirely after Tenant loses possession or control of the Demised Property following a termination or expiration of this Lease or following an actual eviction of Tenant by Landlord pursuant to applicable Law such that Tenant has no legal right to possess or control the Demised Property; provided, however, that, without limitation, the foregoing shall in no way limit (a) Tenant's obligations under this Article 29 for any such event actually caused by Tenant, its subtenants, agents, employees, contractors, invitees or lenders at the Demised Property, whether during any re-entry by any such Persons to collect or inspect Tenant's Property or otherwise (and whether or not such re-entry is expressly authorized by Landlord)), even where Tenant has previously lost possession or control of the Demised Property following a termination or expiration of this Lease or following an actual eviction of Tenant by Landlord pursuant to applicable Law such that Tenant has no legal right to possess or control the Demised Property, (b) Tenant's obligations under any other indemnity provision set forth in this Lease or any other Transaction Document, or (c) any event or circumstance occurring in whole or in part prior to Tenant losing possession or control of the Demised Property following a termination or expiration of this Lease (including any Losses arising out of or in any way related to or resulting directly or indirectly from such event or circumstance, including such Losses incurred after Tenant loses possession or control of such Property following a termination or expiration of this Lease or following an actual eviction of Tenant by Landlord pursuant to applicable Law such that Tenant has no legal right to possess or control the Demised Property).

ARTICLE 30 LANDLORD ASSIGNMENT

This Lease shall be fully assignable by the Landlord or its successors and assigns, in whole or in part. Tenant shall execute and deliver to Landlord, within five (5) Business Days after delivery thereof, any other instruments and documents requested by Landlord in connection with the sale or assignment, including without limitation any commercially reasonable subordination, non-disturbance and attornment agreement that may be requested by Landlord's

assignee's lenders. In addition, Tenant agrees to cooperate reasonably with Landlord in connection with any such sale or assignment. From and after the effective date of any such assignment, Landlord will be released from any liability thereafter arising with respect to this Lease.

ARTICLE 31 INTENTIONALLY OMITTED

ARTICLE 32 INTENTIONALLY OMITTED

ARTICLE 33 LANDLORD'S RIGHTS UNDER LEASE

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

ARTICLE 34 INTENTIONALLY OMITTED

ARTICLE 35 LIQUOR

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

ARTICLE 36 INTERPRETATION; MISCELLANEOUS

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

Section 36.02 This Lease may be executed in counterparts and shall be binding on all the parties hereto as if one document had been signed. The delivery of an executed copy of this Lease by facsimile transmission shall have the same force and effect as the delivery of the original, signed copy of this Lease. Time is of the essence of every provision of this Lease. Any provision of this Lease explicitly providing for the performance by Tenant of obligations upon or after the expiration or termination of this Lease shall survive any such expiration or termination. This Lease and the Exhibits attached hereto, all of which form a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Demised Property, and there are no covenants, promises, agreements, conditions or understandings heretofore made, either oral or written, between them other than as herein set forth. No modification, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party. The captions, section numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections or articles nor in any way affect this Lease. Nothing contained in this Lease shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of landlord and tenant. Except as explicitly set forth in this Lease, there shall be no third party beneficiaries of this Lease or any of the agreements contained herein. The failure of Landlord or Tenant to insist upon strict performance of any of the terms and conditions hereof shall not be deemed a waiver of any rights or remedies that party or any other such party may have, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

ARTICLE 37 QUIET ENJOYMENT SUBJECT TO DILIGENCE MATTERS

From and after the Commencement Date until the expiration or termination of the Lease Term, and provided no Event of Default has occurred, Tenant shall have quiet enjoyment of the Demised Property, subject however, to all Diligence Matters, which shall have priority over the interest of Tenant in this Lease and its leasehold interest in the Demised Property.

ARTICLE 38 NO MERGER OF TITLE

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

ARTICLE 39 ADDITIONAL CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES

Tenant hereby represents, warrants and certifies to Landlord as follows:

(a) Tenant does not intend to apply the constant rental accrual method (within the meaning of section 1.467-3(b) of the Treasury Regulations promulgated under the Internal Revenue Code of 1986) to any Rent paid by Tenant under this Lease.

