

STIPULATION OF TERM OF LEASE

CHIPOTLE SITE: Northwest Expressway

STORE #: 1232

THIS STIPULATION OF TERM OF LEASE (this "Stipulation") is executed as of this 11 day of February, 2009 by **Chipotle Mexican Grill of Colorado, LLC**, a Colorado limited liability company ("Tenant") and **BR Midland Center, LLC**, a Delaware limited liability company ("Landlord"), with respect to that certain Lease dated June 18, 2008, as the same may have been amended (the "Lease") pursuant to which Tenant has leased from Landlord certain premises consisting of approximately 2,715 square feet and being known generally by street and number as 3315 NW Expressway, Suite A located in Oklahoma City, Oklahoma (the "Premises").


In consideration of the mutual covenants and agreements set forth in the Lease, Landlord and Tenant hereby acknowledge and stipulate as follows:

1. All initially capitalized terms used herein shall have the meanings set forth for such terms in the Lease.
2. The initial term of the Lease is ten (10) years. Tenant has a total of four (4) options to extend the Term of the Lease for five (5) years each.
3. The Possession Date occurred on July 2, 2008.
4. The Rent Commencement Date occurred on November 28, 2009.
5. The initial term expires on November 30, 2019.
6. If properly exercised by Tenant, the first extended term shall commence on December 1, 2019 and expire on November 30, 2024. Tenant must give written notice of its exercise of the first extended term on or before September 2, 2019.
7. If properly exercised by Tenant, the second extended term shall commence on December 1, 2024 and expire on November 30, 2029. Tenant must give written notice of its exercise of the first extended term on or before September 2, 2024.
8. If properly exercised by Tenant, the third extended term shall commence on December 1, 2029 and expire on November 30, 2034. Tenant must give written notice of its exercise of the first extended term on or before September 2, 2029.
9. If properly exercised by Tenant, the fourth extended term shall commence on December 1, 2034 and expire on November 30, 2039. Tenant must give written notice of its exercise of the first extended term on or before September 2, 2034.
10. The Lease is unmodified and in full force and effect.

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Stipulation as of the date first set forth above.


TENANT:

CHIPOTLE MEXICAN GRILL OF COLORADO, LLC, a Colorado limited liability company

By: 
Rex Jones, Chief Development Officer

LANDLORD:

BR MIDLAND CENTER, LLC, a Delaware limited liability company

By: 
Name: Brandon R. Jensen
Title: Managing Member

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease"), is entered into as of June 13, 2008 (the "Effective Date"), between **BR MIDLAND CENTER, LLC**, a ~~California~~ ^{Delaware} limited liability company ("Landlord") and **CHIPOTLE MEXICAN GRILL OF COLORADO, LLC**, a Colorado limited liability company ("Tenant"). *Am*

**ARTICLE 1
BASIC TERMS**

1.1 In all instances, the basic terms set forth in this Article 1 are subject to the main body of the Lease.

Estimated Initial Monthly Payment:	Base Rent	\$ 6,787.50	[\$30.00/square foot/year]
	Estimated Taxes (Article 12)	\$ 203.63	[\$ 0.90/square foot/year]
	Estimated Insurance (Section 13.3)	\$ 113.13	[\$ 0.50/square foot/year]
	Estimated Common Area Charges (Article 10)	\$ 244.35	[\$ 1.08/square foot/year]
	Total	\$ 7,348.61	[\$32.48/square foot/year]

Base Rent:	Lease Year	Per Square Foot	Per Month
	1-5	\$30.00	\$ 6,787.50
	6-10	\$33.00	\$ 7,466.25
First Extended Term	11-15	\$36.30	\$ 8,212.88
Second Extended Term	16-20	\$39.33	\$ 8,898.41
Third Extended Term	21-25	\$43.92	\$ 9,936.90
Fourth Extended Term	26-30	\$48.32	\$ 10,932.40

Landlord's Broker: CB Richard Ellis

Tenant's Broker: The Palmer Company

Landlord's Notice Address: c/o CBRE/Oklahoma
1200 NW 63 St. Ste. 300
Oklahoma City, OK 73116

Rent Payment Address: PO Box 51089
Los Angeles, CA 90051-5389

Tenant's Mailing Address: Chipotle Mexican Grill, Inc.
1543 Wazee Street, Suite 200

Denver, Colorado 80202
Attn: Real Estate Legal Department

with a copy to:

Messner & Reeves, LLC
1430 Wynkoop Street, Suite 400
Denver, Colorado 80202
Attn: Jason T. Moilanen, Esq.

