

**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>3P Family Investments, LLC</u><br>Name of the current creditor (the person or entity to be paid for this claim)<br>Other names the creditor used with the debtor _____   |   |
| 2. Has this claim been acquired from someone else?   | <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes. From whom? _____  |   |
| 3. Where should notices and payments to the creditor be sent?<br><br>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) | <b>Where should notices to the creditor be sent?</b><br><u>3P Family Investments, LLC</u><br><u>c/o Troy L. Hales, Esq.</u><br><u>Bell Nunnally and Martin LLP</u><br><u>2323 Ross Avenue, Suite 1900</u><br><u>Dallas, Texas 75201, United Staes</u><br><br>Contact phone <u>2147401400</u><br>Contact email <u>thales@bellnunnally.com</u><br><br>Uniform claim identifier (if you use one):<br>_____ | <b>Where should payments to the creditor be sent? (if different)</b><br><u>See summary page</u><br><br>Contact phone <u>8054693671</u><br>Contact email <u>skye.daley@gmail.com</u> |
| 4. Does this claim amend one already filed?  | <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____<br>MM / DD / YYYY   |   |
| 5. Do you know if anyone else has filed a proof of claim for this claim?   | <input checked="" type="checkbox"/> No<br><input type="checkbox"/> Yes. Who made the earlier filing? _____  |   |



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

6. Do you have any number you use to identify the debtor? ☒ No  
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_

7. How much is the claim? \$ 194963.93. Does this amount include interest or other charges?  
☐ No  
☒ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Non-residential lease rejection damages. See Exhibit A.

9. Is all or part of the claim secured? ☒ No  
☐ Yes. The claim is secured by a lien on property.  
**Nature or property:**  
☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
☐ Motor vehicle  
☐ Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
☐ Fixed  
☐ Variable

10. Is this claim based on a lease? ☐ No  
☒ Yes. Amount necessary to cure any default as of the date of the petition. \$ 194963.93

11. Is this claim subject to a right of setoff? ☒ No  
☐ 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 08/15/2025  
MM / DD / YYYY

/s/Skye Daley  
Signature

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

Name Skye Daley  
First name Middle name Last name

Title Secretary

Company 3P Family Investments, LLC  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 77495 Via Rosa Trail, La Quinta, California, 92253, United States

Contact phone 8054693671 Email skye.daley@gmail.com



# Verita (KCC) ePOC Electronic Claim Filing Summary

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

|  |   |                                  |
|--|---|----------------------------------|
| <b>Debtor:</b><br>25-52416 - OTB Acquisition LLC<br><b>District:</b><br>Northern District of Georgia, Atlanta Division   |   |                                  |
| <b>Creditor:</b><br>3P Family Investments, LLC<br>c/o Troy L. Hales, Esq.<br>Bell Nunnally and Martin LLP<br>2323 Ross Avenue, Suite 1900<br>Dallas, Texas, 75201<br>United Staes<br><b>Phone:</b><br>2147401400<br><b>Phone 2:</b><br>2147401456<br><b>Fax:</b><br>2147401499<br><b>Email:</b><br>thales@bellnunnally.com | <b>Has Supporting Documentation:</b><br>Yes, supporting documentation successfully uploaded<br><b>Related Document Statement:</b>   |                                  |
|  | <b>Has Related Claim:</b><br>No<br><b>Related Claim Filed By:</b>   |                                  |
|  | <b>Filing Party:</b><br>Authorized agent  |                                  |
| <b>Disbursement/Notice Parties:</b><br>3P Family Investments, LLC<br>c/o Skye Daley, Secretary<br>44795 Via Rosa Trail<br>La Quinta, California, 92253<br>United States<br><b>Phone:</b><br>8054693671<br><b>Phone 2:</b><br><b>Fax:</b><br><b>E-mail:</b><br>skye.daley@gmail.com<br><b>DISBURSEMENT ADDRESS</b>          |   |                                  |
| <b>Other Names Used with Debtor:</b>   | <b>Amends Claim:</b><br>No<br><b>Acquired Claim:</b><br>No  |                                  |
| <b>Basis of Claim:</b><br>Non-residential lease rejection damages. See Exhibit A.  | <b>Last 4 Digits:</b><br>No   | <b>Uniform Claim Identifier:</b> |
| <b>Total Amount of Claim:</b><br>194963.93   | <b>Includes Interest or Charges:</b><br>Yes   |                                  |
| <b>Has Priority Claim:</b><br>No   | <b>Priority Under:</b>  |                                  |
| <b>Has Secured Claim:</b><br>No<br><b>Amount of 503(b)(9):</b><br>No<br><b>Based on Lease:</b><br>Yes, 194963.93<br><b>Subject to Right of Setoff:</b><br>No   | <b>Nature of Secured Amount:</b><br><b>Value of Property:</b><br><b>Annual Interest Rate:</b><br><b>Arrearage Amount:</b><br><b>Basis for Perfection:</b><br><b>Amount Unsecured:</b> |                                  |

**Submitted By:**

Skye Daley on 15-Aug-2025 1:38:48 p.m. Pacific Time

**Title:**

Secretary

**Company:**

3P Family Investments, LLC

**Optional Signature Address:**

77495 Via Rosa Trail

La Quinta, California, 92253

United States

**Telephone Number:**

8054693671

**Email:**

skye.daley@gmail.com

**Exhibit A**

3P Family Investments, LLC asserts an unsecured claim in the amount of \$194,963.93 for lease rejection damages. The amount of the claim comprises of rejection damages in the amount of post-petition rent. The damages are calculated in accord with the lease, as amended, attached to this proof of claim.

3P Family Investments previously filed a proof of claim on May 28, 2025, in the amount of \$101,142.35 for prepetition past-due rent. The instant proof of claim supplements the prior proof of claim. 3P Family Investments' total claim is accordingly \$296,106.28 as of the filing of the instant proof of claim.

EXHIBIT

**A**

**AMENDMENT TO LEASE**  
**#240 – 6536 Northwest Loop 820 Freeway, Fort Worth, Texas 76135**

This AMENDMENT TO LEASE (this “**Amendment**”) made as of the \_\_\_\_\_ day of July, 2020 by and among: (i) 3P FAMILY INVESTMENTS, LLC, a California limited liability company, (“**Landlord**”), (ii) and OTB ACQUISITION, LLC, a Delaware limited liability company (“**Tenant**”).

**WITNESSETH:**

WHEREAS, Landlord and Tenant previously entered into that certain Lease dated June 22, 2016 (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 **6536 Northwest Loop 820 Freeway, Fort Worth, Texas 76135**; and

WHEREAS, in view of the COVID-19 pandemic, 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 August 1, 2020, monthly installment, the annual base rent is hereby reduced to a flat rate of \$204,000.00 per annum, with said amount to be paid in equal monthly installments of \$17,000.00 each;

b. Annual base rent shall remain at a flat rate of \$204,000.00 per annum for a period of twenty-four (24) months, with said period commencing on August 1, 2020, and running through July 31, 2022;

c. Commencing with the August 1, 2022, installment, annual base rent shall increase by ten percent (10.0%) to \$224,400.00 per annum, with said amount to be paid in equal monthly installments of \$18,700.00 each. Annual base rent shall remain at this rate from August 1, 2022, through July 31, 2023;

d. Commencing with the August 1, 2023, installment, and continuing on August 1<sup>st</sup> of each successive year thereafter, annual base rent shall increase to the greater of (i) one and one-half percent (1.5%) over the prior year’s annual base rent, or (ii) seven percent (7.0%) of the prior calendar year’s sales. Thereafter, annual base rent shall increase on August 1<sup>st</sup> of each subsequent year to the greater (i) one and one-half percent (1.5%) over the prior year’s annual base rent, or (ii) seven percent (7.0%) of the prior calendar year’s sales.

**EXHIBIT**

**A-1**

e. The term of the Lease is hereby modified such that the term shall run for fifteen (15) years from August 1, 2020, to July 31, 2035. Tenant shall retain the renewal and extension options set out in the Lease.

f. Lastly, Tenant shall provide quarterly store-level sales reports to the Landlord.

3. Tenant acknowledges and agrees that monthly rents are past-due and owing for the months April, May and June of 2020, with said arrearage totaling \$58,891.24, plus late fees and interest. Landlord and Tenant have agreed that in consideration of the execution of this Amendment, Landlord shall waive, forgive and otherwise discharge all past-due rents and waive all defaults.

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]*

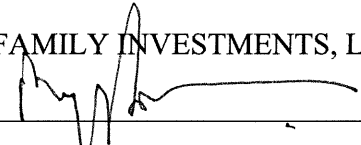


IN WITNESS WHEREOF, each of the parties hereto has executed this Amendment on the date first above written.

3P FAMILY INVESTMENTS, LLC, as Landlord

By:

Title:

  
managing partner

OTB ACQUISITION, LLC, as Tenant

By:

Title:

\_\_\_\_\_  
\_\_\_\_\_

**Unit #240**

**Address: 5901 Quebec Street  
Fort Worth, Texas 76135**

### **LEASE AGREEMENT**

THIS LEASE AGREEMENT is made and entered into as of June 22, 2016,  
by and between:

- (i) **3P FAMILY INVESTMENTS, LLC**, a California limited liability company ("Landlord"), and
- (ii) **OTB ACQUISITION LLC**, a Delaware limited liability company ("Tenant").

