

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?	<u>AJ Dell Orto Realty, Inc.</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor <u>MANGANARO'S HERO BOY, INC.</u>	
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? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>AJ Dell Orto Realty, Inc.</u> <u>Anthony Dell Orto</u> <u>291 South Collier Blvd., #606</u> <u>Marco Island, Florida 34145</u> Contact phone _____ Contact email <u>agajd88@icloud.com</u> (see summary page for notice party information) Uniform claim identifier (if you use one): _____	Where should payments to the creditor be sent? (if different) 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?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: __ __ __ __
7. How much is the claim?	\$ <u>760892.60</u> Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> 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. <u>Lease</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature or property: <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> 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) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ <u>78245.58</u>
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



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 05/29/2025
MM / DD / YYYY

/s/Geoffrey B. Treece
Signature

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

Name Geoffrey B. Treece
First name Middle name Last name

Title Attorney for AJ Dell Orto Realty, Inc.

Company Quattlebaum, Grooms Tull PLLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 111 Center Street, Suite 1900, Little Rock, AR, 72201, US

Contact phone 5013791735 Email gtreece@ggtlaw.com



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: AJ Dell Orto Realty, Inc. Anthony Dell Orto 291 South Collier Blvd., #606 Marco Island, Florida , 34145 Phone: Phone 2: Fax: Email: agajd88@icloud.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: Quattlebaum, Grooms Tull PLLC Geoffrey B. Treece 111 Center Street Suite 1900 Little Rock , Arkansas , 72201 Phone: 501-379-1735 Phone 2: Fax: E-mail: gtreece@qgtlaw.com		
Other Names Used with Debtor: MANGANARO'S HERO BOY, INC.	Amends Claim: No Acquired Claim: No	
Basis of Claim: Lease	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 760892.60	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: Yes, 78245.58 Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	

Submitted By:

Geoffrey B. Treece on 29-May-2025 12:58:59 p.m. Pacific Time

Title:

Attorney for AJ Dell Orto Realty, Inc.

Company:

Quattlebaum, Grooms Tull PLLC

Optional Signature Address:

111 Center Street

Suite 1900

Little Rock, AR, 72201

US

Telephone Number:

5013791735

Email:

gtreece@qgtlaw.com

Itemization of Claim

Total Lease Term (months) (as modified)		299
Lease Start		10/29/2013
Lease End		9/30/2038
Remaining Lease Term (months)		162.9
Remaining Lease (dollars)	\$	4,550,980.12
15% of remaining term (months)		24.44
15% of remaining (dollars)	\$	682,647.02
Unpaid prepetition Rent	\$	78,245.58
Rejection Damages (15% of dollars)	\$	682,647.02
Total Pre-Petition Damages Claim	\$	760,892.60

Unpaid Prepetition Rent

Date	Description	Charges	Running Balance
12/1/2024	Decemeber 2024 Rent	\$ 25,240.51	\$ 25,240.51
1/1/2025	January 2025 Rent	\$ 25,240.51	\$ 50,481.02
2/1/2025	February 2025 Rent	\$ 25,240.51	\$ 75,721.53
3/1/2025	March 1-3, 2025 Rent (pro-rated)	\$ 2,524.05	\$ 78,245.58

Chapter 11 Petition Filed - 3/4/25

Value of Remaining Lease

Period	Start	End	Monthly	Annually	Months
Yr1	11/1/2013	10/31/2014	\$ 25,833.33	\$ 310,000.00	12.00
Yr2	11/1/2014	10/31/2015	\$ 25,833.33	\$ 310,000.00	12.00
Yr3	11/1/2015	10/31/2016	\$ 25,833.33	\$ 310,000.00	12.00
Yr4	11/1/2016	10/31/2017	\$ 25,833.33	\$ 310,000.00	12.00
Yr5	11/1/2017	10/31/2018	\$ 25,833.33	\$ 310,000.00	12.00
<i>10% Increase</i>					
Yr6	11/1/2018	10/31/2019	\$ 28,416.67	\$ 341,000.00	12.00
Yr7	11/1/2019	9/30/2020	\$ 28,416.67	\$ 312,583.33	11.00
<i>2020 Lease Modification</i>					
<i>Rent lowered to \$294,000/yr for 3 years, then 1.5% increase annually;</i>					
<i>lease extended for additional 5 years</i>					
Yr8	10/1/2020	9/30/2021	\$ 24,500.00	\$ 294,000.00	12.00
Yr9	10/1/2021	9/30/2022	\$ 24,500.00	\$ 294,000.00	12.00
Yr10	10/1/2022	9/30/2023	\$ 24,500.00	\$ 294,000.00	12.00
<i>1.5% Annual Increases Begin</i>					
Yr 11	10/1/2023	9/30/2024	\$ 24,867.50	\$ 298,410.00	12.00
Yr12	10/1/2024	3/3/2025	\$ 25,240.51	\$ 128,726.61	5.10
Total Pre-Petition				\$ 3,512,719.95	136.10
Chapter 11 Petition Filed - 3/4/25					
Yr 12	3/4/2025	9/30/2025	\$ 25,240.51	\$ 174,159.54	6.90
Yr 13	10/1/2025	9/30/2026	\$ 25,619.12	\$ 307,429.44	12.00
Yr 14	10/1/2026	9/30/2027	\$ 26,003.41	\$ 312,040.88	12.00
Yr 15	10/1/2027	9/30/2028	\$ 26,393.46	\$ 316,721.50	12.00
Yr 16	10/1/2028	9/30/2029	\$ 26,789.36	\$ 321,472.32	12.00
Yr 17	10/1/2029	9/30/2030	\$ 27,191.20	\$ 326,294.40	12.00
Yr 18	10/1/2030	9/30/2031	\$ 27,599.07	\$ 331,188.82	12.00
Yr 19	10/1/2031	9/30/2032	\$ 28,013.05	\$ 336,156.65	12.00
Yr 20	10/1/2032	9/30/2033	\$ 28,433.25	\$ 341,199.00	12.00
Yr 21	10/1/2033	9/30/2034	\$ 28,859.75	\$ 346,316.99	12.00
Yr 22	10/1/2034	9/30/2035	\$ 29,292.65	\$ 351,511.74	12.00
Yr 23	10/1/2035	9/30/2036	\$ 29,732.03	\$ 356,784.42	12.00
Yr 24	10/1/2036	9/30/2037	\$ 30,178.02	\$ 362,136.18	12.00
Yr 25	10/1/2037	9/30/2038	\$ 30,630.69	\$ 367,568.23	12.00
Total Post-Petition				\$ 4,550,980.12	162.90

LEASE AGREEMENT

This Lease Agreement (this "**Lease**") is made as of Oct. 29, 2013 (the "**Effective Date**") by and between MANGANARO'S HERO BOY, INC., a New York corporation ("**Landlord**") and OTB Acquisition LLC, a Delaware limited liability company (the "**Tenant**"), covering that certain improved real property situated in City of Sherwood, County of Pulaski, and the State of Arkansas, and more particularly described on **Exhibit A** and made part hereof together with all rights, privileges and appurtenances thereto, Buildings and Improvements (hereinafter defined) located thereon (collectively, the "**Leased Premises**") further depicted in the site plan attached hereto as **Exhibit B** (the "**Site Plan**").

LEASED PREMISES

1. **LAND.** The Leased Premises has a street address of 6000 Warden Rd., Sherwood, Arkansas 72120 and is located on land legally described on **Exhibit A** attached hereto (the "**Land**") and by this reference made a part of this Lease.
2. **TRIPLE NET LEASE.** Tenant acknowledges and agrees that it is intended that this is a net lease. From and after the Commencement Date, except as otherwise specifically provided for herein, Landlord has no obligations or liabilities whatsoever in connection with or relating to the Leased Premises or the construction, management, operation, maintenance, or repair of the Leased Premises during the Lease Term. No portion of taxes, insurance premiums, utility charges, maintenance costs or other operating costs are included in the Monthly Rent; provided, however, such obligations of payment and performance pursuant to this Lease shall be Tenant's obligations and should constitute "additional rent" under this Lease. Tenant is obligated to pay all costs and expenses allocable to the Leased Premises and the Monthly Rent, such that the Monthly Rent is "net" to Landlord. Except as for otherwise provided in this Lease, Tenant shall not be required to pay or reimburse to Landlord any sum of money with respect to (a) any mortgage, deed of trust, or other monetary lien attaching to the Leased Premises and voluntarily made by Landlord, (b) any other encumbrance encumbering the Leased Premises and made by Landlord unless caused by Tenant or Tenant's agents, or (c) any Landlord income taxes.
3. **IMPROVEMENTS.** The Leased Premises shall include the building (the "**Building**"), parking area and site improvements which are constructed upon the Land. Collectively the Land, Building, parking area and site improvements shall be referred to as the ("**Leased Premises**"). Tenant is leasing the Leased Premises "AS IS, WHERE IS AND WITH ALL FAULTS" in its present condition on the Effective Date and by taking possession of the Leased Premises on the Commencement Date, Tenant shall be deemed to have accepted the Leased Premises as suitable for the purposes for which they are leased and accepts the Leased Premises as being in good and satisfactory condition. Further, Tenant shall be solely responsible for pursuing, for its own account and at its own expense, any warranty claim, "punchlist" item(s), or any claim for design or construction defect desired by Tenant without limiting any right or remedy Landlord may have for similar claims.
4. **SIGNS.** Tenant shall have the right to place or replace suitable signs on the Leased Premises that in its sole discretion it deems necessary, without the approval of Landlord, for the purpose of advertising its business as Tenant, provided however, that such signs shall be in conformance with the laws and ordinances of the city and any covenants or restrictions applicable to the Leased Premises.
5. **MEMORANDUM OF LEASE.** Concurrent with execution of this Lease, Landlord and

Tenant shall execute a Memorandum of this Lease in the form attached hereto as **Exhibit C**, which will be recorded in the real property records of the county in which the Premises are located.