Existing Tenant: N/A

Possession Date: Defined in Article 7.

Premises: Approximately 2,715 square feet

Premises Address: 3315A NW Expressway, Oklahoma City, Oklahoma 73112

Center: Midland Center

Rent Commencement Date:
(Article 7) The Rent Commencement Date shall be the date which is the later of: (a) one hundred and fifty (150) days after the Possession Date, or (b) the date which is ten (10) calendar months after Tenant opens for business to the public at the Premises.

Tenant's Proportionate Share: Six and forty-five hundredths percent (6.45%)

Term:
(Article 3) Primary Term: Ten (10) Lease Years, commencing on the Rent Commencement Date.

First Extended Term: Five (5) Lease Years

Second Extended Term: Five (5) Lease Years

Third Extended Term: Five (5) Lease Years

Fourth Extended Term: Five (5) Lease Years

Permitted Use: A "Chipotle" restaurant serving specialty burritos and tacos, and other items generally served in a "Chipotle" restaurant including, at Tenant's option, alcoholic beverages, and for any other lawful purpose.

Exclusive Use: Subject to Section 5.6, the sale of burritos, wraps, fajitas or tacos.

Guarantor: Chipotle Mexican Grill, Inc.

ARTICLE 2 LEASE OF PREMISES

2.1 For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord hereby leases, demises and lets to Tenant, and Tenant hereby leases, hires and takes from Landlord the Premises, consisting of a portion of the building (the "Building") located in the County of Oklahoma, State of Oklahoma, in the Center and situated on the real

property owned or controlled by Landlord, which real property is legally described on **Exhibit A-1** attached hereto and incorporated herein by reference and outlined on **Exhibit A**. Landlord represents that the legal description attached as **Exhibit A-1** substantially describes the Center as outlined on **Exhibit A**. The site plan for the Center is shown on **Exhibit A** attached hereto. The dimensions of the Premises are shown on **Exhibit B** attached hereto, and the Landlord hereby confirms the accuracy of the dimensions of the Premises as shown on such **Exhibit B**. After delivery of possession of the Premises by Landlord, Tenant shall have the right to have the Premises measured by Tenant's architect. The certification by Tenant's architect with respect to the actual square footage of the Premises shall be conclusive and binding. If such remeasurement accurately discloses that the size of the Premises is greater or less than the amount stated herein, the Base Rent, Tenant's Proportionate Share and the Tenant Improvement Allowance shall be recalculated accordingly; provided, however, that in no event shall the Premises be deemed to contain more than 102% of the square footage described in Article 1, and in the event that the Premises are determined to contain 98% or less of the approximate square footage described in Article 1, Tenant shall have the right to terminate this Lease. The square footage of the Premises shall be calculated in accordance with BOMA standards and shall be calculated from the exterior of outside walls and the center of common walls and shall not include any columns, staircases, mechanical rooms or other obstructions.

2.2 In addition to the Premises, Tenant shall be permitted to create a patio area of not less than 300 square feet for Tenant's exclusive use for outside dining with, at Tenant's option, tables, chairs, umbrellas, lights, speakers, trash receptacles and a misting system, all in accordance with Tenant's specifications, adjacent to the Premises as determined by Tenant and Landlord, subject to the city's approval of Tenant's seating plan. The patio area constitutes a portion of the Premises, however, no additional rent or charges are payable for the use thereof. Tenant shall have the right to enclose the patio area, without Landlord's consent, by installing a railing or other appropriate barrier.