### **WITNESSETH:**

WHEREAS, Landlord is the owner of that certain tract of land described on Exhibit "A", attached hereto and by this reference incorporated herein (hereinafter called the "Land"), on which an On the Border Restaurant is under construction (the "Building");

WHEREAS, Tenant wishes to lease from Landlord the Land and Building (hereinafter collectively called the "Premises"); and

WHEREAS, Tenant intends to operate an On the Border Restaurant from the Premises.

NOW, THEREFORE, in consideration of the payment of the rent and the keeping and performance of the covenants and agreements by Tenant as hereinafter set forth, Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, the Premises, together with all rights and privileges appurtenant thereto as may be necessary or convenient to Tenant's business, inclusive of all easements benefiting the Premises, on the terms and conditions hereof.

The following additional stipulations are hereby declared to be covenants of this Lease and shall, unless otherwise expressly stated, be applicable at all times throughout the term of this Lease and any extension or renewal thereof:

#### **1. DEFINITIONS**

For purposes of this Lease, the following terms shall have the definitions ascribed to them:

"Affiliate" shall mean any party that controls or is controlled by or is under common control with a party. For purposes of this definition, "control" and correlative terms shall mean the possession, directly or indirectly, of the power to cause the direction of the management and policies of such party, whether through the ownership of voting securities, by contract or otherwise.

"Effective Date" shall mean the date set forth at the beginning of this Lease.

"Improvements" shall mean the Building and all improvements now or hereafter constructed on the Land.

"Lease" shall include this Lease Agreement and all amendments hereto, if any, entered into from time to time hereafter, together with the Rent Addendum and exhibits attached hereto.

"Lease Year" shall mean a fiscal period beginning on the Rent Commencement Date (and each anniversary thereof) and expiring on the last day of the twelfth (12th) month thereafter. In the event the Rent Commencement Date is not the first (1st) day of a calendar month, then the first Lease Year shall commence on the first (1st) day of the calendar month following the Rent Commencement Date.

"Rent" shall mean the rent payable under this Lease as set forth in the Rent Addendum attached hereto and incorporated herein, and shall include Annual Rent (as defined in the Rent Addendum) and all other items described in this Lease as "additional rent".

"Rent Commencement Date" shall mean the date on which Landlord delivers possession of the Building to Tenant, which date shall be the Effective Date hereof unless Landlord and Tenant otherwise agree in writing.

## **2. TERM AND RENT**

(a) Term. The term of this Lease shall begin on the Effective Date and shall expire on the last day of the fifteenth (15th) Lease Year after the Rent Commencement Date (hereinafter the "Termination Date"), unless previously terminated or renewed or extended as provided herein.

(b) Rent. Rent shall be due and payable as provided in the Rent Addendum attached hereto and incorporated herein, without notice, demand, deduction, or set-off.

(c) Acceptance of Premises. Tenant confirms that Tenant shall accept possession of the Premises in their current "as is" condition on the Rent Commencement Date; that the Building and other improvements have not been completed as of the date of delivery of possession to Tenant; that Tenant waives any and all rights of termination of this Lease in connection with the failure of the Building and other improvements to be completed; Tenant acknowledges that there is no certificate of occupancy for the Premises as of the Rent Commencement Date and there is no assurance that a certificate of occupancy will be issued for the Premises in the future; Tenant will be responsible for completing all actions and improvements to the Premises as may be necessary to obtain such certificate of occupancy; and Tenant waives any and all rights it may have due to the absence of a certificate of occupancy for the Premises.

## **3. IMPROVEMENTS, INVESTMENT TAX CREDIT, MECHANIC'S LIENS, AND LANDLORD'S DISCLAIMER**

(a) Improvements. During the Term of this Lease, the Improvements (and any additions, alterations or modifications thereto) shall be owned by Landlord. Notwithstanding the foregoing, Tenant shall have the absolute right to construct, remodel and make any additions, alterations or

extensions to the Premises or the Improvements now or hereafter to be erected, without Landlord's consent or the payment of any additional rentals; provided, however, that in the event that Tenant elects to tear down and rebuild the Premises, Tenant's construction plans shall be subject to Landlord's prior written consent, not to be unreasonably withheld, conditioned or delayed. In either event, (A) all such construction shall be completed promptly and in a workmanlike manner and in material compliance with all laws, building codes and ordinances applicable thereto, at Tenant's sole expense, and (B) such additions, alterations, changes and improvements (whether structural or non-structural) shall not reduce the fair market value of the Premises. Further, without Landlord's consent Tenant shall have the unrestricted right, at any time and from time to time, to (a) sell, assign, sublease, transfer, encumber, hypothecate or mortgage Tenant's leasehold estate, and (b) place liens upon or give security interests in any or all furniture, fixtures, trade fixtures, equipment, materials, supplies, inventory, books, records or other personalty, and/or the proceeds of any thereof, any time or from time to time located, erected or installed on the Premises by Tenant during the Term (including without limitation any and all wall mounted lockers, microwaves, fryers, ovens, drink machines, coolers, freezers, sinks, tables, menuboards, building lettering, signs, sign posts and sign standards, awnings, canopies, seating and exhaust hoods, removable decor items and office equipment, but specifically excluding any portion of the electrical, heating or air conditioning systems serving the Premises) (collectively, the "Tenant's Property"). Any such lien or security interest shall vest in the lien holder or secured party as a prior lien on or security in such Tenant's Property. Landlord hereby subordinates any lien rights Landlord may have in Tenant's Property, whether statutory or otherwise to the liens and security interests of any bona-fide third party lender of Tenant and shall execute any instruments that any assignee, sublessee, transferee, lien holder, or other secured party may reasonably request or require from Landlord, with respect to acknowledging the terms contained in this subsection (a): (a) the right of Tenant to erect, install, modify or replace Tenant's Property; (b) the right of a lien holder or secured party to maintain a lien thereon or security interest therein superior to any claim and interest of Landlord; (c) the right of the assignee, sublessee, transferee, lien holder, or other secured party, as applicable, to remove any and all Tenant's Property in the event of default in the instrument creating the interest, subject to making reasonable repairs for any physical injury caused thereto by such removal and indemnification of Landlord for any damages arising from entry upon the Premises by such assignee, sublessee, transferee, lien holder, or other secured party, but without any liability for diminution in value caused by the absence of the Tenant's Property so removed and without any necessity for replacing same; and (d) the right of Tenant to grant a collateral assignment of its interest in this Lease as further security. If Landlord, within ten (10) days after submission of such instruments, shall fail to execute and deliver same, Tenant may execute, acknowledge and deliver any of said applications or documents as the attorney-in-fact of Landlord, and Landlord hereby irrevocably appoints the same, its successors and assigns, as such attorney-in-fact. In the event of any conflict between, or ambiguity resulting from, this section and any other provision of the Lease, this section shall control.

(b) Investment Tax Credit. Landlord hereby grants Tenant the right and privilege of applying for and receiving all investment tax credits, if any, under the Internal Revenue Code which may be available with respect to the Tenant's Property.

(c) Mechanic's and Other Liens. Tenant shall not do or suffer anything to be done whereby the Premises, or any part thereof, may be encumbered by a mechanic's, materialman's, or other lien for work or labor done, services performed, materials, appliances, or power contributed, used, or furnished in or to the Premises or in connection with any operations or any other activity

of Tenant. If, whenever and as often as any lien is filed against the Premises, or any part thereof, purporting to be for or on account of any labor done, materials or services furnished in connection with any work in or about the Premises, done by, for or under the authority of Tenant, or anyone claiming by, through or under Tenant, Tenant shall discharge the same of record within twenty (20) business days after service upon Tenant of written notice of the filing thereof; provided, however, Tenant shall have the right to remove the lien as an encumbrance upon the Premises by bonding same in accordance with applicable law and to contest any such lien; provided further that Tenant shall diligently prosecute any such contest, at all times effectively staying or preventing any official or judicial sale of the Premises under execution or otherwise, and, if unsuccessful, satisfy any final judgment against Tenant adjudging or enforcing such lien or, if successful, procuring record satisfaction or release thereof.

(d) Landlord's Disclaimer. All of Tenant's Property placed in or upon the Premises by Tenant (excluding the Improvements) shall remain the property of Tenant with the right to remove the same at any time during the term of this Lease, subject to Tenant's obligation to repair any damage to the Premises caused by such removal. Landlord, if requested by Tenant, agrees to execute, acknowledge and deliver an instrument in the form customarily used by any financier of Tenant's Property and reasonably satisfactory to Landlord, by which Landlord subordinates its lien rights to the lien rights of any equipment lender or lessor of Tenant's Property, and to all rights of levy for distraint for rent against same; provided any damage caused by, or resulting from the removal of any of Tenant's Property or other personal property (including the leaving of holes or other openings in the roof or exterior of the building) shall be promptly repaired by Tenant or the party entitled to remove same.