6. HAZARDOUS SUBSTANCES.

6.1 Hazardous Materials.

a. Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Material upon or about the Leased Premises, nor permit Tenant's employees, agents, contractors, and other occupants of the Leased Premises to engage in such activities, upon or about the Leased Premises. The foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance and handling within, the Leased Premises of substances customarily used in restaurant operations, provided: (i) such substances shall be used and maintained only in such quantities as are reasonably necessary for Tenant's permitted use of the Leased Premises, strictly in accordance with applicable law and the manufactures' instructions therefore, (ii) such substances may be disposed of, released or discarded at the Leased Premises if permitted by and in compliance with applicable laws, and shall be transported to and from the Leased Premises in compliance with all applicable laws, and as Landlord shall reasonably require, (iii) if any applicable law or Tenant's trash removal contractor requires that any such substances from the Leased Premises be disposed of separately from ordinary trash, Tenant shall make arrangements at Tenant's expense for such disposal directly with a qualified and licensed disposal company at a lawful disposal site and shall ensure that disposal occurs frequently enough to prevent unnecessary storage of such substances in the Leased Premises, and (iv) any remaining such substances shall be completely, properly and lawfully removed by Tenant from the Building upon expiration or earlier termination of this Lease or termination of Tenant's right to possession of the Leased Premises.

b. Each party shall promptly notify the other party upon the notifying party becoming aware of: (i) any enforcement, cleanup, or other regulatory action taken or threatened against either party by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Leased Premises or the migration thereof from or to other property (ii) any demands or claims made or threatened by any party against either party hereto relating to any loss or injury resulting from any Hazardous Material, (iii) any unlawful release, discharge or non-routine, improper or unlawful disposal or transportation of any Hazardous Material on or from the Leased Premises, and (iv) any matters where the party is required by law to give a notice to any governmental or regulatory authority respecting any Hazardous Materials in the Leased Premises. Each party shall have the right (but not the obligation) to join and participate, as a party, in any legal proceedings or actions affecting the Leased Premises initiated in connection with any environmental, health or safety law. At such times as either party may reasonably request, the non-requesting party shall provide the requesting party with a written list identifying any Hazardous Material then actually known to the non-requesting party to be then used, stored, or maintained upon the Leased Premises, the use and appropriate quantity of each such material, a copy of any material safety data sheet ("MSDS") issued by the manufacturer therefore written information concerning the removal, transportation and disposal of the same, and such other information as the requesting party may reasonably require or as may be required by law. The term "**Hazardous Material**" for purposes hereof shall mean any chemical substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by an federal, state or local governing or regulatory

body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of an MSDS.

c. If any Hazardous Material is released, discarded or disposed of by Tenant or Landlord, or their respective employees, agents or contractors, on or about the Leased Premises in violation of the foregoing provisions, then the applicable laws governing clean up and removal of the Hazardous Material from the Leased Premises and any other affected property shall apply and the responsible party shall be responsible to clean up or remediate any affected personal property (whether or not owned by Landlord or Tenant), at the responsible party's expense. Such clean up and removal work shall be subject to Landlord's (as to activities by Tenant) or Tenant's (as to activities by Landlord within the Leased Premises) prior written approval (except in emergencies), not to be unreasonably withheld, and shall include, without limitation, any testing, investigation, and the preparation and implementation of any remedial action plan required by Landlord. If Landlord or Tenant shall fail to comply with the provisions of this Section 6 within fifteen (15) days after written notice by the other party, or such shorter time as may be required by laws or in order to minimize any hazard to persons or property, the non-responsible party may (but shall not be obligated to) arrange for such compliance directly or as the responsible party's agent through contractors or other parties selected by the non-responsible party (without waiving the non-responsible party's other remedies under this Lease or applicable laws). If any material amount of Hazardous Material is released, discharged or disposed of on or about the Building and such release, discharge or disposal is not caused by Tenant, or its employees, agents or contractors then (subject to legal requirements) such release, discharge or disposal shall be deemed casualty damage under this section to the extent that the Leased Premises or common areas serving the Leased Premises are affected thereby and Landlord and Tenant shall have the obligations and rights respecting such casualty damage provided elsewhere in this Lease.

RENTAL TERMS

7. TERM. The term of this Lease shall commence as follows:

7.1 Primary Term. The Primary Term of this Lease ("**Primary Term**") shall commence at 12:01 a.m. (Arkansas time) on the Effective Date (the "**Commencement Date**"), and shall expire at 11:59 p.m. (Arkansas time) twenty (20) years thereafter.

7.2 Rent Commencement Date. The Monthly Rent payable under Section 10 of this Lease shall commence upon the Commencement Date.

8. OPTIONS.

8.1 Provided Tenant is not in default and is current with the payment of all Monthly Rents and other charges under the terms of this Lease, Tenant shall have the option to extend the Lease term for six (6) additional periods of five (5) years (each, an "**Option Term**") from and after the expiration date hereof, upon the same terms and conditions herein set forth, except that the Monthly Rent for each Option Term shall be paid in the amounts as set forth in this Section 8. Tenant shall exercise such option by written notice to Landlord, given not less than one hundred eighty (180) days prior to the expiration of the then applicable Lease Term.

8.2 The annual Monthly Rent paid during each Option Term shall be equal to the greater of (a) 110% of the Monthly Rent paid during the last year of the then applicable Lease

Term when the extension option is exercised, or (b) the Fair Market Rent (as defined in Section (c) below) as of the date Tenant exercises its option to extend the Lease Term. The Fair Market Rent is determined as follows:

a. Initially, Landlord will determine the Fair Market Rent by using its good faith judgment. Landlord will use commercially reasonable efforts to provide written notice of its determination in that regard within 30 days after the date Tenant sends notice of its desire to extend the Lease Term under this Section 8. Tenant will have a period (the "**Tenant Review Period**") of 30 days following the date of its receipt of Landlord's notice of the proposed Fair Market Rent within which to accept Landlord's proposal or to provide Landlord Tenant's objections to Landlord's proposal. If Tenant objects to Landlord's initial proposal, the parties will use their best efforts to reach agreement with respect to the Fair Market Rent, but, if the parties fail to agree within 15 days after the expiration of the Tenant Review Period, determination of the Fair Market Rent will be made in accordance with the terms of Subsection a.(1)-(4) below. If Tenant fails to respond to Landlord's proposal in writing, Tenant will be deemed to have accepted Landlord's determination of Fair Market Rent. If Landlord fails to provide Tenant written notice of its initial proposal with respect to the Fair Market Rent within the 30 day period set forth above, the Monthly Rent for such Option Term shall be 110% of the Monthly Rent paid during the last year of the then applicable Lease Term when the extension option is exercised. If determination of the Fair Market Rent in accordance with the following procedures becomes necessary, each party will place in a separate sealed envelope its final proposal as to the Fair Market Rent that will apply during the ensuing Option Term.

- (1) The parties will meet within five (5) business days after the expiration of the Tenant Review Period or the Landlord Review Period, whichever is applicable, exchange the sealed envelopes and open those envelopes in the presence of each other. If the proposed Fair Market Rent is within 5% of each other, then an average of the proposed Fair Market Rent shall be used. If the parties do not agree upon the Fair Market Rent within that 30-day period then the parties will jointly appoint a single arbitrator within the period that expires forty (40) days following the date on which the exchange and opening of the envelopes occur. The arbitrator must be a real estate broker who, as his or her primary livelihood, has been active in the leasing of commercial properties in Pulaski County, Arkansas, during the 10-year period preceding the date of his or her appointment. Prior to the arbitrator's appointment, neither party will reveal to prospective arbitrators under consideration by the parties its opinion regarding the Fair Market Rent. The sole issue submitted to the arbitrator for determination will be which party's final proposal regarding the Fair Market Rent is closest to the actual Fair Market Rent, as independently determined by the arbitrator.
- (2) Within 30 days after the date of his or her appointment, the arbitrator will give the parties written notice of its determination as to which of the parties' final proposals regarding the Fair Market Rent will apply during the ensuing Option Term.
- (3) If the parties fail to agree upon the appointment of an arbitrator within the time specified above, that appointment will be made by the Little Rock Office of the American Arbitration Association.

- (4) Tenant shall be responsible for the cost of the arbitration.

b. **"Fair Market Rent"** means the annual rental rate per square foot that comparable buildings located in the same market area as the Building and that are comparable in size, design, and quality to the Building would accept in comparable transactions involving a tenant whose creditworthiness is comparable to that of Tenant and whose other obligations under the lease would be comparable to those undertaken by Tenant in this Lease. In any evaluation of comparable transactions, the arbitrator will consider the annual rental rates per square foot, the use to which the tenant puts the leased premises, the extent of the tenant's liability for the performance of the covenants set forth in the lease, abatement provisions reflecting free rent or no rent during the period of construction or subsequent to the commencement date as to the building in question, brokerage commissions, if any, that would be payable by the landlord, length of the lease term, size and location of premises being leased, building standard work letter or tenant improvement allowances, if any, and other generally applicable conditions of tenancy for those comparable transactions. The intent is that Tenant will obtain the same rent and other economic benefits that a landlord would otherwise give in a comparable transaction and that Landlord will make and receive the same economic payments and concessions that other landlords would otherwise make and receive in comparable transactions.