(b) None of Tenant, Tenant's officers and directors, or Tenant's direct or indirect owners regardless of the number of tiers of ownership (each such owner, a "**Beneficial Owner**") (i) is a

Person, or has a fiduciary acting on its behalf, whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such Person, or any fiduciary acting on such Person's behalf, in any manner violative of Section 2, or (iii) is a Person, or has a fiduciary acting on its behalf, on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order. If Tenant shall at any time determine that an officer, director or Beneficial Owner of Tenant, or any fiduciary acting on its behalf, is or has become subject to Executive Order 13224 or is a Person, or has a fiduciary acting on its behalf, listed on the list referenced in foregoing clause (iii) or subject to the limitations or prohibitions referenced in such clause, Tenant will take such steps as a result of such determination as may be required by applicable Law. Tenant is in compliance with (y) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (z) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001), and each of the officers, directors and Beneficial Owners of Tenant, and any fiduciary acting on behalf of any of them, is in compliance with such statutes, enabling legislation or executive orders to the extent applicable to such Persons.

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

ARTICLE 40 BROKERS

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

[SIGNATURES FOLLOW ON NEXT PAGE]

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

LANDLORD:

DB Triple Dipper Restaurant LLC,
a Delaware limited liability company



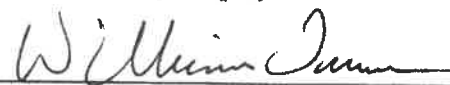
First Witness

Aaron Haas
Printed Name of First Witness



Second Witness

Justine Harris
Printed Name of Second Witness

By: 
Name: William Turner
Title: Authorized Signatory

TENANT:

OTB ACQUISITION LLC,
a Delaware limited liability company

First Witness

Printed Name of First Witness

Second Witness

Printed Name of Second Witness

By: _____
Name: Karl F. Jaeger
Title: Vice President

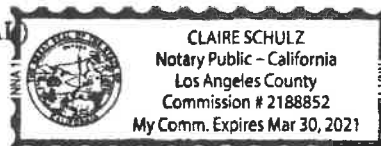
ACKNOWLEDGMENTS

STATE OF California)
COUNTY OF Los Angeles) ss.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On this 30th day of August, 2017, before me, the undersigned, personally appeared William Turner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)



Claire Schulz
Notary Public

My commission expires:
March 30, 2021

[ACKNOWLEDGMENTS CONTINUE ON NEXT PAGE]

Acknowledgment

LAND AND BUILDING LEASE

OTB Lease - Cary

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

LANDLORD:

DB Triple Dipper Restaurant LLC,
a Delaware limited liability company

First Witness

By: _____

Name: _____

Title: _____

Printed Name of First Witness

Second Witness

Printed Name of Second Witness

TENANT:

OTB ACQUISITION LLC,
a Delaware limited liability company



First Witness

By:  _____

Name: Karl F. Jaeger

Title: Vice President

SARA GOODWIN

Printed Name of First Witness



Second Witness

Thomas Randazzo

Printed Name of Second Witness

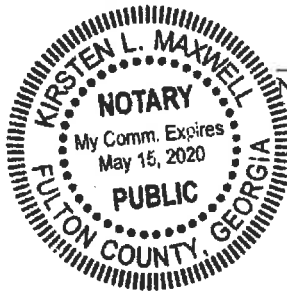
ACKNOWLEDGMENTS

STATE OF Georgia)
COUNTY OF Fulton) ss.

On this 11 day of August, 2017, before me, the undersigned, personally appeared Karl Jaeger personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)

My commission expires:
May 15, 2020



[Signature]
Notary Public

[ACKNOWLEDGMENTS CONTINUE ON NEXT PAGE]

Acknowledgment

LAND AND BUILDING LEASE

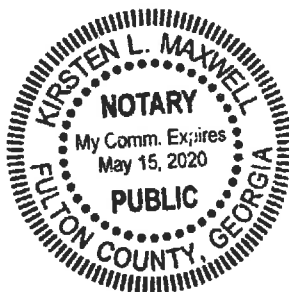
OTB Lease - Cary

STATE OF Georgia)
COUNTY OF Fulton) ss.

On this 11 day of August, 2017 before me, the undersigned, personally appeared Robert S. Marshall, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person, acted, executed the instrument.