#### **4. DESTRUCTION OF PREMISES; INSURANCE**

(a) If the Premises are damaged or destroyed by fire, flood, tornado or other element, or by any other casualty and such damage or destruction does not occur within the last two (2) years of the original or of any extended or renewed term of this Lease, this Lease shall continue in full force and effect and Tenant shall, as promptly as possible, restore, repair or rebuild the Premises to substantially the same condition as it existed before the damage or destruction, including any improvements or alterations required to be made by any governmental body, county or city agency, due to any changes in code or building regulations. Tenant shall for this purpose use all, or such part as may be necessary, of the insurance proceeds received from insurance policies required to be carried under subsection (b) below. Should the Premises be damaged or destroyed by any of the foregoing described casualties within the last two (2) years of the original term or of any extended or renewed term of this Lease, then to the extent that the Premises are untenable or unsuitable, in Tenant's reasonable opinion, for continued use in the normal conduct of Tenant's business, Tenant shall have the right, exercisable by written notice to Landlord given within thirty (30) days after the date of such damage or destruction, to terminate this Lease effective upon the date of such damage or destruction. Notwithstanding the foregoing, in the event that the Premises are damaged at any time during the term of this Lease such that Tenant determines, in its reasonable business judgment, that such damage will prevent Tenant from carrying on its normal business operations for a period of more than one hundred eighty (180) days, then Tenant may elect to terminate this Lease by giving written notice thereof to Landlord within thirty (30) days after the date of such damage or destruction. If Tenant terminates this Lease as thus provided Landlord shall be entitled to the insurance proceeds on the Premises as

Landlord's interest may appear, but not to the proceeds of insurance carried by Tenant on Tenant's Property or business interruption regarding extra expense or loss of income; provided, however, Tenant shall not have the right to terminate this Lease unless (i) the damage or destruction of the Premises was caused by a peril which was insured against as required by the provisions of subsection (b) below; and (ii) at the time of such damage and destruction the said insurance policies required to be carried by Tenant were in the amounts required herein.

(b) Tenant, at its expense, shall throughout the term of this Lease and any extension or renewal thereof, keep the Premises insured with "Special Form Causes of Loss" coverage (as such term is used in the insurance industry), including coverage for glass breakage, vandalism and malicious mischief, and for fire, windstorm, and other casualty damage for one hundred percent (100%) insurable replacement value (excluding footings and foundations), inclusive of \$250,000 ordinance and law limit (coverages A, B and C combined) naming the Landlord as additional insured.

(c) Tenant shall maintain throughout the term of this Lease and any extension thereof, at its own expense and as additional rent, commercial general liability insurance including product liability covering the Premises (occurrence basis) covering bodily injury, property damage, personal injury, and liquor liability, naming Landlord as an additional insured as Landlord's interest may appear, with limits not less than One Million Dollars (\$1,000,000.00) per occurrence, with a general aggregate of not less than Two Million Dollars (\$2,000,000.00) and a "following form" umbrella liability policy or excess liability policy to include product liability in an amount of not less than Ten Million Dollars (\$10,000,000.00) per occurrence.

(d) Tenant shall maintain throughout the term of this Lease and any extension thereof, at its own expense, business interruption insurance covering risk of loss due to the occurrence of any of the hazards insured against under Tenant's insurance and providing coverage in an amount sufficient to permit the payment of Rents, any additional rent and continuing operating expenses payable hereunder for a period (in such case) of not less than twelve (12) months.

(e) In the event the Premises are located in an area identified by the National Flood Insurance Program as an area having "special flood hazards" (zones beginning with "A" or "V"), Tenant shall maintain throughout the term of this Lease and any extension thereof, flood insurance with limits stipulated pursuant to the National Flood Insurance Program, with any deductible in excess of Twenty Five Thousand Dollars (\$25,000.00) to be approved by Landlord.

(f) All insurance companies providing the coverage required hereunder shall be selected by Tenant and shall be rated A minus (A-) VII or better by Best's Insurance Rating Service (or equivalent rating service if not available), and shall be licensed to write insurance policies in the state in which the Premises are located. Tenant shall provide Landlord with copies of all policies or certificates of such coverage for the insurance coverages referenced in this Section 4, and all commercial general liability and umbrella liability or excess liability policies shall name Landlord (and if Landlord is either a general or limited partnership, all general partners) and any mortgagee designated by Landlord as an additional insured as their interests may appear. Any such coverage for additional insureds shall be primary and non-contributory with any insurance carried by Landlord or any other additional insured hereunder. All property insurance policies shall name Landlord (and if Landlord is either a general or limited partnership), all general

partners and any mortgagee designated by Landlord as an additional insured or as a loss payee as Landlord's interests may appear, and shall provide that all losses shall be payable as herein provided. All such policies of insurance shall provide that the amount thereof shall not be reduced and that none of the provisions, agreements or covenants contained therein shall be modified or canceled by the insuring company or companies without thirty (30) days prior written notice being given to additional insureds except ten (10) days' notice for non-payment. Such policy or policies of insurance may also cover loss or damage to Tenant's Property, extra expense and loss of income, and the insurance proceeds applicable to Tenant's Property, shall not be paid to Landlord or any mortgagee but shall accrue and be payable solely to Tenant. In the event of a casualty, Tenant shall be responsible for any deficiency between the replacement cost of the Premises and the amount actually paid by the insurance company.

## **5. MAINTENANCE AND REPAIR**

Tenant shall, during the term of this Lease and any renewals thereof maintain the Premises and all buildings and improvements thereon (interior and exterior, roof, structural and otherwise) in good order and repair, ordinary wear and tear excepted.

## **6. CONDEMNATION**

(a) In the event that the whole or any material part of the building on the Premises or a material portion of the Land (for purposes hereof, "material" shall mean more than 10% of the building on the Premises, more than 20% of the Land or a portion of the parking area that would reduce the number of available parking spaces below the minimum number of parking spaces required by code, unless suitable alternative parking is provided) shall be taken during the term of this Lease or any extension or renewal thereof for any public or quasi-public use under any governmental law, ordinance, regulation or by right of eminent domain, or shall be sold to the condemning authority under threat of condemnation, or if Tenant can demonstrate to Landlord's reasonable satisfaction that the Premises cannot be reasonably operated as a restaurant as contemplated herein as a result of such condemnation, or if all reasonable access to the adjacent roadways from the existing or comparable curb cuts shall be taken or materially reduced, or if Tenant's activities on the Premises shall be disrupted following such condemnation such that, in Tenant's reasonable discretion, the Premises cannot be operated in the substantially the same manner (any of such events being hereinafter referred to as a "taking"), then in such event, Tenant shall have the option of terminating this Lease as of a date no earlier than the date of such taking, such termination date to be specified in a notice of termination to be given by Tenant to Landlord not fewer than fourteen (14) days prior to the date on which possession of the Premises, or part thereof, must be surrendered to the condemning authority or its designee.

(b) In the event of any taking which does not give rise to an option to terminate or in the event of a taking which does give rise to an option to terminate under subsection (a) hereinabove and Tenant does not elect to terminate, Landlord shall make available to Tenant and Tenant shall, to the extent of the portion of the award from such taking (which term "award" shall mean the net proceeds after deducting expenses of any settlement, or net purchase price under a sale in lieu of condemnation but shall exclude the value of Landlord's reversionary interest) that is applicable to restoration and repair of the Premises, promptly restore or repair the Premises and all improvements thereon (except those items of Tenant's Property which Tenant is permitted to

remove under the terms of this Lease) to the same condition as existed immediately prior to such taking insofar as is reasonably possible. If the estimated cost of restoration or repair shall exceed the amount of Landlord's award, Landlord shall promptly provide notice to the Tenant of such deficiency, and Tenant shall have the option to (i) terminate this Agreement by giving written notice to Landlord within thirty (30) days after Tenant receives notice from Landlord of the deficiency, or (ii) deposit with Landlord the amount of such excess. In the event that Tenant elects under clause (ii) in the preceding sentence, the portion of the award applicable to restoration and repair of the Premises and any excess shall be held in trust by Landlord and used, to the extent required, for the purpose of such restoration or repair. A just and proportionate part of the Rent payable hereunder shall be abated from the date of such taking until ten (10) days after Tenant has restored same and thereafter the Rent shall be reduced in proportion to the reduction in the then rental value of the Premises after the taking in comparison with the rental value prior to the taking. If the award shall exceed the amount spent or to be spent promptly to effect such restoration, repair or replacement, such excess shall unconditionally belong to Landlord and shall be paid to Landlord.

(c) In the event of any partial taking where this Lease is not terminated, Tenant shall not be entitled (except for use in reconstruction) to any part of the compensation or award given Landlord attributable to the taking of the fee of the Premises, but Tenant shall have the right to bring a separate claim against the condemning authority for amounts (i) to reimburse Tenant for any cost which Tenant may incur in removing Tenant's Property from the Premises and (ii) to compensate Tenant for loss of Tenant's business, provided that the award to Tenant shall not reduce the amount of Landlord's award.

(d) If this Lease is terminated by reason of a taking, then Landlord shall be entitled to receive the reimbursement for its entire award in any such condemnation or eminent domain proceedings or purchase in lieu thereof and Tenant hereby assigns to Landlord all of its right, title and interest in and to all and any part of such award, provided, however, Tenant shall be entitled to bring a separate claim against the condemning authority for an award (i) to reimburse Tenant for any cost which Tenant may incur in removing Tenant's Property from the Premises and (ii) to compensate Tenant for loss of Tenant's business, provided that the award to Tenant shall not reduce the amount of Landlord's award.