ARTICLE 3 TERM

3.1 Tenant shall lease the Premises for the Primary Term and, if Tenant exercises one or more Extension Options, for one or more Extended Terms.

3.2 Tenant shall have four (4) options (collectively, the "Extension Options," and each, an "Extension Option") to extend the Term of this Lease for the Extended Terms. The exercise of an Extension Option shall operate to extend this Lease upon the same terms and conditions except for the amount of Base Rent, which shall be increased as set forth in Section 1.1. Tenant may exercise an Extension Option by sending notice thereof to Landlord at least ninety (90) days prior to the Expiration Date of the Primary Term or then current Extended Term, as applicable. Notwithstanding the foregoing, Tenant's right to any Extended Term will not lapse because of Tenant's failure to exercise any option to extend unless Landlord first will have given Tenant notice that Tenant has failed to exercise such option to extend, and Tenant does not exercise such option to extend within thirty (30) days following Tenant's receipt of Landlord's notice. The Primary Term and any Extended Terms are sometimes collectively referred to herein as the "Term".

3.3 When the Rent Commencement Date determined, upon the written request of either party, Landlord and Tenant shall enter into a supplement to this Lease, which shall specify the Expiration Date for the Primary Term and the Rent Commencement Date, in the form of the Stipulation of Term of Lease attached hereto as **Exhibit E**.

3.4 "Expiration Date" shall mean 11:59 p.m. on the date that is the last day of the tenth (10th) Lease Year for the Primary Term; the date that is five (5) years after the Expiration Date of the Primary Term for the first Extended Term, if applicable; and the date that is five (5) years after the Expiration Date of the first Extended Term for the second Extended Term, if applicable; and the date that is five (5) years after the Expiration Date of the second Extended Term for the third Extended Term, if applicable; and the date that is five (5) years after the Expiration Date of the third Extended Term for the fourth Extended Term, if applicable.

3.5 "Lease Year" shall mean a twelve-month period. The first Lease Year begins on the Rent Commencement Date and will end on the last day of the twelfth (12th) month following the Rent Commencement Date.

ARTICLE 4 BASE RENT

4.1 Tenant agrees, except as otherwise provided in this Lease, to pay monthly Base Rent, in advance, at Landlord's address on or before the first (1st) day of each calendar month during the Term of this Lease. Tenant's obligation to pay Base Rent shall commence on the Rent Commencement Date. If the Rent Commencement Date is not the first day of a calendar month, the first month's Base Rent shall be prorated on the basis of a thirty (30) day month, and shall be payable with the first full monthly Base Rent due hereunder. Landlord's address for purposes of payment of Base Rent shall be as set forth in Section 1.1 above, or as from time to time designated in writing to Tenant. For the purposes of this Lease, Base Rent and Tenant's Proportionate Share of Common Area Charges and Taxes shall collectively be referred to herein as "Rent".

ARTICLE 5 USE OF PREMISES

5.1 The Premises may be used and occupied by Tenant for the Permitted Use.

5.2 Neither Landlord nor Tenant shall do nor permit to be done in, on or about the Premises anything which is illegal or unlawful, or which is of a hazardous or dangerous nature, or which will increase the rate of or cause cancellation of any insurance on the Center, unless Tenant or Landlord, as the case may be, specifically agrees to pay any such increase on insurance.

5.3 Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises, nor commit any waste therein or thereon. Tenant, during its hours of operation, shall be allowed to play music within the Premises, and on any outdoor seating area of the Premises, and Landlord agrees that such music does not constitute a nuisance. Landlord understands that some odors and smoke are associated with the operation of a "Chipotle" restaurant and that the presence of such odors and smoke shall not constitute a breach of this Lease or a violation of any rules or regulations of Landlord and shall not be deemed noxious or offensive. Tenant shall not use or

permit the use of the Premises or any part thereof as living or sleeping quarters. Tenant shall operate its business in such manner at such hours as Tenant considers proper in Tenant's reasonable business judgment and may close for any reason whatsoever, including without limitation, for the following holidays: New Year's Day, Easter Sunday, July 4th, Thanksgiving Day, Christmas Day and any other holidays recognized by Tenant.