(NOTARIAL SEAL)

My commission expires:
May 15, 2020



[Signature]
Notary Public

Acknowledgment

LAND AND BUILDING LEASE

OTB Lease - Cary

SCHEDULE 1

DEFINED TERMS

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

"AAA" means the American Arbitration Association or any successor thereto.

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

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

"Alteration Information" is defined in Article 6.

"Alterations" is defined in Article 6.

"Base Rent" is defined in Section 3.02.

"Beneficial Owner" is defined in Article 39.

"Building Equipment" is defined in the Recitals to this Lease.

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

"Casualty Substitution" is defined in Section 11.01.

"Casualty Substitution Deadline Date" is defined in Section 11.01.

"Casualty Substitution Notice" is defined in Section 11.01.

"Code" means the Internal Revenue Code of 1986, and any rule or regulation promulgated thereunder from time to time, in each case as amended.

"Commencement Date" is defined in Section 2.01(a).

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

"Credit Assignee" is defined in Section 22.03.

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

"Default" is defined in Section 15.01.

"Demised Property" is defined in the Recitals to this Lease.

"Diligence Matters" is defined in Article 5.

"Disclosures" is defined in Section 23.02.

"Environmental Claims" is defined in Section 29.04.

"Environmental Conditions" means the conditions of Environmental Media and the conditions of any part of the Demised Property, including building materials, that affect or may affect Environmental Media.

"Environmental Laws" means any federal, state or local law, statute, ordinance, permit condition, regulation or written policy pertaining to public or worker health or safety, natural resources, climate changes, or the regulation protection of the indoor or outdoor environment, the regulation or reporting of Hazardous Materials, including the following: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq. as amended ("**CERCLA**"), the Solid

Waste Disposal Act, 42 U.S.C. § 6901 et seq. as amended ("**RCRA**"), the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 U.S.C. 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 USC 7401 et seq.; the National Environmental Policy Act of 1970, as amended, 42 USC 4321 et seq.; the Rivers and Harbors Act of 1899, as amended, 33 USC 401 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq. the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, et seq.; the Occupational Safety and Health Act of 1970, as amended 29 U.S.C. 651, et seq.; the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300(f) et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq. as amended, and all regulations, published governmental policies, and administrative or judicial orders promulgated under or implementing or enforcing said laws; (ii) all state or local laws which implement the foregoing federal laws or which pertain to public health and safety, occupational health and safety, natural resources or environmental protection, all as amended from time to time, and all regulations, published governmental policies, and administrative or judicial orders promulgated under the foregoing laws; (iii) all federal and state common law, including but not limited to the common law of public or private nuisance, trespass, negligence or strict liability, where such common law pertains to public health and safety, occupational health and safety, natural resources, environmental protection, or the use and enjoyment of property, and all judicial orders promulgated under said laws; and (iv) all comparable local laws and comparable laws of other jurisdictions.

"**Environmental Media**" means soil, fill material, or other geologic materials at all depths, groundwater at all depths, surface water including storm water and sewerage, indoor and outdoor air, and all living organisms, including all animals and plants, whether such Environmental Media are located on or off the Demised Property.

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

"**Estoppel Certificate**" is defined in Article 24.

"**Event of Default**" is defined in Section 15.01.

"**Extension Notice**" is defined in Section 2.02(a).

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

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

"**Hazardous Materials**" means any ignitable, reactive, explosive, corrosive, carcinogenic, mutagenic, toxic or radioactive material, whether virgin material, secondary material, by-product, waste or recycled material, defined, regulated or designated as a contaminant, pollutant, hazardous or toxic substance, material, waste, contaminant or pollutant under any Environmental Laws or any other federal, state or local law, statute, regulation, ordinance, or governmental policy presently in effect or as amended or promulgated in the future, and shall specifically include: (i) those materials included within the definitions of "hazardous substances," "extremely hazardous substances," "hazardous materials," "toxic substances" "toxic pollutants," "hazardous air pollutants" "toxic air contaminants," "solid waste,"

"hazardous waste," "pollutants," "contaminants" or similar categories under any Environmental Laws; (ii) those materials that create liability under common law theories of public or private nuisance, negligence, trespass or strict liability; and (iii) specifically including any material, waste or substance that contains: (A) petroleum or petroleum derivatives byproducts, including crude oil and any fraction thereof and waste oil; (B) asbestos; (C) polychlorinated biphenyls; (D) formaldehyde; and (E) radon. If not already defined as a Hazardous Material under any of the foregoing terms, mold and fungi of any type or concentration shall be deemed a Hazardous Material hereunder if present in any Improvements under such conditions or circumstance as to represent blight or any unsanitary condition or that impairs the use of any Improvements or portion thereof for its intended uses.