## **7. TAXES AND ASSESSMENTS**

(a) Tenant shall pay at least ten (10) business days prior to delinquency all taxes and assessments which may be levied upon or assessed against the Premises and all taxes and assessments of every kind and nature whatsoever arising in any way from the use, occupancy, possession or transfer of ownership (excluding, however, any taxes incurred by Landlord (or a successor landlord) in connection with a transfer of ownership) of the Premises or assessed against the improvements situated thereon, together with all taxes levied upon or assessed against Tenant's Property. To that end, Landlord shall not be required to pay any taxes or assessments whatsoever which relate to or may be assessed against this Lease, the Rent and other amounts due hereunder, the Premises, improvements and Tenant's Property; provided, however, that any taxes or assessments which may be levied or assessed against the Premises for the period prior to the Rent Commencement Date or for the period ending after the later of the Termination Date hereof or the date that Tenant surrenders possession of the Premises to Landlord shall be prorated between



Landlord and Tenant as of such date. Tenant will not be required to pay any income, gross receipts, excess profits, revenue, corporate, personal property, estate, inheritance, gift, devolution, succession, transfer, franchise, capital levy or capital stock tax imposed upon or assessed against Landlord.

(b) Within ten (10) business days after Tenant receives the paid receipted tax bills, Tenant shall furnish Landlord with copies thereof. Tenant may, at its option, contest in good faith and by appropriate and timely legal proceedings any such tax and assessment; provided, however, that Tenant shall indemnify and hold harmless Landlord from any loss or damage resulting from any such contest, and all reasonable expenses of same (including, without limitation, all attorneys' and paralegal fees, court and other costs) shall be paid solely by Tenant. Landlord, at no cost or liability to Landlord, shall cooperate with Tenant and execute any document which may reasonably be necessary for any proceeding.

## **8. COMPLIANCE, UTILITIES, SURRENDER**

(a) Tenant, at its expense: shall promptly comply with all municipal, county, state, federal and other governmental requirements and regulations, whether or not compliance therewith shall require structural or other changes in the Premises; will procure and maintain all permits, licenses and other authorizations required for the use and occupancy of the Premises or any part thereof then being made and for the lawful and proper installation, operation and maintenance of all equipment and appliances necessary or appropriate for the operation and maintenance of the Premises; and shall comply with all easements, restrictions, reservations and other instruments of record applicable to the Premises.

(b) Tenant shall pay all charges for heat, water, gas, sewage, electricity and other utilities used or consumed on the Premises and shall contract for the same in its own name. Landlord shall not be liable for any interruption or failure in the supply of any such utility service to the Premises.

(c) Tenant shall peacefully surrender possession of the Premises, the buildings and other improvements thereon to Landlord at the expiration, or earlier termination, of the original term or any extended or renewed term of this Lease in good condition and repair, reasonable wear and tear excepted, and in broom clean condition with all debris removed.

## **9. QUIET ENJOYMENT**

Landlord covenants and warrants that Landlord has full power and authority to enter into this Lease, and that Tenant shall have and enjoy full, quiet and peaceful possession of the Premises, its appurtenances and all rights and privileges incidental thereto during the term hereof and any renewals or extensions, subject to the provisions of this Lease and any easements, restrictions, reservations and other instruments of record applicable to the Premises and in existence at the time of the conveyance of the Premises to Landlord by Tenant or thereafter.

## **10. OPTION TO RENEW**

Tenant shall have six (6) successive five (5) year options to extend this Lease for up to an additional thirty (30) years upon the same terms, covenants, conditions and rental as set forth

herein provided that Tenant is not in Default hereunder at the commencement of such option period. In the event Tenant elects not to exercise a five (5) year option, Tenant shall give written notice to Landlord not less than six (6) months prior to the Termination Date, as the Termination Date may have been extended by the exercise of prior options. Should Tenant fail to give Landlord such timely written notice during the required period, this Lease shall automatically renew pursuant to the terms hereof.

## **11. DEFAULT**

(a) If any one or more of the following events occur, said event or events shall be referred to as a "Default" under this Lease:

(i) If Tenant fails to pay Rent or any other charges required under this Lease when same shall become due and payable, and such failure continues for ten (10) days or more after written notice from Landlord provided that Landlord shall not be required to provide more than two (2) such notices in any calendar year.

(ii) If Tenant fails to perform or observe any term, condition, covenant, agreement, or obligation required under this Lease and such failure continues for thirty (30) days after written notice from Landlord (except that such thirty (30) day period shall be automatically extended for such additional period of time as is reasonably necessary to cure such Default, if such Default cannot be cured within such period, provided Tenant commences to cure within such thirty (30) day period and is in the process of diligently curing the same).

(iii) If Tenant shall make an assignment for the benefit of creditors or file a petition, in any federal or state court, in bankruptcy or reorganization, or make an application in any such proceedings for the appointment of a trustee or receiver for all or any portion of its property, and such proceeding shall not be set aside within sixty (60) days.

(iv) If any petition shall be filed under federal or state law against Tenant in any bankruptcy, reorganization, or insolvency proceedings, and said proceedings shall not be dismissed or vacated within sixty (60) days after such petition is filed.

(v) If a receiver or trustee shall be appointed under federal or state law for Tenant for all or any portion of the property of either of them, and such receivership or trusteeship shall not be set aside within sixty (60) days after such appointment.

(b) Upon the happening of any one or more of the aforementioned Defaults which are not cured within the cure period applicable thereto, if any, Landlord shall have the right, in addition to any other rights and remedies at law or in equity, to:

(i) terminate this Lease by giving written notice of same to Tenant. Upon such notice, this Lease shall cease and expire, and Tenant shall surrender the Premises to Landlord in the condition required by this Lease, and Landlord will be entitled to recover all damages caused by Tenant's Default, including without limitation, all unpaid rents that have accrued through the date of termination plus the costs of performing any of Tenant's obligations (other than the payment of rent) that should have been but were not satisfied as of the date of such termination, and rent and costs of performing Tenant's obligations under this Lease as the same accrue after the

date of termination less amounts received by Landlord in mitigation of such damages. In addition, as an alternative remedy, Landlord will be entitled to recover, not as rent or a penalty but as compensation for Landlord's loss of the benefit of its bargain with Tenant, the difference between (i) an amount equal to the present value of the rent and other sums that this lease provides Tenant will pay for the remainder of the Primary Term and for the balance of any then effective extension of the Primary Term, and (ii) the present value of the net future rents for such period that will be or with reasonable efforts could be collected by Landlord by reletting the Premises.

(ii) take possession of the Premises without terminating this Lease and then rent the same for the account of Tenant (which may be for a term extending beyond the Term of this Lease) in which event Tenant covenants and agrees to pay any deficiency after crediting it with the rent thereby obtained less all repairs and expenses, including the costs of remodeling and brokerage fees, and Tenant waives any claim it may have to any rent obtained on such reletting which may be in excess of the Rent required to be paid herein by Tenant;

(iii) perform such obligation (other than payment of Rent) on Tenant's behalf and charge the cost thereof, plus an administrative fee equal to fifteen percent (15%) of such cost, to Tenant as additional rent; or

(iv) exercise any and all other rights granted to Landlord under this Lease or by applicable law or in equity.

Tenant further agrees that in the event of a Default, any monies deposited by Tenant with Landlord shall be immediately and irrevocably assigned and released to Landlord (without further action by Landlord or Tenant) to be applied by Landlord against any and all of Tenant's obligations under this Lease, in any manner as Landlord may determine.

(c) If Landlord should elect to terminate or repossess the Premises, as provided hereinabove, Landlord may re-enter the Premises and remove Tenant, its agents and subtenants, together with all or any of Tenant's Property, by suitable action at law, or by force. Tenant waives any right to the service of any notice of Landlord's intention to re-enter and Landlord shall not be liable in any way in connection with any action it takes pursuant to this paragraph. Notwithstanding such re-entry or removal, Tenant's liability under Lease shall survive and continue.

(d) In case of re-entry, repossession or termination of this Lease, Tenant shall remain liable for Rent, any additional rent and all other charges provided for in this Lease for the otherwise remaining term of this Lease, and any and all expenses which Landlord may have incurred in re-entering the Premises including, but not limited to, allocable overhead, alterations to the building to bring the building to "white box" standard, repairs, leasing, construction, architectural, and reasonable legal and accounting fees. Landlord shall have the right, but not the obligation, to relet the whole or part of the Premises upon terms which Landlord, in its sole discretion, deems appropriate and Tenant shall be responsible for all reasonable and customary expenses incurred by Landlord in reletting or attempting to relet and all rent collected for reletting shall be credited against all of Tenant's obligations hereunder. Landlord agrees to use commercially reasonable efforts to relet the Premises in order to mitigate its damages

(e) In the event of and during the continuance of a Default, Landlord may, at its sole option, enter upon the Premises, if deemed necessary by Landlord in its sole discretion, and/or do whatever may be deemed necessary by Landlord in its sole discretion to cure such failure by Tenant. Tenant shall pay to Landlord within five (5) days of Landlord's request, all costs incurred by Landlord in connection with Landlord's curing of such failure, plus an administrative fee equal to fifteen percent (15%) of such costs. In addition to the above costs and administrative fee, in the event Landlord does not receive payment from Tenant when due under this paragraph, then interest at the rate of eighteen percent (18%) per annum or, if less, the highest rate allowable by law, shall be due and payable with respect to such payment from the due date thereof until Landlord receives such payment.