9. HOLDOVER. Should Tenant holdover the Leased Premises or any part thereof after the expiration of the term of this Lease, or any extension thereof, unless otherwise agreed in writing, such holding-over shall constitute a tenancy from month-to-month only, and Tenant shall pay as rental during the holdover period an amount equal to One Hundred and Twenty Five percent (125%) of the rent paid for the last month under the term or extension period of this Lease. Landlord shall have the right to terminate such month-to-month holdover tenancy on thirty (30) days written notice to Tenant. Should Tenant continue to holdover after the expiration of such thirty (30) day notice period, no new tenancy will be created, however the monthly rent payable for such additional holding over shall be at the rate of One Hundred Fifty percent (150%) of the Monthly Rent last paid under the Primary Term or Option Term, as applicable, and acceptance of any Monthly Rent under any holdover period shall not prejudice, limit or alter other remedies available to Landlord under applicable law.

10. RENTAL. Tenant shall pay as rent for the Leased Premises **"Monthly Rent"** (herein so called) in the amounts set forth below, payable in monthly installments during the Primary Term, each Option Term and any other extensions of this Lease (collectively, the **"Lease Term"**) in an amount equal to the amount stated below. Monthly Rent shall be due and payable to Landlord by the first (1st) day of each month during the Lease Term. Monthly Rent for any partial month shall be prorated based on a thirty (30) day month. Monthly Rent shall be absolutely net to Landlord. The amounts of Monthly Rent shall be as follows:

- (1) For months one (1) through sixty (60) of the Lease Term, the Annual Rent shall be \$310,000 (**"First Year Rent"**). Monthly Rent shall be Annual Rent divided by twelve or \$25,833 per month.
- (2) Commencing at the beginning of the sixth (6th) year of the Lease Term, and on each five-year anniversary of such date thereafter during the Lease Term, Annual Rent shall be increased by an amount equal to ten percent (10%) of the Annual Rent payable during the immediately preceding five-years.

- (3) The Monthly Rent for each Option Term shall be as set forth in Section 8 above.

If any installment of Monthly Rent or any sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days of the written notice of Tenant's delinquency, then Tenant shall pay to Landlord a late charge of \$1,000 or three percent (3%) of the overdue amount, whichever is greater, plus reasonable attorneys' fees incurred by Landlord by reason of Tenant's failure to pay rent and/or other charges when due hereunder without limitation of all other remedies available to Landlord under this Lease.

11. TENANT'S RIGHT TO ENCUMBER LEASEHOLD ESTATE & EQUIPMENT.

11.1 Tenant shall have the right to encumber or hypothecate the leasehold estate in the Leased Premises and Tenant's furniture, trade fixtures and equipment (which are not part of the building owned by Landlord) ("**FF&E Package**"). Landlord agrees to cooperate with Tenant's encumbering or hypothecating its leasehold estate and/or FF&E Package by executing commercially reasonable security documents, but in no event shall Landlord be asked to subordinate its fee simple interest, or any lender of Landlord to be asked to subordinate any lien, to the lien to be taken as part of the FF&E Package.

11.2 The FF&E Package shall be defined as all inventory, equipment, machinery, furniture, appliances, trade fixtures, goods, replacements, substitutions, additions, parts and accessories now owned or hereafter acquired by Tenant and located at the Leased Premises, including, without limitation, any walk-in coolers or freezers, fryers, grills, ovens, warmers, refrigerators, freezers, waste disposal units, sinks (other than restroom sinks), dishwashers, beverage dispensers, ice cream makers, racks, display cases, light fixtures, decor, counters, cash registers, salad equipment, tables, seating, signs and similar property of Tenant, together with the proceeds thereof and income therefrom.

11.3 Landlord hereby waives and releases any and all liens, whether statutory or under common law, with respect to the FF&E Package or any other Tenant personal property from time to time located in or about the Leased Premises. In no event shall Landlord be asked to subordinate its fee simple interest, or any lender of Landlord to be asked to subordinate any lien, to the lien to be taken as part of the FF&E Package; however, Landlord shall confirm its waiver of any Landlord lien on the FF&E Package in writing if requested by Tenant.

12. USE OF LEASED PREMISES. Tenant shall use the Leased Premises for the purpose of operating a typical "On The Border" concept restaurant facility together with the sale of all food, beverage, merchandise and services normally and usually associated with an "On The Border" restaurant operation, and for any other lawful purposes not in violation of this Lease or any existing easements, restrictions, governmental regulations and other law, regulation, ordinance or recorded document governing the Leased Premises, provided that Tenant must first obtain the written consent of Landlord for such other purposes, which consent shall not be unreasonably withheld, delayed or conditioned.

13. TAXES AND ASSESSMENTS.

13.1 Tenant shall pay all real and personal property taxes, assessments, charges and levies which may be charged, levied or assessed against the Leased Premises. Taxes for partial years of occupancy shall be prorated. Tenant shall provide Landlord with evidence of payment thereof.

13.2 It is understood, however, that nothing contained herein shall be so construed as requiring payment by the Tenant of any succession, franchise, capital stock, income, excess profit, inheritance, devolution, gift, transfer, estate taxes, sales taxes or taxes based on rental income which may be charged, levied or assessed against the estate of Landlord or any tax upon the sale, transfer or assignment of the title or estate of the Landlord which at any time may be assessed against or become a lien upon the Leased Premises, the leasehold or the rent accruing there from. Tenant may, at its own cost and expense, protest and contest, by legal proceedings or otherwise, the validity or amount of any tax or assessment herein agreed to be paid by Tenant. Tenant shall not, in the event of and during the bona fide prosecution of such contest or proceeding be considered in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

13.3 Landlord agrees that any proceedings filed against the amount or validity of taxes or assessments levied against the Leased Premises may be filed or instituted in the name of Landlord, as the case may require or permit, and Landlord shall not unreasonably withhold appointing Tenant as its agent and attorney-in-fact, during the term of this Lease, or any extension thereof, to execute and deliver in the name of Landlord any instrument, document or pleading as may be reasonably necessary or required in order to carry on any contest, protest or proceeding contemplated in this paragraph. It is further agreed that should any rebate be made on account of any taxes or assessment paid by Tenant, or should any award be made in any way arising out of or in connection with the work or the Improvements for which assessment has been levied and paid by Tenant, then the amount of such rebate or award shall belong to and be paid to Tenant.

13.4 In any action, dispute or challenge relating to any tax or assessment, Tenant shall defend and indemnify Landlord from reasonable attorney's fees, costs and expenses (whether or not recoverable in a legal action as costs); provided that Tenant shall not take any action which will cause or allow the institution of foreclosure proceedings against the Leased Premises. At no out-of-pocket cost to Landlord, Landlord shall cooperate in the institution of any such proceedings to contest the validity or amount of real estate taxes and will execute any documents required therefor and shall post security, in the form of a bond, cash or other medium acceptable to Landlord, in an amount equal to 110% of the contested assessment.

14. INSURANCE.

14.1 Liability Insurance Limits. Tenant shall maintain or cause to be maintained during the Lease Term hereof, at its own expense, liability insurance in the amount of One Million Dollars (\$1,000,000) Single Limit Bodily Injury Liability per person and per occurrence and Two Million Dollars (\$2,000,000) aggregate, including Property Damage Liability per occurrence, and at least Ten Million Dollars (\$10,000,000) umbrella coverage, such coverage to name Landlord as an additional named insured. Tenant shall maintain coverage for liability arising out of the consumption of alcoholic beverages on or obtained at the Leased Premises, of not less than One Million and 00/100ths Dollars (\$1,000,000.00) per occurrence for personal injury and death and property damage. Not more than once per lease year and within twenty (20) days after written request by Landlord, Tenant shall provide Landlord a copy of a certificate evidencing the foregoing insurance and stating that said insurer shall endeavor to provide Landlord thirty (30) days notice of any cancellation of coverage.

14.2 Property Insurance Limits. Tenant shall maintain during the Lease Term hereof, at its own expense, (a) commercial casualty insurance and commercial property insurance on the Improvements on the Property in an amount equal to not less than one hundred percent

(100%) of the full replacement value of the Building (to also earthquake coverage and flood coverage if any portions of the Building is located within a 100 year flood zone area), which insurance shall name Landlord as a Named Insured and shall contain a loss payable endorsement in favor of the beneficiary of any deed of trust covering the Leased Premises; provided, however, that Landlord shall require the beneficiary under any trust deed to agree that the proceeds paid as a result of any insured casualty may be used to repair or restore the Leased Premises, such proceeds shall be deposited in trust with an institution licensed to do business in the state in which the Leased Premises is located, and shall be disbursed to Tenant to pay for completed work of repair or restoration which Tenant is required to perform under the provisions of this Lease, as the work progresses, and (b) special form ("all risk") property insurance insuring Tenant's merchandise, trade fixtures, furnishings, equipment and all items of personal property of Tenant.

14.3 Waiver of Subrogation Rights. Landlord hereby releases Tenant from any liability for damage or destruction to the Leased Premises, or any part thereof, caused by the gross negligence or willful misconduct of Landlord, and Landlord hereby waives any and all claims against Tenant for such damage, loss or injury. Tenant hereby releases Landlord from any liability for damage or destruction to Tenant's property, whether or not caused by acts or omissions of Landlord, and Tenant hereby waives any and all claims against Landlord for damage, loss or injury caused by or resulting from fire and/or other perils, to the extent that any such claim for damages, losses or injuries are or would be covered by fire and extended insurance coverage policies which Tenant does or is required to maintain hereunder. Landlord and Tenant shall look to Tenant's insurance coverage for recovery of any insured casualty damage. Each of Landlord and Tenant shall cause any fire insurance and extended coverage policies which it maintains in respect of the Leased Premises to contain a provision whereby the insurer waives any rights of subrogation against the other party. Both Landlord and Tenant agree to immediately give each insurance company which has issued to it policies of fire and extended coverage insurance written notice of the terms of such mutual waivers and to cause such insurance policies to be properly endorsed, if necessary, to prevent the invalidation thereof by reason of such waivers and shall furnish to the other party written evidence of such endorsement or that such endorsement is not required.