"Improvements" is defined in the Recitals to this Lease.

"Insurance Premium Additional Rent" is defined in Section 10.08.

"Insurance Premium Additional Rent Trigger" is defined in Section 10.08.

"Land" is defined in the Recitals to this Lease.

"Landlord" is defined in the first paragraph of this Lease.

"Landlord Award Amount" means the amount of the net award actually received by Landlord for any taking of any portion of the Demised Premises.

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

"Landlord's Account" is defined in Section 3.01.

"Landlord's Lenders" means any persons or entities providing financing to Landlord or Affiliates of Landlord.

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

"Late Fee" is defined in Section 15.04.

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

"Lease" is defined in the first paragraph of this agreement.

"Lease Term" is defined in Section 2.01(a).

"Lease Year" shall mean a fiscal period beginning on the Commencement Date, and each anniversary thereof, and expiring on the last day of the twelfth (12th) month thereafter.

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

"Liens" means liens, security interests, charges and encumbrances.

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

"Material Casualty" means any casualty regarding the Demised Property where, in Landlord's reasonable determination, (i) the Restoration Work, if diligently prosecuted, could not reasonably be expected to be completed within eighteen (18) months after the first date of such casualty, or (ii) such casualty has reduced the value of the Demised Property by more than 50%.

"Minor Project" means a non-structural minor maintenance or repair project and/or "cosmetic refresh" project involving only painting, carpeting, floor covering and installation of moveable replacement Tenant's Property, unless in either case governmental permits are required or the costs exceed, in the aggregate, for any affected Demised Property, \$50,000.

"Moody's Credit Rating" is defined in Section 22.03.

"Option Period" is defined in Section 2.02(a).

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

"Other Parties" is defined in Section 29.02.

"Permitted Use" is defined in Section 4.01.

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

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

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

"RE Taxes Additional Rent" is defined in Section 3.03(b).

"RE Taxes Additional Rent Trigger" is defined in Section 3.03(b).

"Real Estate Taxes" means (i) all taxes and general and special assessments and other impositions in lieu thereof, or as a supplement thereto and any other tax measured by the value of real property and assessed on a uniform basis against the owners of real property, including any substitution in whole or in part

therefor due to a future change in the method of taxation, and including any increase in any of the foregoing resulting from any sale, exchange, mortgage, encumbrance, or other disposition by Landlord, in each case assessed against, or allocable or attributable to, any of the Demised Property and accruing during or prior to the Lease Term and (ii) all transfer taxes imposed in connection with this Lease.

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

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

"Rent" means Base Rent plus Additional Rent.

"Repairs" means all replacements, renewals, alterations, additions and betterments necessary for Tenant to properly maintain each Demised Property in good order and condition, safe and fit for its permitted use under the Lease.

"Restoration Work" is defined in Section 11.01.

"S&P Credit Rating" is defined in Section 22.03.

"SNDA" is defined in Section 23.01.

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

"Tenant" is defined in the first paragraph of this Lease.

"Tenant's Lender" means any lender of Tenant that holds a Leasehold Mortgage.

"Tenant's Property" means any of Tenant's personal property located at the Demised Property, including any such personal property that is Tenant's inventory, equipment, furniture, furnishings, tools or Tenant's Trade Fixtures, and any personal property equipment leased by Tenant located at the Demised Property (but excluding any items that have been affixed to the Demised Property so as to constitute "fixtures" pursuant to applicable Law other than Tenant's Trade Fixtures), together with all additions, substitutions, replacements and improvements to the same.

"Tenant's Trade Fixtures" means personal property (i) owned or leased by Tenant, (ii) installed by Tenant at the Demised Property for use in its business, and (iii) that is removable without material damage to the Demised Property.

"Transaction Documents" means, collectively, this Lease and any other agreements entered into by and between Landlord and Tenant regarding the Demised Property.