(f) In the event either party engages legal counsel in connection with the enforcement of any of the terms and provisions of this Lease, then, in addition to all other sums due from the party deemed liable hereunder, such liable party shall pay to the prevailing party any and all attorneys' fees, paralegal fees, and legal costs and expenses incurred by the prevailing party, including on appeal and in any bankruptcy proceedings.

(g) The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now or hereinafter provided by law, and all such rights and remedies shall be cumulative. No action or inaction by Landlord shall constitute a waiver of any Default, and no waiver of any Default shall be effective unless it is in writing, signed by Landlord.

## **12. HOLDING OVER**

In the event Tenant remains in possession of the Premises after the expiration of this Lease without executing a new written lease acceptable to Landlord and Tenant, Tenant shall occupy the Premises as a tenant from month to month subject to all the terms hereof (except as modified by this paragraph), but such possession shall not limit Landlord's rights and remedies by reason thereof nor constitute a holding over. In the event of such month to month tenancy, the monthly installment of Annual Rent due for each such month shall increase to be one hundred twenty-five percent (125%) of the monthly installment thereof which was payable during the last month of the term of this Lease.

## **13. WAIVER OF SUBROGATION**

Notwithstanding anything in this Lease to the contrary, other than Tenant's obligations to repair, restore or rebuild described in Section 4 of this Lease, neither party shall be liable to the other for any damage or destruction of the Premises resulting from fire or other casualty covered by insurance required of either party hereunder, whether or not such loss, damage or destruction of the Premises are caused by or results from the negligence of such party (which term includes such party's officers, employees, agents and invitees), and each party hereby expressly releases the other from all total liability for or on account of any said insured loss, damage or destruction. Each party shall procure all endorsements of insurance policies carried by it necessary to protect the other from any right of subrogation and/or liability in the event of such loss.

## **14. ASSIGNMENT AND SUBLETTING**

(a) Tenant shall have the right to assign or sublet all or any part of the Premises to any

party for any lawful purpose. Notwithstanding the foregoing, Tenant shall have no right to assign or sublet in the event such assignment or subletting would violate any material term of any then material existing agreement applicable to the Premises. Except as set forth in this Section, any assignment or subletting permitted hereunder shall not relieve Tenant of its liability for the continued performance of all terms, covenants and conditions of this Lease, including without limitation the payment of all Rent and other charges hereunder. Likewise, as a condition of any such assignment by Tenant, the assignee shall be required to execute and deliver to Landlord, upon the effective date of such assignment, an agreement, in recordable form, whereby such assignee assumes and agrees to discharge all obligations of Tenant under this Lease arising after the date of such assignment or subletting. Tenant shall be released from all liability under this Lease arising after the date of such assignment or subletting if the assignment or sublease is executed in connection with (i) the sale of all or substantially all of Tenant's (or Tenant's Affiliates') business or assets; and (ii) as of the date of assignment or sublease, the assignee or subtenant or guarantor thereof has an S&P Credit Rating of BBB- or higher, and a Fitch Credit Rating of BBB- or higher, a Moody's Credit Rating of Baa3 or higher, and has an aggregate net worth in accordance with GAAP, of at least \$10,000,000; and (iii) the assignee assumes all of Tenant's obligations under this Lease; or (iv) as reasonably approved by Landlord. As used in the immediately preceding sentence, "S&P Credit Rating" means the credit rating assigned by Standard & Poor's Rating Group to the highest rated publicly issued debt securities of the assignee, "Fitch Credit Rating" means the credit rating assigned by Fitch Ratings, Inc. to the highest rated publicly issued debt securities of the assignee, and "Moody's Credit Rating" means the credit rating assigned by Moody's Investors Service to the highest rated publicly issued debt securities of the assignee.

(b) Prior to any assignment that may be permitted hereunder, Tenant shall deliver to Landlord written notice of such assignment or subletting, together with: (i) a copy of the assignment or subletting documents (including copies of any recorded documents related thereto); (ii) the name, address and telephone number of such assignee or sublet tenant and a designated contact person therefor; (iii) a new insurance policy and binder complying with the terms of this Lease and naming such assignee or sublet tenant as the tenant of the Premises; and (iv) an agreement executed by such assignee or sublet tenant, in recordable form, whereby such assignee or sublet tenant assumes and agrees to discharge all obligations of Tenant under this Lease arising after the date of such assignment or subletting. Landlord shall execute and return within ten (10) business days of receipt any estoppels reasonably requested by Tenant, the assignee or sublessee, or their lenders, in connection with such assignment or sublease.

(c) All rent and other consideration payable under any sublease shall be solely the property of Tenant.

(d) Landlord shall have the right without limitation to sell, convey, transfer or assign its interest in the Premises or its interest in this Lease. In the event of any sale or other transfer of Landlord's interest in the Premises, other than a transfer for security purposes only, Landlord shall be automatically relieved of any and all obligations and liabilities on the part of Landlord which accrue under this Lease from and after the date of such transfer; provided, that the transferee shall assume all of the obligations of Landlord under this Lease. It is intended hereby that the covenants and obligations contained in this Lease on the part of the Landlord shall be binding on Landlord only during its period of ownership of the Premises.

**15. SUBORDINATION, NON DISTURBANCE, ATTORNMENT, ESTOPPEL CERTIFICATE.**

(a) Upon written request of the holder of any mortgage (which term "mortgage" shall also include deeds of trust) now or hereafter relating to the Premises, Tenant shall subordinate its rights under this Lease to the lien thereof and to all advances made or hereafter to be made upon the security thereof, and Tenant shall execute, acknowledge and deliver an instrument substantially in the form of Exhibit "B" attached hereto or in other reasonable form customarily used by such encumbrance holder to effect such subordination; provided, however, as a condition of all such subordinations, the holder of such mortgage shall be first required to agree with Tenant that, notwithstanding the foreclosure or other exercise of rights under any such first or other mortgage, Tenant's possession and occupancy of the Premises and the improvements and its leasehold estate shall not be disturbed or interfered with by anyone claiming by through or under the holder of the mortgage, nor shall Tenant's rights and obligations under this Lease be altered or adversely affected thereby so long as Tenant is not in Default.

(b) Notwithstanding anything in subsection (a) above to the contrary, in the event the holder of any such mortgage elects to have this Lease be superior to its mortgage, then upon notification to Tenant to that effect by such encumbrance holder, this Lease shall be deemed prior to the lien of said mortgage, whether this Lease is dated prior or subsequent to the date of said mortgage, and Tenant shall execute, acknowledge and deliver an instrument, in the form customarily used by such encumbrance holder to effect such priority.

(c) In the event proceedings are brought for the foreclosure of, or in the event of the exercise of the power of sale under any mortgage made by Landlord encumbering the Premises, or in the event of delivery of a deed in lieu of foreclosure under such a mortgage, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as "Landlord" under this Lease, and upon the request of the purchaser, Tenant shall execute, acknowledge and deliver an instrument, in form and substance satisfactory to such purchaser, evidencing such attornment.

(d) Each party agrees, within ten (10) days after written request by the other, to execute, acknowledge and deliver to and in favor of any proposed mortgagee or purchaser of the Premises, an estoppel certificate, substantially in the form of Exhibit "C" attached hereto, stating, among other things (but limited to factual matters related to this Lease) (i) whether this Lease is in full force and effect, (ii) whether this Lease has been modified or amended and, if so, identifying and describing any such modification or amendment, (iii) the date to which Rent and other charges have been paid, and (iv) whether the party furnishing such certificate knows of any default on the part of the other party under this Lease, or has any claim against such party and, if so, specifying the nature of such default or claim.

(e) Upon written demand by the holder of any mortgage encumbering the Premises, Tenant shall forthwith execute, acknowledge and deliver an agreement in favor of and in the form reasonably satisfactory to Tenant, by the terms of which Tenant shall agree to give prompt written notice to such encumbrance holder in the event of any casualty damage to the Premises or in the event of any default on the part of Landlord under this Lease, and shall agree to allow such encumbrance holder a reasonable length of time after notice to cure or cause the curing of such

default before exercising Tenant's rights under this Lease, or terminating or declaring a default under this Lease.

**16. USE OF PREMISES**

The Premises shall be used by Tenant for any lawful purpose. Tenant shall operate its business in a high class and reputable manner. Tenant shall have the right to cease operation of a business on the Premises; provided, however, Tenant shall continue to fulfill all other obligations of Tenant under this Lease, including payment of Rent, Additional Rent and performance of Tenant's maintenance obligations. Tenant shall have the right to place billboard signage on the Premises and receive any and all income derived from signage; provided, however that any and all signage must be allowed by applicable law. Further, at such time as this Lease expires, or is earlier terminated in accordance herewith, all right, title, interest of Tenant (including but not limited to the right to receive all rents remaining payable thereunder), as lessor under any billboard lease, shall be deemed assigned to Landlord. The Premises shall be used and occupied only for those purposes that are now or hereafter permitted under the land use designation and zoning district for the Premises and according to all other applicable public and private restrictions, covenants and laws affecting the Premises.