14.4 Landlord's Right to pay Premium or Take out Policy. In the event Tenant fails to procure, maintain, and/or pay for the insurance required by this Lease, at the times and for the durations specified in this Lease, Landlord shall have the right, but not the obligation, at any time and from time to time, and with notice, to procure such insurance and/or pay the premiums for such insurance, in which event Tenant shall repay Landlord, immediately upon demand by Landlord, as additional rent, all sums so paid by Landlord will be assessed a late charge as provided in Section 10, and subject to any other rights and remedies of the Landlord under this Lease.

15. REPAIRS AND MAINTENANCE. Tenant, at its expense, shall make all repairs as shall be reasonably necessary to keep the Leased Premises in good condition and repair during the Lease Term. Tenant, at the expiration of this Lease or earlier termination thereof shall quit and surrender the Leased Premises in good condition and repair, subject to ordinary wear and tear and subject to the provisions of Sections 31 and 32. During the Lease Term, Landlord shall not be required to maintain or repair any portion of the Leased Premises.

16. COMPLIANCE WITH LAWS. Tenant shall not use or permit the use of the Leased Premises in violation of any law or ordinance of the United States, the State in which the Leased Premises is located or any other governmental authority.

17. IMPROVEMENTS BY TENANT.

17.1 Tenant shall have the right, at Tenant's cost and expense, to make such improvements and alterations upon the Leased Premises as Tenant may determine necessary for the operation of its business, provided however, that such alterations and improvements shall not damage or affect the structural qualities of the Building or materially alter the basic character of the Building. No Landlord consent will be required for nonstructural alterations up to \$250,000.00, although Landlord will be provided with written notice of any alterations with an aggregate cost in excess of \$100,000. Tenant may make structural improvements and other improvements above \$250,000.00 once it has obtained Landlord's written approval of said improvements, which consent may not be unreasonably withheld, delayed or conditioned. In the event Tenant desires to make alterations or improvements to the Leased Premises in excess of \$250,000 it shall provide notice to Landlord of its intended alterations and provide a set of plans for said alterations. All plans will be to code and comply with the governing municipalities.

17.2 Upon Landlord receiving Tenant's plans and correspondence it shall have thirty (30) days to provide Tenant with its written approval. In the event Landlord disapproves of the proposed alterations it shall provide Tenant with correspondence indicating specifically why it disapproved the alterations.

17.3 Tenant will keep the Leased Premises free and clear of all mechanics' liens and other liens on account of work done for the Tenant or persons claiming under it including but not limited to any claims related to the initial construction of the Leased Premises. Tenant shall indemnify, defend and save the Landlord free and harmless against liability, loss, damage, costs, reasonable attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for the Tenant or persons claiming under it.

17.4 Subject to the provisions of Section 27 of this Lease Agreement, all such improvements and alterations shall, at the expiration of the Lease Term, or any extension or renewal thereof, become the property of Landlord, and shall remain and be surrendered in good condition with the Leased Premises as part thereof at the termination of this Lease by lapse of time or otherwise.

17.5 Tenant shall not be required to perform any capital item of maintenance, repair, replacement and the like to the heating, ventilating and air conditioning system, plumbing system, mechanical systems, electrical system, roof, foundation, and structural portions of the Premises or obligations for compliance with law, the cost of which would exceed \$50,000.00 (hereinafter referred to as a "**Capital Expense**") during each of the last two (2) years of the Primary Term, or, if Tenant has exercised any of its options to renew, during each year of the Option Term then in effect. The foregoing does not limit Tenant's obligation to continue normal, non-capital repair and maintenance of the Leased Premises.

17.6 Tenant, at its own cost and expense, may contest any liens in any manner permitted by applicable law, in Tenant's name, and whenever necessary, in Landlord's name; provided that that (i) no Tenant default has occurred and remains uncured; (ii) neither the Land, Building nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; (iii) Tenant shall promptly upon final determination thereof pay the amount of any such lien, together with all costs, interest and penalties which may be payable in connection therewith; and (iv) such proceeding shall suspend the collection of such contested

lien. Landlord will reasonably cooperate (at Tenant's sole cost and expense) with Tenant and execute any documents or pleadings reasonably required for such purpose. Such contest may include appeals from any judgment decrees or orders until a final determination is made by a court or governmental department or authority having final jurisdiction in the matter. Any refund with respect to liens previously paid by Tenant shall be the property of Tenant.

18. UTILITIES. Tenant shall be responsible, at its sole cost and expense, for obtaining, connecting, installing, repairing and maintaining all utility lines, connections and facilities on the Leased Premises and shall pay all charges for gas, electricity, telephone and other communication services and all other utilities and similar services rendered or supplied to the Leased Premises, and all water rents, sewer service charges or other similar charges levied or charged against, or in connection with, the Leased Premises. Tenant shall also be responsible for trash disposal from the Leased Premises, at Tenant's sole cost and expense.

19. GLASS. Tenant agrees to replace all glass broken or damaged during the term of this Lease with a glass of the same quality as that broken or damaged.

20. [RESERVED].

LANDLORD'S PROTECTIONS AND RIGHTS

21. DEFAULT BY TENANT. Subject to state forcible entry and detainer statutes and in the event of any rental due hereunder shall not be paid when due or if default shall be made in the performance of any of the terms, covenants or conditions herein contained, Landlord may, at its option, upon ten (10) days written notice regarding a failure to pay rent or thirty days (30) days' written notice for any other failure to performance any other obligation or such longer period of time as is provided by statute, if said default is not corrected, terminate this Lease and re-enter and take possession of the Leased Premises and remove and exclude Tenant and all other persons therefrom and Tenant shall surrender the Leased Premises to Landlord. Notwithstanding the foregoing, where the curing of an alleged default requires more than payment of money, and the work of curing the default cannot reasonably be accomplished within the time otherwise permitted herein, and where the Tenant has commenced upon the work of curing said default, then Tenant shall be entitled to reasonable time extensions to permit curing the default, as a condition precedent to any re-entry by the Landlord or termination of this Lease by the Landlord. If Tenant shall fail to cure such default within the prescribed time, interest shall accrue on any amounts due at the annual rate of five percent (5%). Nothing herein shall be interpreted as limiting Landlord's remedies at law or in equity in the event of default by Tenant. Notwithstanding any of the foregoing, Landlord shall take reasonable steps to re-let the property and therefore minimize Landlord's damages.

22. INDEMNIFICATION.

22.1 LANDLORD SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS TENANT AND TENANT'S EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, LICENSEES, OR CUSTOMERS, (COLLECTIVELY, "TENANT'S GROUP") AND TENANT'S PARENT, SUBSIDIARY AND AFFILIATED COMPANIES (COLLECTIVELY, THE "TENANT COMPANIES") AND THE DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES OF THE TENANT COMPANIES (TENANT'S GROUP AND TENANT'S COMPANIES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS ARE COLLECTIVELY REFERRED TO AS "TENANT'S INDEMNITEES") FROM ANY AND ALL LOSS, COST, DAMAGE, EXPENSE AND LIABILITY (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND REASONABLE

ATTORNEYS' FEES) (COLLECTIVELY, "CLAIMS") INCURRED IN CONNECTION WITH OR ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR LANDLORD'S GROUP.

22.2 TENANT SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS LANDLORD AND LANDLORD'S EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, LICENSEES, OR CUSTOMERS, (COLLECTIVELY, "LANDLORD'S GROUP") AND LANDLORD'S PARENT, SUBSIDIARY AND AFFILIATED COMPANIES (COLLECTIVELY, THE "LANDLORD COMPANIES") AND THE DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES OF THE LANDLORD COMPANIES (LANDLORD'S GROUP AND LANDLORD'S COMPANIES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS ARE COLLECTIVELY REFERRED TO AS "LANDLORD'S INDEMNITEES") FROM ANY CLAIMS INCURRED IN CONNECTION WITH OR ARISING FROM ANY ACT OR OCCURRENCE IN, ON OR ABOUT THE LEASED PREMISES DURING THE LEASE TERM, PROVIDED THAT THE TERMS OF THE FOREGOING INDEMNITY SHALL NOT APPLY TO ANY LOSS, COST, DAMAGE, EXPENSE OR LIABILITY ARISING OUT OF OR RELATED TO LANDLORD'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD OR LANDLORD'S GROUP. Tenant must assume on behalf of the Landlord's Indemnitees and conduct with due diligence and in good faith the defense of all Claims against any of the Landlord's Indemnitees. Tenant will be relieved of its obligation of indemnity to the extent of the amount actually recovered from one or more of the insurance carriers of Tenant or Landlord and either (i) paid to Landlord or (ii) paid for Landlord's benefit in reduction of any liability, penalty, damage, expense, or charge actually imposed upon, or incurred by, Landlord in connection with the Claims. Tenant, at its expense or the expense of its insurer, has the right to contest the validity of any Claims, in the name of Landlord or Tenant, as Tenant deems appropriate.