"Transfer Parties" is defined in Section 23.02.

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

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

SCHEDULE 2
SPECIFIED TRADE FIXTURES

SCHEDULE 2

LAND AND BUILDING LEASE

OTB Lease - Cary

EXHIBIT A

LOCATION/ADDRESS/LEGAL DESCRIPTION OF DEMISED PROPERTY

1102 Walnut Street, Cary, NC

DESCRIPTION:

PARCEL I:

BEING ALL of Lot 7, containing 1.9055 acres more or less, as shown on a map entitled "Subdivision Plat, Property of CK-Cary Commons, LLC, a North Carolina limited liability company, Cary, Wake County, North Carolina dated March 6, 1995 recorded April 6, 1995 in Book of Maps 1995, Page 547, Wake County Registry.

PARCEL II:

Together with those certain rights and easements established under that certain Declaration of Easements and Restrictions recorded in Book 6534, Page 21, as amended in Book 6686, Page 365; as affected by that certain Consent and Subordination Amendment to Declaration of Easements and Restrictions recorded in Book 6686, Page 374; as affected by that certain Assignment of Development Rights recorded in Book 7837, Page 894, Wake County Registry.

EXHIBIT A

LAND AND BUILDING LEASE

OTB Lease - Cary

EXHIBIT B
FORM OF SNDA

(To Be Attached)

EXHIBIT B

LAND AND BUILDING LEASE

OTB Lease - Cary

EXHIBIT C

FORM OF TENANT'S ESTOPPEL CERTIFICATE

THE UNDERSIGNED, _____, a Delaware limited liability company ("**Tenant**"), whose address is _____, represents and certifies as follows in this Tenant's Estoppel Certificate ("**Certificate**"):

1. Tenant is the tenant under that certain Land and Building Lease dated _____, 2017 (the "**Lease**") with _____, a Delaware limited liability company, as landlord ("**Landlord**"), covering the properties described therein (collectively the "**Demised Property**"), a true and correct copy of which (together with all amendments thereof) is attached hereto as Exhibit A. [Tenant understands that _____ ("**Secured Party**") intends to enter into financing arrangements with Landlord, as borrower, to be secured, among other things, by certain mortgages, deeds of trust and assignments of leases and rents, as amended, covering the Demised Property.]

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

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

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

5. Tenant took possession of the Demised Property on or about the date of the Lease and commenced paying rent on or about _____, 2017. Tenant presently occupies the Demised Property, is open for business and in operation on the Demised Property, and is paying rent on a current basis. No rent has been paid by Tenant in advance except for the monthly rental that becomes due on _____, 2017 and no deposits, including security deposits, or prepayments of rent have been made in connection with the Lease. Tenant agrees not to pay rent more than one (1) month in advance unless otherwise specified in the Lease.

6. The monthly base rental is the sum of _____ AND NO/100THS DOLLARS (US\$ _____). Landlord has not agreed to reimburse Tenant for or to pay Tenant's rent obligation under any other lease.

7. The term of the Lease commenced on _____, 2017, expires on _____, 20____, and there are no options to renew except: _____ () option periods of five (5) years each.

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

EXHIBIT C

LAND AND BUILDING LEASE

OTB Lease - Cary

9. Landlord has no personal liability under the Lease (recourse against Landlord being limited to Landlord's interest in the Demised Property).

10. Tenant has no right of first offer, right of first refusal, or option to purchase, with respect to all or any portion of the Demised Property.

11. Tenant is aware that third parties[, including Secured Party,] intend to rely upon this Certificate and the statements set forth herein and that the statements and facts set forth above shall be binding on Tenant.

12. Tenant is not entitled to any concession or rebate of rent or other charges from time to time due and payable under the Lease, and there are no unpaid or unreimbursed construction allowances or other offsets due Tenant under the Lease.