**17. NOTICES**

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be delivered by a nationally recognized overnight courier or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Landlord:                      3P Family Investments, LLC  
2261 Monaco Drive  
Oxnard, California 93035  
Attention: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Fax: \_\_\_\_\_

If to Tenant:                      OTB Acquisition LLC  
2201 West Royal Lane, Suite 240  
Irving, Texas 75063  
Attention: Thomas N. McCord  
E-mail: tom.mccord@ontheborder.com

With copies to:                      Argonne Capital Group, LLC  
One Buckhead Plaza, Suite 1560  
3060 Peachtree Road, NW  
Atlanta, Georgia 30305  
Attention: Karl F. Jaeger  
Facsimile: (404) 364-2985  
  
McGuireWoods LLP  
1230 Peachtree Street, NE, Suite 1230

Atlanta, Georgia 30309  
Attention: Josiah Bancroft  
E-mail: jrbancroft@mcguirewoods.com  
Facsimile: (404) 443-5688

Any party may change its address for notices by written notice in like manner as provided in this paragraph and such change of address shall be effective seven (7) days after the date written notice of such change of address is given. Notice for purposes of this Lease shall be deemed given by the party who is giving such notice when it shall have been received or refused from the U.S. certified or registered mail, or from a nationally recognized overnight courier, with sufficient postage prepaid.

With respect to any such notice, Tenant shall, and Landlord shall use its best efforts to, simultaneously deliver a copy of such notice by facsimile at the appropriate facsimile number above to the other party; provided however, that certified mail or overnight courier delivery shall nevertheless be required to effect proper notice hereunder.

#### **18. INDEMNIFICATION**

Tenant does hereby indemnify and exonerate and agrees to hold harmless Landlord against and from all liabilities, losses, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects' fees, attorneys' fees, paralegal fees, and legal costs and expenses incurred by Landlord, whether or not judicial proceedings are filed, and including on appeal and in any bankruptcy proceedings, which may be imposed upon or asserted against or incurred by Landlord by reason of Tenant's use and occupancy of the Premises, including without limitation any of the following occurring:

- (a) any work or thing done in respect of construction of, in or to the Premises or any part of the improvements now or hereafter constructed on the Premises;
- (b) any use, possession, occupation, operation, maintenance or management of the Premises or any part hereof;
- (c) any failure to, or to properly, use, possess, occupy, operate, maintain or manage the Premises or any part thereof;
- (d) the condition, including environmental conditions, of the Premises or any part thereof;
- (e) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees;
- (f) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof including any sidewalk adjacent thereto;
- (g) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with.



Landlord shall not be responsible or liable to Tenant for any loss or damage to either the person or property of Tenant unless caused by the negligence or intentional acts of Landlord. Landlord shall not be responsible or liable for any defect, latent, or otherwise, in the Premises, or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any injury, loss or damage to any person or to any property caused by or resulting from bursting, breakage, leakage, steam or snow or ice, running, backing up, seepage, or the overflow of water or sewage in any part of said Premises or for any injury or damage caused by or resulting from acts of God or the elements, or for any injury or damage caused by or resulting from any defect or negligence in the occupancy, construction, operation or use of any of said Premises, building, machinery, apparatus or equipment.

## **19. COOPERATION**

(a) Landlord shall fully cooperate with Tenant throughout the term of this Lease to secure or maintain proper zoning, building and other permits and compliance with all applicable laws; provided, however, that Landlord shall not be required to incur any expense or liability in connection with such cooperation. Landlord shall within ten (10) days of request execute any petitions, requests, applications and the like as Tenant shall reasonably request in order to obtain any permit, license, variances and approvals which, in the reasonable judgment of Tenant, are necessary for the lawful construction and/or operation of Tenant's business on the Premises, provided, however, that Tenant shall indemnify and save Landlord harmless from any and all expenses, costs, charges, liabilities, losses, obligations, damages and claims of any type which may be imposed upon, asserted against or incurred by Landlord by reason of same.

(b) Landlord shall have the right, in Landlord's sole discretion, to enter into an exchange agreement with a qualified intermediary in order to effectuate a like-kind exchange of the Premises for one or more other properties. Landlord and Tenant agree that Tenant, at no cost to Tenant, shall cooperate with Landlord in effecting a like-kind exchange of the Premises by Landlord pursuant to and in accordance with the provisions of Section 1031 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

## **20. EXCULPATION**

Neither Party shall be liable to the other, or the other's employees, agents, invitees, licensees or any other person whomsoever for any injury to person or damage to property on or about the Premises caused by the other party's negligence or misconduct, its agents, servants or employees or of any other person entering the building under express or implied invitation by the other party or due to any other cause whatsoever, except to the extent by the negligence or neglect of such party, its employees or its authorized representatives.

## **21. LANDLORD'S LIABILITIES**

The term "Landlord" as used in this Lease means the owner from time to time of the Premises. Neither Landlord nor any partner, shareholder or beneficiary thereof shall have any personal liability with respect to any of the provisions of this Lease, and if Landlord is in default with respect to its obligations hereunder, Tenant shall look solely to the equity of Landlord in the Premises for the satisfaction of Tenant's remedies for the collection of a judgment or other judicial

process requiring the payment of money by Landlord, and no other property or assets of Landlord shall be subject to levy, execution, or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder, or Tenant's use or occupancy of the Premises.

**22. SUCCESSORS**

The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and permitted assigns.

**23. ENTIRE AGREEMENT/MEMORANDUM OF LEASE**

This Lease contains the entire agreement between the parties hereto and may not be modified in any manner other than in writing signed by the parties hereto or their successors in interest. A memorandum of this Lease in the form attached hereto as Exhibit "D" shall be executed by the parties and shall be recorded in the official records of the county where the Premises are located.

**24. GENDER**

Whenever the context hereof permits or requires, words in the singular may be regarded as in the plural and vice-versa, and personal pronouns may be read as masculine, feminine and neuter.

**25. BROKERAGE FEES**

It is understood and agreed that neither party has incurred any real estate brokerage fees or commissions arising out of this Lease and each party agrees to hold the other harmless from and against all such fees and commissions incurred, and costs related thereto including legal fees, as a result of its own conduct or alleged conduct.

**26. CAPTIONS**

The captions of this Lease are for convenience only, and do not in any way define, limit, disclose, or amplify terms or provisions of this Lease or the scope or intent thereof.

**27. NOT A SECURITY ARRANGEMENT**

The parties hereto agree and acknowledge that this transaction is not intended as a security arrangement or financing secured by real property, but shall be construed for all purposes as a true lease.

**28. NET LEASE**

It is the intention of the parties hereto that this Lease is and shall be treated as a triple net lease. Any present or future law to the contrary notwithstanding, except as expressly set forth in this Lease, this Lease shall not terminate, nor shall Tenant be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense with respect to Rent, nor shall

the obligations of Tenant hereunder be affected by reason of: any damage to or destruction of the Premises or any part thereof; any taking of any Premises or any part thereof or interest therein by condemnation or otherwise; any prohibition, limitation, restriction or prevention of Tenant's use, occupancy or enjoyment of the Premises or any part thereof, or any interference with such use, occupancy or enjoyment by any person or for any other reason; any title defect or encumbrance or any matter affecting title to the Premises or any part thereof; any eviction by paramount title or otherwise; any default by Landlord hereunder; any proceeding relating to Landlord; the impossibility or illegality of performance by Landlord, Tenant or both; any action of governmental authority; any breach of warranty or misrepresentation; any defect in the condition, quality or fitness for use of the Premises or any part thereof; or any other cause whether similar or dissimilar to the foregoing and whether or not Tenant shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of Tenant hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated in accordance with an express provision of this Lease.

**29. WAIVER**

No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision. Either party's consent to, or approval of, any act as required hereunder shall not be deemed to render unnecessary the obtaining of such party's consent to or approval of any such subsequent act by the other party. The acceptance of Rent, or any partial payment of Rent, hereunder by Landlord shall not be a waiver of any preceding Default by Tenant of any provision hereof, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent.

**30. TIME OF THE ESSENCE**

Landlord and Tenant agree that time shall be of the essence of all terms and provisions of this Lease.

**31. GOVERNING LAW**

This Lease shall be construed in accordance with the laws of the state in which the Premises are located.

**32. SEVERABILITY**

If any provision of this Lease becomes unenforceable for any reason, such unenforceability shall not limit or impair the operation or validity of any other provision of this Lease.

**33. JURISDICTION, VENUE, AND GOVERNING LAW**

If any party to this Lease institutes any lawsuit or other action or proceeding against the other party and pertaining to this Lease, any right or obligation of any party hereunder, breach of this Lease or otherwise pertaining to the Premises, the sole and exclusive venue and jurisdiction for filing and maintaining any such lawsuit or other action or proceeding shall be in the jurisdiction where the Premises are located, and the parties to this Lease waive the right to institute or maintain

any such suit, action or proceeding in any other courts or forums whatsoever. Each party by executing this Lease consents and submits itself to the personal jurisdiction of such court. This Lease shall be construed and governed in accordance with the laws of the state where the Premises are located without regard to conflict of law principles.

#### **34. COUNTERPARTS**

This Lease may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement.

#### **35. RIGHT OF FIRST REFUSAL**

(a) Landlord grants to Tenant a continuous right of first refusal to purchase the Premises as follows.