23. PERSONAL PROPERTY AT RISK OF TENANT. Landlord shall not be liable for any damage to property of Tenant or of others located on the Leased Premises, nor for the loss or damage to any property of Tenant or of others by theft or otherwise, except where said loss or damage arises out of the willful act of Landlord. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow, or leaks from any part of the Leased Premises or from the pipes, appliances, or plumbing, or from the roof, street or subsurface, or from any other place, or by dampness, or by any other cause of whatsoever nature. Landlord, however, shall be responsible for damage as a result of the willful act of Landlord if Tenant's claim under Tenant's personal property coverage is denied due to Landlord's actions.

24. FINANCING AND REFINANCING. Landlord shall provide Tenant an agreement (an "SNDA") in the form attached hereto as Exhibit E (or such other form reasonably acceptable to Tenant) signed by any lender granted a mortgage, deed of trust or similar mortgage instrument (collectively, a "Mortgage") on the Leased Premises by Landlord providing that the Mortgage expressly recognizes Tenant's rights to possession under this Lease and that in the event of a default by Landlord which results in such lender acquiring more than just a security interest in the Leased Premises, such lender shall continue thereafter to recognize Tenant's rights under this Lease. Landlord shall have the right, during the term of this Lease, to refinance and rehypothecate the Leased Premises, provided that any new security interest recognizes Tenant's rights hereunder and enters into an SNDA with Tenant in the form materially consistent with the form attached hereto as Exhibit E (or such other form reasonably acceptable to Tenant). Tenant shall execute all documents necessary for Landlord to refinance or rehypothecate the subject property within ten (10) business days of receipt by Tenant, provided, however, that such documents, by their terms, comply with the terms of this Section. In the

event an SNDA has not been executed and delivered and Landlord should default in the payment of any installment due under such mortgage or lien on the Leased Premises and if such default shall affect Tenant's rights under this Lease or the security of this Lease, Tenant shall have the right to make such payment in a manner acceptable to the mortgagee, and to deduct the amount thereof from the next ensuing installment of rent payable to Landlord hereunder.

25. RIGHTS CUMULATIVE. All rights and remedies of the Landlord under or in connection with this Lease shall be cumulative, and none shall be exclusive of any other rights or remedies allowed by law.

TENANT'S PROTECTION AND RIGHTS

26. LANDLORD'S WARRANTS OF TITLE AND QUIET ENJOYMENT; TENANT'S WARRANTY.

26.1 Landlord covenants and warrants that it has full right and lawful authority to enter into this Lease for the full term hereof, and for any extensions provided herein, and that to the best of Landlord's knowledge, Landlord is lawfully seized of the entire Leased Premises and has good title thereto, free and clear of all liens and encumbrances except such mortgages as may be entered into to provide the financing of said restaurant building.

26.2 Landlord covenants and agrees that Tenant shall have complete and quiet enjoyment of and may peaceably enjoy the Leased Premises and all appurtenances belonging thereto, throughout the Lease Term, subject, however, to the express terms, covenants and conditions contained in this Lease.

26.3 Tenant covenants and warrants that it has full right and lawful authority to enter into this Lease for the full term hereof, and for any extensions provided herein.

27. REMOVAL UPON TERMINATION.

27.1 At the expiration of the Lease Term, Tenant shall surrender the Leased Premises in good condition and repair, subject to ordinary wear and tear and the provisions of Sections 31 and 32, and shall surrender all keys for the Leased Premises to the Landlord at the place then fixed for the payment of the rent.

27.2 Tenant shall, upon the natural expiration or earlier termination of this Lease have the right to remove all trade fixtures, equipment, inventories and other personal property installed by Tenant upon the Leased Premises, provided such removal does not affect the structure or structural qualities of the Building. Notwithstanding the foregoing, and subject to any rights of any secured lender for the Tenant, in the event this Lease is canceled due to the default by Tenant, Tenant shall not have the right to remove the items outlined in the previous sentence, other than perishable food items.

27.3 Upon termination of this Lease for any reason other than Tenant's default, Tenant may, or shall if requested by Landlord, remove all of Tenant's trademarks, logos and marks from all buildings, signs, fixtures, and furnishings and shall repair any damage to the Leased Premises caused by removal of such items.

28. ASSIGNMENT AND SUBLETTING.

28.1 Tenant may assign, convey or transfer this Lease and all of Tenant's obligations hereunder without the consent of Landlord to any party who, as a result of the assignment, conveyance or transfer operates five or more retail/distribution units as part of a regional or national brand at the time of assignment and who has a tangible net worth of at least the greater of (a) \$10,000,000.00 or (b) Tenant's tangible net worth as of the Effective Date (a "**Pre-Approved Transferee**"), and by so doing, shall be released of any and all obligations and liability under this Lease.

Tenant shall be permitted to assign this Lease or sublet the entire Leased Premises without Landlord's consent to a parent, affiliate or subsidiary or to a successor by merger, consolidation or acquisition. The following shall not be considered an assignment and no consent shall be required from Landlord for: (a) sale or exchange of Tenant's stock if Tenant is a publicly traded company; (b) the transfer or exchange of stock/company interest between Tenant's parent company, a related company or a subsidiary or any of Tenant's (or its parent's) shareholders; (c) the sale of substantially all of Tenant's and its affiliates (provided this applies to at least five or more of Tenant's stores) assets; (d) an assignment of this Lease in connection with a merger, consolidation, corporate reorganization (other than pursuant to the bankruptcy laws), sale of substantially all of company assets or sale or other transfer of stock/membership interests of Tenant; or (e) a merger, consolidation, corporate reorganization (other than pursuant to the bankruptcy laws), sale of substantially all of company assets or sale or other transfer of stock/membership interests of Tenant. If the assignee has a net worth equal to or exceeding the Tenant's tangible net worth as of the Effective Date, then Tenant shall be released from the obligations of this Lease that accrue on or after the date of such assignment.

Except as permitted herein, Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed, (a) assign, convey, mortgage or pledge this Lease or any interest hereunder, (b) sublet the Leased Premises or any part thereof, or (c) permit the use of the Leased Premises by any parties other than Tenant, its agents and employees.

28.2 Upon any assignment, conveyance, sublet or transfer of this Lease by Tenant to any party other than a Pre-Approved Transferee, said party shall be subject to Landlord's prior approval and Tenant shall not be relieved from any obligations or liability established in this Lease.

29. LANDLORD'S MORTGAGE OBLIGATIONS. Landlord shall make all payments on any mortgage which encumbers the Leased Premises in a timely fashion, and shall request that the mortgagee have a copy of any late notices demanding payment on the mortgage sent also to Tenant. If an SNDA has not been executed and delivered by Landlord, Tenant and Landlord's lender, in the event Landlord fails to make payment of any sum due upon said mortgage, Tenant shall have the right to pay such sums to the mortgagee and to apply the money so advanced toward the next maturing rental payment on the Leased Premises, or at the Tenant's option, Tenant shall have the right to recover the amount of such advances, together with interest at the annual rate of ten percent (10%), together with attorney's fees and costs incurred in connection with the recovery thereof, in any court of competent jurisdiction.

30. LANDLORD'S DEFAULT. If the Landlord shall breach any of the conditions or covenants to be performed by the Landlord under this Lease, then Tenant may either cure such breach and deduct the costs thereof from any rent otherwise due hereunder, or elect to terminate this Lease upon giving at least thirty (30) days' notice to the Landlord of its intention to do so, in which event this Lease shall terminate upon the date fixed in such notice, except if

Landlord shall have cured said breach prior to the stated termination date. Interest shall accrue on any amounts paid by Tenant to cure Landlord's default at an annual rate of ten percent (10%) from date of payment to date of reimbursement or date of credit against rents, until such costs have been fully repaid to Tenant. Notwithstanding the foregoing, where the curing of an alleged default requires more than payment of money, and the work of curing the default cannot reasonably be accomplished within the time otherwise permitted herein, and where the Landlord has commenced upon the work of curing said default, then Landlord shall be entitled to reasonable time extensions to permit curing the defaults.

Tenant's sole recourse against Landlord, and any successor to the interest of Landlord in the Leased Premises, is to the interest of Landlord, and any successor, in the Leased Premises and the Building of which the Leased Premises are a part. Tenant will not have any right to satisfy any judgment that it may have against Landlord, or any successor, from any other assets of Landlord, or any successor. In this Section 30, the terms "Landlord" and "successor" include the shareholders of Landlord and any successor as well as the officers, directors, and employees of Landlord and any successor.

COMMON PREROGATIVES

31. DAMAGE OR DESTRUCTION.

31.1 Duty of Tenant to Repair Damage Covered by Insurance. In the event of a total or partial destruction of the Leased Premises from any cause covered by the insurance which is to be maintained by Tenant, Tenant shall repair the same, upon receipt of the insurance proceeds, but such destruction shall not annul or void this Lease. There shall be no rent abatement during the period of repair. Tenant alone shall have the right to settle claims against insurance companies arising from a covered casualty. If there is total or partial destruction that is greater than 25% of the replacement value of the Leased Premises during the last eighteen (18) months of the Lease Term hereof Tenant may elect not to repair or restore the Leased Premises, but may terminate this Lease by paying the insurance proceeds to Landlord provided that Landlord has been given notice and approved of the amount of the insurance settlement, which approval may not be unreasonably delayed, conditioned or withheld. Tenant is responsible for any deductibles.