5.4 Unless specifically delineated to the contrary herein, Tenant agrees that, at its own cost and expense, it will comply with and conform to all laws and ordinances and any and all lawful requirements including ADA requirements and orders of any properly constituted governmental board of authority which relate to: (i) the physical condition of Tenant improvements constructed by Tenant; and (ii) repairs and maintenance required by Tenant's operation upon the Premises. Tenant shall, in no event, be responsible to make any structural repairs, improvements or alterations to the Premises or the Building in order to comply with the requirements of this Section. However, if structural repairs, improvements or alterations to the Premises are required by law due to Tenant's use and occupancy of the Premises, Landlord shall be required to make such repairs, improvements or alterations and may bill Tenant for the reasonable costs thereof.

5.5 Notwithstanding anything contained herein to the contrary, in no event shall Tenant be obligated to perform, pay for, or reimburse Landlord for any repairs, replacements or alterations mandated or required by any governmental authority unless caused by Tenant's operations or improvements on the Premises.

5.6 For the Term of this Lease, Tenant shall have the exclusive right to sell burritos, wraps, fajitas and tacos at the Center and neither Landlord nor its affiliates or successors or assigns shall permit or suffer any other tenant in the Center to engage in the Exclusive Use. The foregoing shall not apply to any tenants of the Center with leases in effect as of the Effective Date. Notwithstanding anything in the Lease to the contrary, in the event any leases in existence as of the Effective Date, and any amendments, extensions and renewals thereof, do not allow the tenant to sell items specified in the Exclusive Use or require Landlord's consent to a change in use, Landlord shall not consent to a change in such tenant's use which would allow such tenant to begin selling items specified in the Exclusive Use. Landlord agrees to enforce Tenant's rights under this Section against other tenants in the Center using all reasonable legal means. Landlord covenants that leases in the Center dated later in time to the date this Lease is fully executed shall require those tenants to honor Tenant's rights hereunder. Landlord understands that its breach of this provision will cause Tenant irreparable harm for which Tenant has no adequate legal remedy, and that in the event of such breach, Tenant shall be entitled to immediately abate 50% of its Rent, provided that fifteen (15) days prior written notice has been given to Landlord to cure, and shall be entitled to injunctive relief as well as all other remedies available at law or equity. If the breach of this provision is not cured within 180 days from the date of such breach, and prior written notice has been given to Landlord to cure as set forth above, then Tenant shall have the right to terminate this Lease and recover from Landlord the costs of Tenant's leasehold improvements to the Premises as of the date of such breach, decreased by amortization, based on the straight line method of amortization, over a period equal to the length of the Term of the Lease (including any Extension Options), but not to exceed twenty (20) years.

5.7 Landlord shall not lease space to a gym or health club within the Center without Tenant's prior written consent, which consent cannot be unreasonably withheld.

ARTICLE 6
CONTINGENCIES

6.1 In the event that Tenant has not received, prior to the Rent Commencement Date ("Approval Period") any and all necessary and required local, state, federal and private permits, licenses, variances, consents and approvals (collectively "Approvals") which give Tenant the ability to construct Tenant's initial improvements to the Premises and do business as a "Chipotle" restaurant including, without limitation, building permits, a liquor license to allow Tenant to sell liquor at the Premises, Approvals relating to the patio area, and Approvals relating to Tenant's signage, Tenant shall have the right, at its sole option, to terminate this Lease by notifying Landlord in writing of its election to so terminate. Notwithstanding anything herein to the contrary, Tenant shall have the right to extend the Approval Period until such time as all the applicable authorities have made a formal decision and all applicable appeal periods have expired. Upon such termination, both parties shall be released from any further obligations hereunder, except that Landlord shall promptly refund any amount paid to it by Tenant hereunder. Landlord shall assist Tenant in obtaining all necessary Approvals.