(i) If (A) Landlord receives a bona fide offer, solicited or unsolicited, to sell the Premises or to otherwise transfer or dispose of the Premises or the sale of the interests of the Landlord for value to any unaffiliated third party (any such sale, transfer or other disposition, a "Sale") and intends to accept the offer, or (B) Landlord decides to make a bona fide offer for a Sale of the Premises for value to any unaffiliated third party (which shall be subject to Tenant's right of first refusal) and Landlord has found an unaffiliated third party ready, willing and able to accept such offer, then Landlord shall provide a written copy of such offer to Tenant (the "Offer"), which Offer shall include all material terms of the proposed sale or transfer (including, without limitation, the interests or property affected, the name and address of any proposed transferees, the amount of the purchase price, the intended date for closing, and all other material terms and conditions of such offer, along with copies of all relevant documents.) Tenant will have the right to accept Landlord's Offer by written notice to Landlord given within fifteen (15) days after Tenant's receipt of the Offer, time being of the essence with respect to this and all other periods provided herein. For purposes hereof, a party shall be considered to be "unaffiliated" so long as Landlord or its principals own or control less than a twenty five percent (25%) interest therein. The right of first refusal shall be applicable to the sale or transfer of stock, membership interests or partnership interests of Landlord or its principal. Notwithstanding any provision hereof to the contrary, Tenant shall not be entitled to exercise its right of first refusal at any time that Tenant is in Default under this Lease. In addition, Tenant must comply with all of the terms of this Lease from the date of Tenant's acceptance of the Offer to the date that settlement occurs.

(ii) If Tenant accepts the Offer, settlement shall be held by the earlier of (A) sixty (60) days after Tenant's acceptance, or (B) at Tenant's option, such earlier closing date as was set forth in the Offer. Upon settlement, Landlord shall convey to Tenant (or its designee) indefeasible title to such interests or property free and clear of all liens, encumbrances and restrictions (except this Lease and such non-material liens, encumbrances and restrictions as are of record on the date hereof or recorded after the date hereof).

(iii) If Tenant does not accept the Offer within the time period specified and a Sale closes (A) on terms no more favorable to the transferee than those specified in the Offer, and (B) by the earlier of (1) the time frame set forth in the Offer and (2) six (6) months after the Offer was made to Tenant, then Tenant's right of first refusal hereunder shall be terminated and shall no

longer be in effect. If, however, at any time, an intended Sale will not meet both of the conditions set forth in clauses (A) and (B) above, then Tenant's right of first refusal as set forth herein shall be deemed reinstated, and Landlord shall be required to again, and thereafter, comply with the requirements contained herein (i.e. delivering an Offer to Tenant, awaiting Tenant's response, etc.).

(iv) NOTWITHSTANDING ANYTHING TO THE CONTRARY, IF THIS LEASE TERMINATES (OTHER THAN BY REASON OF TENANT PURCHASING THE PREMISES PURSUANT TO THIS SECTION OR THE TERM EXPIRES, TENANT'S RIGHT OF FIRST REFUSAL SET FORTH HEREIN SHALL TERMINATE AND BE NULL AND VOID AND OF NO FURTHER FORCE AND EFFECT; AND, IN SUCH EVENT TENANT SHALL EXECUTE SUCH DOCUMENTS AS LANDLORD SHALL REASONABLY REQUEST EVIDENCING SUCH TERMINATION OF ITS RIGHT OF FIRST REFUSAL. EXCEPT AS AFORESAID, TENANT'S RIGHTS CONTAINED HEREIN SHALL SURVIVE ANY SALE, TRANSFER OR OTHER DISPOSITION OF THE PREMISES BY OR THROUGH LANDLORD (INCLUDING THOSE PERSONS DESCRIBED IN SUBSECTION (B) BELOW).

(b) Notwithstanding anything to the contrary contained herein, the provisions of this Section shall not apply to or prohibit (A) any mortgaging, subjection to deed of trust or other hypothecation of Landlord's interest in the Premises to any Lender, (B) any sale of the Premises pursuant to a private power of sale under or judicial foreclosure of any Mortgage or other security instrument or device to which Landlord's interest in the Premises is now or hereafter subject (including subsequent transfers of title to any Affiliate of any such Lender established or existing primarily for the purpose of taking title to the Premises and the first subsequent third-party purchaser for value of the Premises that acquires title to the Premises through such Lender), (C) any transfer of Landlord's interest in the Premises to a Lender, beneficiary under deed of trust or other holder of a security interest therein or their designees by deed in lieu of foreclosure (including subsequent transfers of title to any Affiliate of any such Person established or existing primarily for the purpose of taking title to the Premises and the first subsequent third-party purchaser for value of the Property that acquires title to the Property through any such Person, or (D) any transfer of the Property to any governmental or quasi-governmental agency with power of condemnation (including subsequent transfers of title to any Affiliate of any such governmental or quasi-governmental agency established or existing primarily for the purpose of taking title to the Premises). For the avoidance of doubt, however, Tenant's rights under this Section shall survive all of the foregoing.

### **36. NO ESTATE BY TENANT.**

This Lease shall create the relationship of lessor and lessee between Landlord and Tenant; no estate shall pass out of Landlord. Tenant's interest shall not be subject to levy or sale, and shall not be assignable by Tenant except as otherwise provided herein. Nothing contained in this Lease shall, or shall be deemed or construed so as to, create the relationship or principal-agent, joint venturers, co-adventurers, partners or co-tenants between Landlord and Tenant; it being the express intention of the parties that they are and shall remain independent contractors one as to the other.

**37. REPRESENTATIONS AND WARRANTIES OF TENANT.**

Tenant, and the individual executing this Lease on behalf of Tenant, hereby represents and warrants to Landlord that: (a) Tenant is a limited liability company, duly organized and validly existing under the laws of the State of Delaware; (b) Tenant has qualified with the Secretary of State of the State in which the Premises are situated to transact business in that State; (c) Tenant has all necessary power and authority to enter into this Lease and has all necessary licenses to conduct its business for the uses contemplated hereunder; and (d) this Lease constitutes a binding and enforceable obligation of Tenant and does not conflict with any provision of Tenant's organizational documents or of any other lease or other agreement to which Tenant is a party or by which Tenant may be bound.

**38. HAZARDOUS SUBSTANCES OR CONDITIONS.**

Tenant shall not use, handle, store and dispose of any Hazardous Materials, on or about the Premises, except in accordance with all applicable laws, and hereby agrees to indemnify, defend and hold Landlord harmless from any claim, liability, loss or damage arising from the improper use, handling, storage or disposal of Hazardous Materials on or about the Premises. Without limitation of the foregoing, Tenant shall promptly provide to Landlord copies of any written notice that Tenant may receive from any governmental authority relating to or alleging any improper use, handling storage or disposal of any Hazardous Materials by Tenant, its employees, agents or contractors on or about the Premises. "Hazardous Material(s)" for purposes of this Lease shall include but not be limited to all toxic or hazardous materials, chemicals, wastes, pollutants or similar substances, including, without limitation, Petroleum (as hereinafter defined), asbestos and/or urea formaldehyde insulation, which are regulated, governed, restricted or prohibited by any Hazardous Materials Laws including, but not limited to, those materials or substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "pollutants" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Clean Air Act, 42 U.S.C. Section 7401 et seq., the Clean Water Act, 33 U.S.C. Section 1251 et seq., and any rules and regulations promulgated thereunder, all as presently or hereafter amended. "Petroleum" for purposes of this Lease shall include, without limitation, oil or petroleum of any kind and in any form including but not limited to oil, petroleum, fuel oil, oil sludge, oil refuse, oil mixed with other waste, crude oil, gasoline, diesel fuel and kerosene.


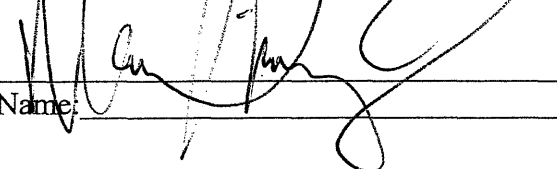
[Remainder of Page Intentionally Left Blank; Signatures Begin on Next Page]


~~IN WITNESS WHEREOF, the parties hereto have executed and sealed this Lease~~  
Agreement to be effective as of the day and date first above written.

**"LANDLORD"**

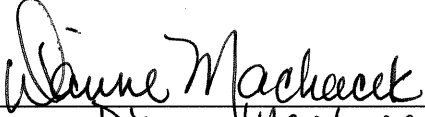
Signed, sealed and Delivered  
in the presence of:

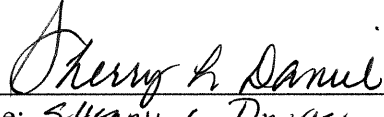
**3P FAMILY INVESTMENTS, LLC, a**  
California limited liability company

  
Name: Crista Gonzalez  
  
Name: \_\_\_\_\_

By:   
Name: Barry K. Pressman  
Title: \_\_\_\_\_


Signed, sealed and Delivered  
in the presence of:

  
Name: Dianne Machacek

  
Name: SHERRY L. DANIEL

"TENANT"

**OTB ACQUISITION LLC**, a Delaware  
limited liability company

By:   
Thomas N. McCord  
Vice President of Real Estate



EXHIBITS AND ADDENDA ATTACHED

Rent Addendum

Exhibit "A" - Legal Description

Exhibit "B" - Subordination, Non-Disturbance and Attornment Agreement

Exhibit "C" - Estoppel Certificate

Exhibit "D" - Memorandum of Lease

**Unit # 240**

**Address: 5901 Quebec Street  
Fort Worth, Texas 76135**

**RENT ADDENDUM  
to  
LEASE AGREEMENT**

THIS RENT ADDENDUM dated \_\_\_\_\_, 2016, by and between 3P Family Investments, LLC, a California limited liability company ("Landlord") and OTB Acquisition LLC, a Delaware limited liability company ("Tenant"), for Unit #240 is attached to and made a part of that certain Lease Agreement by and between Landlord and Tenant of even date herewith (the "Lease"). Notwithstanding any other provision to the contrary which may be contained in said Lease, it is specifically agreed by and between Landlord and Tenant as follows:

1. **Definitions.** Capitalized terms used in this Rent Addendum shall, unless otherwise defined, have the meaning ascribed to them in the Lease.