31.2 Duty of Tenant to Repair Damage not Covered by Insurance. In the event of a total or partial destruction of the Leased Premises from any casualty, other than a casualty insured under the insurance referred to herein, the Tenant shall forthwith repair the same and such destruction shall not annul or void this Lease. If there is total or partial destruction that is greater than 25% of the replacement value of the Leased Premises during the last eighteen (18) months of the Lease Term hereof, Tenant may elect not to repair or restore the Leased Premises and surrender the Leased Premises to Landlord, but must continue to pay rent until the end of the then-current Lease Term.

32. CONDEMNATION.

32.1 If the whole of the Leased Premises, or such portion thereof as will, in the Tenant's sole discretion, substantially impair the ability of Tenant to carry on its business, is condemned by eminent domain, inverse condemnation, or otherwise taken for any public use whatsoever by any legally constituted authority, then this Lease shall terminate and all future obligations and performances shall cease from the time that Tenant surrenders possession of the Leased Premises. Such termination shall be without prejudice to the rights of either the

Landlord or the Tenant to recover compensation from the condemning authority for any loss or damage caused by such condemnation.

32.2 In the event a partial taking of the Leased Premises occurs, which in the Tenant's reasonable discretion is deemed not to substantially impair Tenant's use of the Leased Premises, the Lease Agreement shall remain in full force and effect, covering the remaining property and improvements, except that effective as of the date of the taking, Monthly Rent shall be reasonably adjusted. Neither the Landlord nor the Tenant shall have any rights in or to any award made to the other by the condemning authority in the event of either a full or partial condemnation.

33. ESTOPPEL. Upon the reasonable request of the other party at any time or from time to time, each of Landlord and Tenant agree to execute, acknowledge and deliver to the requesting party or to the requesting party's designee, within fifteen (15) days after request a written instrument in a form reasonably satisfactory to both parties duly executed and acknowledged (it being agreed that an estoppel in the form attached hereto as Exhibit D is a reasonable form to be delivered by Tenant) (i) certifying that this Lease has not been modified, except as set forth in such certificate, and is in full force and effect, as modified; (ii) specifying the dates to which the Monthly Rent and other charges hereunder have been paid; (iii) stating whether or not, to the knowledge of the party executing such instrument, the other party thereto is in default and, if so, stating the nature of such default; (iv) stating which options to renew the Term have been exercised, if any; and (v) affirming such other factually accurate matters pertaining to the provisions or subject matter of this Lease as may be reasonably requested by the other party.

34. RENT NOTICE. If the ownership of the Leased Premises or the name, address or tax identification number of the party entitled to receive Monthly Rent and other charges payable hereunder shall be changed, Tenant may, until receipt of notice of such change as provided in Section 40 hereof from Landlord and from the grantor, assignor or other party entitled to receive the Monthly Rent immediately preceding such change, continue to pay Monthly Rent and other charges hereunder to the party to which and in the same manner as the last installation of rent was paid preceding receipt of such notice. Tenant may rely upon and shall proceed in accordance with any notice of change given in accordance with this Section 34.

35. FORCE MAJEURE. In the event that either party hereto shall be delayed or hindered in or prevented from the performances of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or any reason of a like nature, not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for the period of such delay, provided that the provisions hereof shall not operate to excuse Tenant from prompt payment of rent or any other payments required by Tenant hereunder.

36. WAIVER. The failure of either party to insist upon strict performance of any of the covenants or conditions of this Lease in any one or more instances shall not be construed as a waiver or relinquishment for the future of any such covenants or conditions, but the same shall be and remain in full force and effect.

37. COSTS AND ATTORNEY'S FEES. In the event of any dispute or litigation involving this Lease, the prevailing party shall be entitled to recover all of its costs, including reasonable attorney's fees, whether resolved by way of a lawsuit or otherwise.

38. SUCCESSORS AND ASSIGNS. This Lease shall be binding upon the parties hereto, their permitted successors in interest and assigns. This Section shall not alter the provisions of Section 28.

39. TIME. Time is of the essence in this Lease and every term, covenant and condition herein contained.

40. NOTICES. Any notice, document or payment required or permitted to be delivered or remitted hereunder or by law shall be deemed to be delivered or remitted, whether actually received or not, (a) when delivered in person, (b) two (2) business days after such item is deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one (1) business day after such item is deposited for overnight delivery or two (2) business days after such item is deposited for second day delivery with Federal Express or other generally recognized overnight courier, shipping charges prepaid, addressed to the appropriate party hereto at its address set out below, or at such other address as it shall have theretofore specified by written notice delivered in accordance herewith:

40.1 If to Landlord:

MANGANARO'S HERO BOY, INC.
c/o Anthony Dell 'Orto
187 Northfield Avenue
Dobbs Ferry, NY 10522
Email: agajd@msn.com

With a copy to:

QUATTLEBAUM, GROOMS, TULL & BURROW PLLC
111 Center Street, Suite 1900
Little Rock, Arkansas
Attention: Timothy W. Grooms
Phone: 501-379-1713
Email: tgrooms@qgtb.com

And an additional copy to:

Adam Leitman Bailey, P.C.
120 Broadway, 17th Floor
New York, New York 10271
Attention: David P. Speciner
Phone: (212) 584-1955
Fax: (866) 895-8382
Email: dspeciner@alblawfirm.com

40.2 If to Tenant:

OTB ACQUISITION LLC
2201 W. Royal Ln.
Suite 240
Irving, TX 75063
Attn: Property Mgmt.
Tel: (972) 499-3000
Fax: (972) 769-5663
Email: teri.jones@ontheborder.com

Either party may change the address at which notice is to be served upon them giving written notice thereof in the manner herein provided.

41. PARAGRAPH HEADINGS. All paragraph headings in this Lease are for convenience only and shall not be considered as having any legal effect.

42. MORTGAGE/MORTGAGEE DEFINED. For purposes of this Lease and all exhibits, attachments and amendments thereto, the term "mortgage" shall, in addition to its normal meaning, also mean any type of document of security against real estate including, but not limited to, a deed of trust; that the term "mortgagee" shall, in addition to its normal meaning, also include, but not be limited to, a beneficiary of a deed of trust.

43. MODIFICATION. This Lease and the exhibits attached hereto constitute the whole agreement between the parties. No agreement shall be held as changing or in any manner modifying or adding to or detracting from any of the terms or conditions of this Lease unless such agreement shall be in writing executed by both parties hereto.

44. BROKERAGE FEES. It is understood and agreed that neither party has incurred any real estate brokerage fees or commissions arising out of this Lease. Except as set forth above, each party agrees to defend, indemnify and hold the other harmless from and against all such other commissions and fees incurred as a result of its own conduct.

45. FINANCIAL STATEMENTS. Tenant shall furnish to Landlord upon written request from Landlord or in the event Landlord desires to finance or sell the Leased Premises, but not more than two times per year, the following financial statements and information:

- (1) A statement of the annual sales volume for the Leased Premises,
- (2) A statement of profit and loss and a balance sheet for the Tenant company-wide.

46. MATTERS OF TITLE. Tenant and Landlord agree to observe and obey any restrictions on the use, development, assignment, parking, easements, signage or transfer that exist as a matter of record in the title to the Leased Premises.

47. CONSTRUCTION OF LEASE. The captions preceding all of the paragraphs of this Lease are intended only for convenience of reference and in no way define, limit or describe the scope of this Lease or the intent of any provision hereof. Whenever the singular is used, the same shall include the plural and vice versa and words of any gender shall include the other gender. As used herein, "including" shall mean "including, without limitation". It is hereby

mutually acknowledged and agreed that the provisions of this Lease have been fully negotiated between parties of comparable bargaining power with the assistance of counsel and shall be applied according to the normal meaning and tenor thereof without regard to the general rule that contractual provisions are to be construed narrowly against the party which drafted the same or any similar rule of construction.

48. CHOICE OF LAW. This Lease and the rights and obligations of the parties hereto shall be interpreted and construed in accordance with and governed by the laws of the State in which the Leased Premises are located without regard to the law of that State concerning choice of law. Any suit arising from or relating to this Lease shall be brought in the county wherein the Leased Premises are located, and the parties hereto waive the right to be sued elsewhere.

49. WAIVER OF TRIAL BY JURY. LANDLORD AND TENANT MUTUALLY, EXPRESSLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY FOR ANY PROCEEDINGS, WHETHER IN LAW OR IN EQUITY ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, OR ANY CONDUCT OR COURSE OF DEALING OF THE PARTIES, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PERSON. THIS WAIVER IS A MATERIAL INDUCEMENT TO TENANT TO ENTER INTO THIS LEASE.

50. COUNTERPARTS. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

[Signature page follows.]

IN WITNESS WHEREOF the parties hereto have caused this Lease to be executed on the date first above written.

TENANT:

OTB ACQUISITION LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

LANDLORD:

MANGANARO'S HERO BOY, INC.,
a New York corporation

By: Anthony D'Amico

Name: Anthony D'Amico

Title: VICE PRESIDENT

Date: 10/23/13

IN WITNESS WHEREOF the parties hereto have caused this Lease to be executed on the date first above written.

TENANT:

OTB ACQUISITION LLC,
a Delaware limited liability company

By: R. 2. 760
Name: Devin L. Keil
Title: SVP of Development
Date: 10.24.13

LANDLORD:

MANGANARO'S HERO BOY, INC.,
a New York corporation

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

Legal Description

Lot 3B, Sherwood Forest, in the City of Sherwood, and in the Southwest Quarter of the Southeast Quarter of Section 8, Township 2 North, Range 11 West, Pulaski County, Arkansas, and as being shown on Plat recorded as Instrument No. 2013022787, records of Pulaski County, Arkansas.