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

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

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

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE TO FOLLOW]**

EXHIBIT C

LAND AND BUILDING LEASE

OTB Lease - Cary

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

TENANT:

OTB ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT C

LAND AND BUILDING LEASE

OTB Lease - Cary

EXHIBIT D
FORM OF MEMORANDUM OF LEASE

(Above space reserved for recorder and recording information)

This instrument prepared by and
after recording return to:

MEMORANDUM OF LEASE

This Memorandum of Lease is made and entered into as of _____, _____ by and between _____, a Delaware limited liability company ("**Landlord**"), and OTB ACQUISITION LLC, a Delaware limited liability company, whose address is _____ ("**Tenant**"), who agree as follows:

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

2. Subordination Provisions. Tenant's rights under the Lease shall at all times be subject and subordinate to any fee mortgages and/or trust deeds now or hereafter filed against the Premises and to the rights of any Landlord's Mortgagee thereunder or as otherwise set forth in Article 23 of the Lease.

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

[SIGNATURES AND ACKNOWLEDGMENTS ON NEXT PAGE]

EXHIBIT C

LAND AND BUILDING

LANDLORD:

TENANT:

_____,
a Delaware limited liability company

OTB ACQUISITION LLC, a Delaware
limited liability company

By: _____

By: _____

Date: _____

Date: _____

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

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

Witness

Witness

Notary Public, County of _____,
State of _____

Notary Public, County of _____,
State of _____

My commission expires: _____

My commission expires: _____

(Notary Seal)

(Notary Seal)

[SIGNATURES CONTINUE ON NEXT PAGE]

EXHIBIT C

LAND AND BUILDING

OTB Lease - Cary

AMENDMENT TO LEASE
(Cary, NC/Store #__)

This AMENDMENT TO LEASE (this “**Amendment**”) made as of the ____ day of October, 2020 by and among: (i) **1102 WALNUT STREET CARY NC LLC**, a North Carolina limited liability company, (“**Landlord**”), (ii) and **OTB ACQUISITION, LLC**, a Delaware limited liability company (“**Tenant**”).

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to that certain Lease dated October 2, 2017, (the “**Lease**”). Pursuant to the Lease, Landlord leased to Tenant certain premises (the “**Premises**”) as are more particularly described in the Lease and commonly known and designated as **1102 Walnut Street, Cary, Wake County, North Carolina (the Cary/Store #__)**; and

WHEREAS, in view of the COVID-19 pandemic and other financial issues, Landlord and Tenant desire to amend the Lease as set forth herein.

NOW, THEREFORE, in consideration of these premises, the mutual covenants hereinafter contained, ten (\$10) dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. All terms not otherwise defined herein shall have the meanings assigned to them in the Lease.

2. The Lease shall be, and is hereby, modified in the following respects:

a. Commencing with the November 1, 2020 monthly installment, the annual base rent (ABR) is hereby reduced to \$156,000.00 per annum, with said amount to be paid in equal monthly installments of \$13,000.00 each;

b. Commencing with the November 1, 2021 installment, annual base rent shall increase by one and one-half percent (1.5%) annually thereafter over the prior year’s annual base rent;

c. The term of the Lease is hereby extended to October 31, 2035.

d. All fixed/base/minimum monthly rent for December 2020 will be fully abated by one-hundred (100) percent. Notwithstanding the foregoing, Tenant shall be obligated to pay all utilities, insurance, real estate taxes, common area maintenance and other costs provided for in the Lease during this period. Commencing on January 1, 2021, Tenant shall recommence paying monthly installments of fixed/base/minimum monthly rent payments in the amount set forth herein.

3. Landlord and Tenant entered into a rent deferment agreement regarding April, May, and June 2020 rent. The parties hereto do hereby terminate that agreement, with Tenant agreeing

to pay all deferred rent on or before November 1, 2020. The amount of deferred rent now due is \$ \$ 30,754.68 .

4. This Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Facsimile and PDF signatures to this Amendment shall be acceptable and binding and have the same force and effect as an original signature.

5. The covenants, agreements, terms and conditions contained in this Amendment shall bind and inure to the benefit of the parties hereto and their respective successors and their respective assigns.

6. All other provisions of the Lease not otherwise amended shall remain unchanged, and are hereby ratified and confirmed by the undersigned. This amendment is a revision only and shall not be viewed as a novation, but shall be deemed to stand as a part of the Lease.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has executed this Amendment on the date first above written.

1102 WALNUT STREET CARY NC LLC, as Landlord

By: _____

Title: _____

OTB ACQUISITION, LLC, as Tenant

By: 

Title: Bruce Vermilyea
Chief Financial Officer