2. **Annual Rent.**

(a) Beginning on the Rent Commencement Date, Tenant covenants and agrees to pay to Landlord annual rent ("Annual Rent") according to the following schedule:

| <b><u>Lease Year</u></b> | <b><u>Annual Rent</u></b> | <b><u>Monthly Installment</u></b> |
|--------------------------|---------------------------|-----------------------------------|
| 1                        | \$227,500.00              | \$18,958.33                       |

All payments of Annual Rent shall be paid in equal monthly installments paid monthly in advance, on the first (1st) business day of each month.

(b) **Increases in Annual Rent.** Commencing at the end of the first (1st) Lease Year after the Rent Commencement Date, and on each anniversary of such date thereafter during the term of this Lease (and any extension thereof), Annual Rent shall be increased by an amount equal to the previous year's Annual Rent multiplied by one percent (1.00%).

(c) **Partial Months.** If the Rent Commencement Date is on a day other than the first day of a calendar month, then Rent for the partial rental month shall be prorated on a per diem basis and shall be paid by Tenant to Landlord for such month.

3. **Sales/Use Tax.** Tenant shall also pay to Landlord any sales and use tax imposed on any Rent payable hereunder from time to time by state law or any other governmental entity, which sums are due monthly as to monthly Rent payments on the due date of the Rent payment under this Lease.

4. **Late Charges.** In the event any installment of Rent is not received by Landlord within ten (10) days after Tenant's receipt of written notice from Landlord that such installment has not been received before its respective due date, there shall be an automatic late charge due to Landlord from Tenant in the amount of five percent (5%) of such delinquent installment of Rent. All such late charges due hereunder shall be deemed additional rent, and are not penalties but rather are charges attributable to administrative and collection costs arising out of such delinquency. In addition to such late charge, in the event Landlord does not receive Rent when due hereunder, interest at the rate of the maximum rate allowable by law shall be due and payable with respect to such payment from the expiration of any applicable grace period until Landlord receives such Rent.

Initialed for Identification:


By Landlord

By Tenant

4. **Late Charges.** In the event any installment of Rent is not received by Landlord within ten (10) days after Tenant's receipt of written notice from Landlord that such installment has not been received before its respective due date, there shall be an automatic late charge due to Landlord from Tenant in the amount of five percent (5%) of such delinquent installment of Rent. All such late charges due hereunder shall be deemed additional rent, and are not penalties but rather are charges attributable to administrative and collection costs arising out of such delinquency. In addition to such late charge, in the event Landlord does not receive Rent when due hereunder, interest at the rate of the maximum rate allowable by law shall be due and payable with respect to such payment from the expiration of any applicable grace period until Landlord receives such Rent.

Initialed for Identification:

\_\_\_\_\_  
By Landlord

  
\_\_\_\_\_  
By Tenant

## **EXHIBIT "A"**

### Legal Description

#### **5901 Quebec Street, Fort Worth, Texas 76135**

Being a tract of land out of the J. M. Basques Survey, Abstract No.85 and situated in the City of Fort Worth, Tarrant County, Texas, and surveyed by Miller Surveying, Inc. of Hurst, Texas in February 2015, said tract being a portion of Lot 4, Block 1, Landmark Quebec Addition, an addition to the City of Fort Worth, Texas according to the plat thereof recorded as Document No. D214096079 in the Plat Records of Tarrant County, Texas and being more particularly described by metes and bounds as follows:

Beginning at a 1/2 inch capped steel rod found for the most southerly corner of said Lot 4, said rod being in the northwesterly right-of-way line of Northwest Loop 820;

Thence North 33 degrees 15 minutes 42 seconds West with the southwesterly boundary line of said Lot 4 a distance of 236.87 feet to a cross in concrete found for the most westerly corner thereof;

Thence North 56 degrees 44 minutes 18 seconds East with the northwesterly boundary line of said Lot 4 a distance of 261.90 feet to a cross in concrete set;

Thence South 33 degrees 15 minutes 42 seconds East a distance of 236.87 feet to a 1/2 inch "MILLER 5665" capped steel rod set in the southeasterly boundary line of said Lot 4, said rod being in said right-of-way line;

Thence South 56 degrees 44 minutes 18 seconds West with said southeasterly boundary line and said right-of-way line a distance of 261.90 feet to the point of beginning and containing 1.424 acres of land, more or less.

## EXHIBIT "B"

### Form of Subordination, Non-Disturbance and Attornment Agreement

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: Loan Administration  
Loan No. \_\_\_\_\_

### SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

|                     |   |
|---------------------|---|
| 1. Lease            | Lease between Landlord and Tenant dated _____, _____. |
| 2. Landlord         |   |
| 3. Tenant           |   |
| 4. Premises         | As described on Exhibit A                             |
| 5. Premises Address | As described on Exhibit A                             |

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (the "Mortgagee") and Tenant.

#### R E C I T A L S:

A. Landlord and Tenant have entered into a certain Lease relating to a portion of the real property (the "Property") described therein and on the attached Exhibit "A" (the "Premises"); and

B. Mortgagee [has recorded] [is about to record] a mortgage on the Property; and

C. Tenant and Mortgagee desire to establish certain rights, safeguards, obligations, and priorities with regard to their respective interests by means of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagee and Tenant hereby agree as follows:

1. Provided the Lease is in full force and effect and the Tenant is not in default under the Lease (beyond any period given the Tenant to cure defaults), then:

(a) The Tenant's right of possession to the Premises and the Tenant's other rights arising out of the Lease shall not be affected or disturbed by the Mortgagee in the exercise of any of its rights under or related to the Mortgage or the note which it secures.

(b) In the event the Mortgagee or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in the Mortgage, or by conveyance in lieu of foreclosure, the Lease shall not be terminated or affected by the foreclosure, conveyance or sale in any such proceeding. The Mortgagee covenants that any sale of the Property as a result of the exercise of any rights and remedies under the Mortgage, or otherwise, shall be made subject to the Lease and the rights of the Tenant under the Lease, and the Tenant covenants and agrees to attorn the Mortgagee, or such person, as its new landlord, and the Lease shall continue in full force and effect as a direct Lease between the Tenant and the Mortgagee, or such other person, upon all of the terms, covenants, conditions and agreements set forth in the Lease. However, in no event shall the Mortgagee or such person be:

(i) Liable for any act or omission of the Landlord; or

(ii) Subject to any offsets or deficiencies, which the Tenant might be entitled to assert against the Landlord.

2. Subject to the foregoing provisions, the Lease shall be subject and subordinate to the lien of the Mortgage and to all of its terms, conditions and provisions, to all advances made or to be made and to any renewals, extensions, modifications or replacements.

3. Mortgagee hereby consents to any leasehold mortgage or deed of trust (the "Leasehold Mortgage") now or hereinafter entered into by Tenant for the benefit of Tenant's lender (together with its successors and assigns, the "Leasehold Mortgagee") and the liens and security interests evidenced by same and encumbering (among other things) Tenant's leasehold interest under the Lease. In no event shall the Mortgage cover or encumber (and shall not be construed as subjecting in any manner to the lien thereof) any of Tenant's moveable trade fixtures, business, equipment, furniture, signs or other personal property at any time placed on or about the Premises; the Mortgagee and Tenant acknowledging that such property is pledged to the Leasehold Mortgagee as further security for the obligations of Tenant under the Leasehold Mortgage.

4. The above provisions shall be self-operative and effective without the execution of any further instruments on the part of either party. However, the Tenant agrees to execute and deliver to the Mortgagee or to any other person to whom the Tenant agrees to attorn such other instruments as either shall reasonably request in order to comply with these provisions.

5. This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest and by Leasehold Mortgagee.

6. This Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns (including (with respect to Tenant) the Leasehold Mortgagee and any other person which acquires rights in or title to Tenant's leasehold interest under the Lease).

To indicate their agreement to the above, the parties or their authorized representatives or officers have signed this document under seal as of the day and year first above written.

**"LENDER"**

\_\_\_\_\_, a  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**"LANDLORD"**

**3P FAMILY INVESTMENTS, LLC**, a California  
limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**"TENANT"**

**OTB ACQUISITION, LLC**, a Delaware limited  
liability company

By: \_\_\_\_\_  
Thomas N. McCord  
Vice President of Real Estate