EXHIBIT B
Site Plan

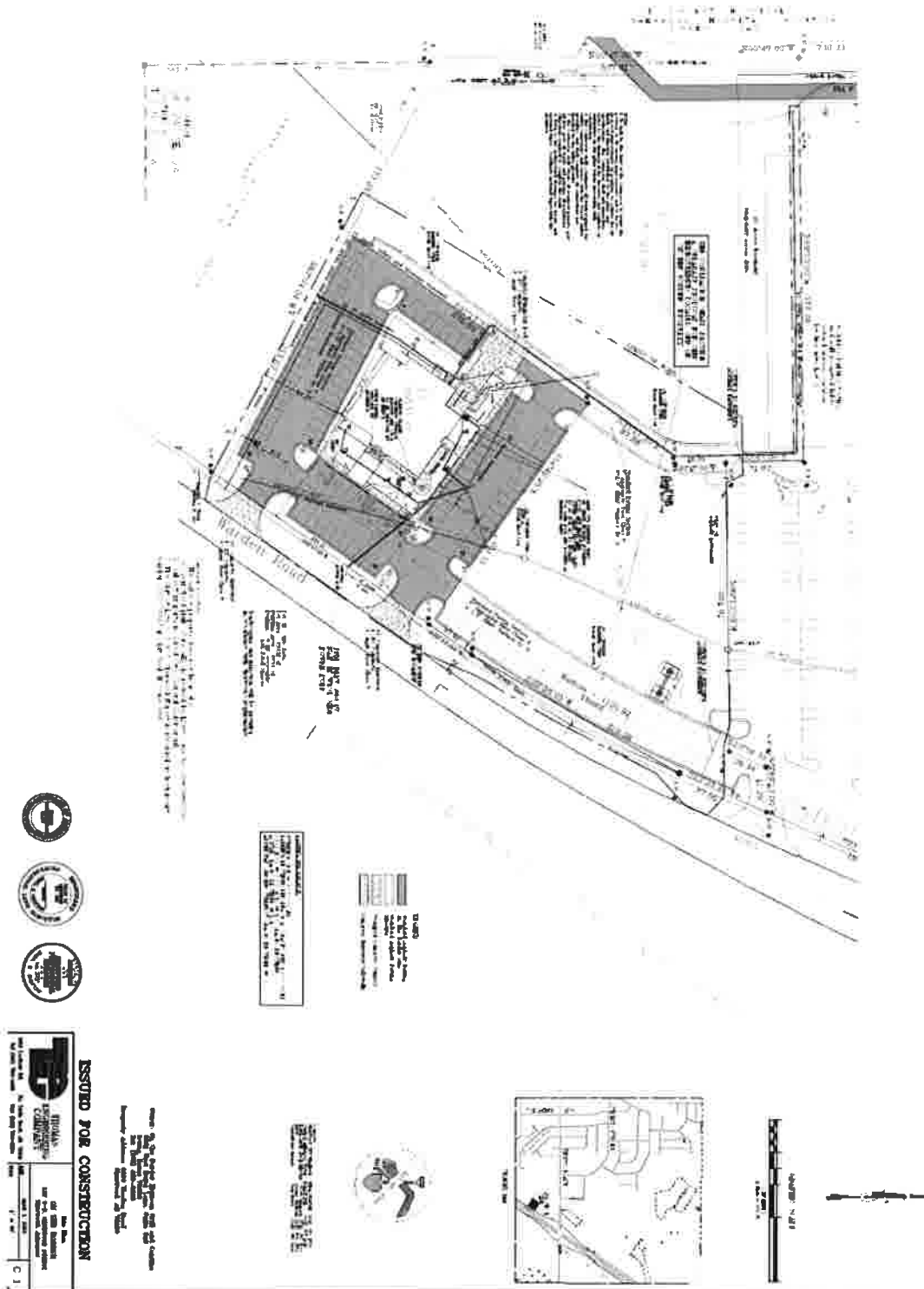


EXHIBIT C

Memorandum of Lease

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("**Memorandum**") is made and entered into as of the ___ day of _____, 2013, by and between ("**Landlord**"), and _____ ("**Tenant**").

Landlord and Tenant have entered into a lease ("**Lease**") for certain real property located in Pulaski County, and by recordation of this Memorandum of Lease give notice of the unrecorded Lease and place of public record the following information:

Date of Lease:

Description of Premises: See **Exhibit A** attached.

Date of Term Commencement: _____.

Term: The Term of this Lease ("**Term**") shall be for a period of twenty (20) years from the Date of Term Commencement.

Renewal Options: Six (6) consecutive 5-year periods.

Successors: The Lease, and all matters relating to the Lease, are binding on and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties thereto as set forth in the Lease.

All Exhibits attached hereto and referenced herein shall be deemed incorporated herein by this reference.

This Memorandum of Lease in no way modifies or amends the provisions of the Lease.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the date first set forth above.

LANDLORD:

MANGANARO'S HERO BOY, INC.,
a New York corporation

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §
§

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, _____ of _____, a _____, on behalf of said _____.

Notary Public, State of _____

TENANT:

OTB ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by _____, _____ of OTB Acquisition LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

EXHIBIT A TO MEMORANDUM OF LEASE

Legal Description

Lot 3B, Sherwood Forest, in the City of Sherwood, and in the Southwest Quarter of the Southeast Quarter of Section 8, Township 2 North, Range 11 West, Pulaski County, Arkansas, and as being shown on Plat recorded as Instrument No. 2013022787, records of Pulaski County, Arkansas.

EXHIBIT D

Form of Estoppel Certificate

FORM OF ESTOPPEL CERTIFICATE

_____, 20____

_____ ("Purchaser")

Re: Lease Agreement dated _____, between Manganaro's Hero Boy, Inc. ("Landlord"), and OTB Acquisition LLC ("Tenant") (as amended, the "Lease") for Leased Premises located at 6000 Warden Rd., Sherwood, Arkansas 72120 (the "Leased Premises")

Dear _____:

Tenant understands that _____ ("Purchaser") is purchasing the Leased Premises from Landlord and Purchaser and Landlord are relying on this Estoppel Certificate. Defined terms in the Lease have the same meanings in this Estoppel Certificate.

For \$10 and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Tenant ratifies the Lease and certifies to Purchaser and Landlord that:

1. Tenant is occupying and conducting business in the Leased Premises.
2. As of the date hereof, the Monthly Rent under the Lease is \$_____ per month payable in advance on the first day of each calendar month. Monthly Rent is paid through ____ 1, 20____.
3. The Lease is in full force and effect and Tenant has not assigned or subleased its interest in the Lease except as specified on Schedule A attached to this Estoppel Certificate.
4. The Lease is the entire agreement between Landlord and Tenant concerning the Premises.
5. The Term expires on _____, 20____.
6. To Tenant's actual knowledge, Landlord satisfied all of its obligations regarding the installation of Landlord Improvements, except as follows:

7. To Tenant's actual knowledge, no default by Landlord has occurred under the Lease and is continuing except as specified on Schedule A.

8. Tenant is not entitled to any accrued abatements, setoffs, or deductions from Monthly Rent or additional rent under the Lease except as expressly set forth therein or as specified in Schedule A.
9. No Monthly Rent has been paid more than one month in advance.
10. There is no security deposit under the Lease.

OTB ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

4. Mortgagee agrees that, so long as Tenant is not in default under the Lease:

(a) Tenant shall not be named or joined as a party or otherwise in any suit, action or proceeding for foreclosure by the Mortgagee or to enforce any rights under the Mortgage or the Loan.

(b) The possession by Tenant of the Premises and Tenant's rights under the Lease shall not be disturbed, affected or impaired by (i) any suit, action or proceeding under the Mortgage or the Loan or for foreclosure under the Mortgage, or any other enforcement of any rights under the Mortgage or any other documents pertaining to the Loan, (ii) any judicial or non-judicial foreclosure, sale or execution of the Premises, or any deed given in lieu of foreclosure, or (iii) any default under the Mortgage or the Loan.

(c) All condemnation awards and insurance proceeds paid or payable with respect to the Premises and received by Mortgagee shall be applied and paid in the manner set forth in the Lease.

(d) Neither the Mortgage nor any other security instrument executed in connection with the Loan shall cover or be construed as subjecting in any manner to the lien thereof any trade fixtures, signs or other personal property at any time furnished or installed by or for Tenant in or on the Premises.

5. If Mortgagee or any future holder of the Mortgage or any other transferee under the Mortgage shall become the owner of the Premises or any part thereof by reason of foreclosure of the Mortgage, or if the Premises or any part thereof shall be sold as a result of any action or proceeding to foreclose the Mortgage, or by transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the then owner of the Premises as "Landlord" under the Lease, upon all of the same terms, covenants and provisions contained in the Lease, and in such event:

(a) Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including also any extension periods, if Tenant elects or has elected to exercise its option to extend the term) and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "Landlord" under the Lease; and

(b) Such new owner shall be bound to Tenant under and hereby assumes all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including also any extension periods, if Tenant elects or has elected to exercise its option to extend the term), and Tenant shall, from and after the date such new owner succeeds to the interest of "Landlord" under the Lease, have the same remedies against such new owner for the breach of any covenant contained in the Lease; provided, however, that such new owner shall not be:

(i) liable for any act or omission of any prior landlord (including Landlord), except to the extent the same is an ongoing non-monetary default under the Lease which relates to an ongoing obligation of Landlord under the Lease, provided Mortgagee has been given notice and an opportunity to cure (simultaneous to that given to Landlord) pursuant to this Agreement and provided further that such default is curable by Mortgagee and is not personal to any prior landlord (including Landlord);

(ii) subject to any defenses which Tenant may have against any prior landlord (including Landlord), except to the extent resulting from any default or breach by such prior landlord under the Lease which continues from and after the date upon which the new owner succeeds to the interest of such prior landlord, provided Mortgagee has been given notice and an opportunity to cure (simultaneous to that given to Landlord) pursuant to this Agreement;

(iii) subject to any offsets which Tenant may have against any prior landlord, except to the extent such offsets are expressly provided under the Lease and Mortgagee has received notice thereof and the opportunity to cure (simultaneous to that given to Landlord) pursuant to this Agreement (it being further agreed that offsets under the Lease that were deducted by Tenant prior to the date upon which the new owner succeeds to the interest of such prior landlord shall not be subject to challenge);

(iv) bound by any fixed rent or additional rent which Tenant might have paid for more than one month in advance of its due date under the Lease to any prior landlord (including Landlord), unless such additional rent is paid in accordance with the applicable provisions of the Lease; or

(v) bound by any amendment or modification of the Lease made without its consent; notwithstanding the foregoing, Mortgagee acknowledges that the Lease specifically provides for amendments thereof upon the occurrence of certain events described in the Lease (such as, for example, an amendment to the Lease confirming the measurement of the Premises), and, by its execution below, Mortgagee agrees to recognize such amendments as part of the Lease, and Mortgagee further agrees that such new owner shall also be bound by such amendment(s) to the Lease, without any consent on the part of Mortgagee or such new owner.

6. Any notices or communications given under this Agreement shall be in writing and shall be deemed given on the earlier of actual receipt or three (3) days after deposit in the U.S. Mail, by registered or certified mail, return receipt requested, postage prepaid, at the respective addresses set forth above, or at such other address as the party entitled to notice may designate by written notice as provided herein.

7. This Agreement shall bind and inure to the benefit the parties hereto and their respective successors and assigns.

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

9. This Agreement and the covenants contained herein shall run with and shall bind the land on which the Premises is located.

[Signature Page Follows]

[Signature Page to SNDA]

EXECUTED as of the date first written above.

MORTGAGEE:

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

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

Notary Public, State of _____

TENANT:

OTB ACQUISITION LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

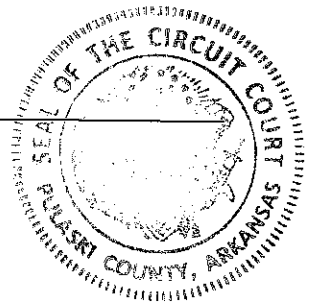
The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____ of OTB Acquisition LLC, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public, State of Texas

Please Return To:

Munsch Hardt Kopf & Harr, P.C.
500 N. Akard Street, Suite 3800
Dallas, Texas 75201
Attention: David Coligado

for recorder's use only



MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") is made and entered into as of the 29 day of October, 2013, by and between Manganaro's Hero Boy, Inc., a New York corporation ("Landlord") and OTB Acquisition LLC, a Delaware limited liability company ("Tenant").

Landlord and Tenant have entered into a lease ("Lease") for certain real property located in Pulaski County, and by recordation of this Memorandum of Lease give notice of the unrecorded Lease and place of public record the following information:

Date of Lease: October 29, 2013

Description of Premises: See Exhibit A attached.

Date of Term Commencement: October 29, 2013

Term: The Term of this Lease ("Term") shall be for a period of twenty (20) years from the Date of Term Commencement.

Renewal Options: Six (6) consecutive 5-year periods.

Successors: The Lease, and all matters relating to the Lease, are binding on and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties thereto as set forth in the Lease.

All Exhibits attached hereto and referenced herein shall be deemed incorporated herein by this reference.

This Memorandum of Lease in no way modifies or amends the provisions of the Lease.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the date first set forth above.

LANDLORD:

MANGANARO'S HERO BOY, INC.,
a New York corporation

By: Anthony Dell'Orto
Name: ANTHONY DELL'ORTO
Title: VICE PRESIDENT

STATE OF New York §
COUNTY OF Westchester §
§

The foregoing instrument was acknowledged before me this 23rd day of October, 2013, by Anthony Dell'Orto of Manganaro's Hero Boy, Inc., a New York corporation, on behalf of said corporation.

[Signature]
Notary Public, State of NY

ANDREA HEGARTY
NOTARY PUBLIC-STATE OF NEW YORK
No. 01HE6056939
Qualified in Westchester County
My Commission Expires April 09, 2015

TENANT:

OTB ACQUISITION LLC,
a Delaware limited liability company

By: L. 2. 760
Devin Keil,
Senior Vice President of Development

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

The foregoing instrument was acknowledged before me this 25 day of October, 2013, by Devin Keil, as Senior Vice President of Development of OTB Acquisition LLC, a Delaware limited liability company, on behalf of said limited liability company.

Susan Dianne Thompson
Notary Public, State of Texas

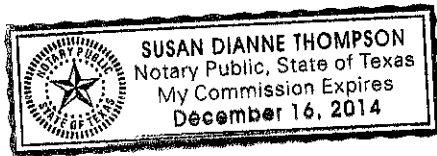


EXHIBIT A TO MEMORANDUM OF LEASE

Legal Description

Lot 3B, Sherwood Forest, in the City of Sherwood, and in the Southwest Quarter of the Southeast Quarter of Section 8, Township 2 North, Range 11 West, Pulaski County, Arkansas, and as being shown on Plat recorded as Instrument No. 2013022787, records of Pulaski County, Arkansas.

FIRST AMENDMENT TO LEASE

This FIRST AMENDMENT TO LEASE (this "**Amendment**") made as of the _____ day of September, 2020 by and among: (i) MANGANARO'S HERO BOY, INC., a New York corporation, ("**Landlord**"), (ii) and OTB ACQUISITION, LLC, a Delaware limited liability company ("**Tenant**").

WITNESSETH:

WHEREAS, Landlord and Tenant previously entered into that certain Lease dated October 29, 2013, including any subsequent amendments and modifications thereto (collectively, 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 **6000 Warden Road, Sherwood, Arkansas 72120** (also known as **Store #233**); and

WHEREAS, in view of the COVID-19 pandemic and the resultant economic impact of same, 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 **October 1, 2020** monthly installment, the annual base rent is hereby reduced to a flat rate of **\$294,000.00 per annum**, with said amount to be paid in equal monthly installments of **\$24,500.00 each** for a period of **three (3) years**, with said period commencing on **October 1, 2020**, and running through **September 30, 2023**;

b. Commencing with the **October 1, 2023** installment, annual base rent shall increase to **one and a half percent (1.50%) over the prior year's annual base rent**. Thereafter, annual base rent shall increase on **October 1st of each subsequent year by one and a half percent (1.50%) over the prior year's annual base rent**, for the remainder of the Term of the Lease including any renewal option periods exercised by Tenant.

c. The term of the Lease is extended for an **additional five (5) years** through and including **October 28, 2038** and the Lease shall terminate on that date unless extended by Tenant's exercise of its option(s) to renew. **The five (5) year extension of Lease term granted herein shall not affect the number of additional option periods remaining under the Lease.**

d. In addition to the Annual Base Rent set forth above, the Landlord and the Tenant agree to an additional Percentage Rent ("**Percentage Rent**") to be calculated on an **annual basis** of the amount of **Six Percent (6.0%) of Gross Sales** (defined herein) **in excess of the break point of \$2,900,000.00 for the preceding calendar year** (January 1st through December 31st). Within **forty-five (45) days after the year end**, the Tenant shall **submit and report to Landlord the**

Gross Sales for the preceding year, and if required by the calculation set forth above, Tenant shall pay Landlord an additional payment for the amount of **Percentage Rent** so calculated. The term "**Gross Sales**" as used herein shall mean all receipts from the sale of food, beverages, and merchandise or services in or from the business and all other income of every kind and nature related to the business and/or generated or initiated from the restaurant Premises whether for cash or credit, and regardless of collection in the case of credit; provided, however, that "Gross Sales" shall not include any of the following: (i) vending machine, electronic or other game machine receipts, (ii) service personnel tips, (iii) employee and/or charity-related meals at discounted sales prices, (iv) refunds, and (v) any sales taxes or other taxes collected by Tenant for transmittal to the appropriate taxing authority. Tenant shall keep, or cause to be kept, full, complete and proper books, records and accounts of the Gross Sales and credits of each separate department and concession at any time operated in the Premises. Said books, records and accounts, including any sales tax reports that Tenant may be required to furnish to any governmental agency, shall, at all reasonable times, be open to the inspection of Landlord, Landlord's auditor or other authorized representatives.

3. Tenant acknowledges and agrees that monthly rents are past-due and owing for the two (2) full months of April and May of 2020, and two (2) half-months of June and July of 2020, with said arrearage totaling **\$85,248.00**. Landlord and Tenant have agreed that Tenant shall pay the amount of **\$85,248.00 on or before October 15, 2020**, which payment shall be in full satisfaction of the deferred rents, as agreed in the **Letter Agreement dated May 27, 2020** attached hereto and incorporated herein by reference.

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]

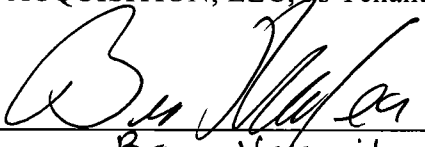
IN WITNESS WHEREOF, each of the parties hereto has executed this Amendment on the date first above written.

MANGANARO'S HERO BOY, INC., as Landlord

By: _____
Anthony Dell'Orto

Title: _____

OTB ACQUISITION, LLC, as Tenant

By:  _____
Bruce Vermilyea

Title: Chief Financial Officer