ARTICLE 7
DELIVERY OF THE PREMISES

7.1 The "Possession Date", as used herein, shall be deemed the later of (a) the date upon which Tenant obtains the necessary building and use permits to construct Tenant's initial improvements to the Premises, and conduct business as a "Chipotle" restaurant, or (b) the date that Landlord delivers exclusive possession of the Premises, and all keys thereto, free, clear and unencumbered of all tenancies and parties in possession. On or before the Possession Date, the Landlord hereby agrees to deliver possession of the Premises to Tenant free, clear and unencumbered of all tenancies and parties in possession.

7.2 Landlord acknowledges that Tenant intends to start construction of Tenant's improvements on June 18, 2008 and that a delay in delivery of the Premises beyond such date will cause Tenant to suffer certain losses, including, by way of illustration and not of limitation, lost profits, construction start up and delay costs and wages and benefits for store personnel, the amount of which is impossible to quantify as of the date of this Lease. Notwithstanding anything herein to the contrary, in the event that Landlord fails to deliver exclusive possession of the Premises to Tenant, and all keys thereto, free, clear and unencumbered of all tenancies and parties in possession to Tenant within seven (7) days of June 18, 2008 then Tenant shall receive one (1) day free Rent for each twenty-four hour period beyond June 18, 2008 to the day the Premises are delivered to Tenant. In the event the Landlord fails to deliver exclusive possession of the Premises to Tenant, and all keys thereto, in, free, clear and unencumbered of all tenancies and parties in possession for any reason (including, without limitation, force majeure) on or before November 18, 2008 Tenant may, but shall not be obligated to, without liability or further obligation to Landlord: (i) terminate this Lease and receive a refund of any and all amounts previously paid by Tenant to Landlord; or (ii) continue to accrue additional free rent at the rate set forth above.

7.3 Except as otherwise set forth herein, on or before the Possession Date, Landlord shall deliver the Premises to Tenant in its "as-is" condition. Landlord shall provide Tenant with written notice of the date upon which the Premises will be free, clear and unencumbered of all

tenancies and parties in possession at least thirty (30) days prior to such date ("Notice of Possession")

7.4 Tenant shall have the right, from and after the date hereof, to have access to the Premises for the purpose of inspecting and measuring the Premises and preparing drawings.

ARTICLE 8 CONDITION OF THE PREMISES

8.1 Landlord shall deliver the Premises to Tenant clean and free of debris on the Possession Date. In the event that it is determined by Tenant that this warranty has been violated, then it shall be the obligation of Landlord, after receipt of written notice from Tenant setting forth with specificity the nature of the violation, to promptly rectify such violation, at Landlord's sole cost and expense. Landlord hereby assigns to Tenant, or at Tenant's option, will diligently enforce, all of the warranties provided to Landlord by manufacturers of all the equipment on the Premises, including, without limitation, the HVAC systems and the roof.

8.2 Landlord represents and warrants to Tenant that as of the Possession Date, the Center, the Building and the Premises comply in all respects with applicable building codes, governmental ordinances and regulations, including, but not limited to, the ADA, and that parking for the Premises complies with all governmental requirements, that the zoning for the Premises is such that Tenant may utilize the Premises for restaurant purposes and that the Premises do not violate any covenants or restrictions of record. If it is determined that this warranty has been breached, then it shall be Landlord's obligation to promptly rectify such violation, at Landlord's sole cost and expense.

ARTICLE 9 MAINTENANCE AND REPAIRS

9.1 During the Term of this Lease and any extensions thereof, Landlord, at its sole cost and expense, shall maintain in good order, condition and repair (including replacements and upgrades thereof), the foundations, subflooring, footings, walls, all unexposed plumbing, all structural elements of the Premises, all mechanical equipment not serving the Premises exclusively, all heating, ventilating and air-conditioning equipment not serving the Premises exclusively and the roof (including its waterproof membrane) of the Premises in a watertight condition, and as necessary, or when required by governmental authority, shall make modifications or replacements thereof. Landlord shall commence repair work within five (5) days after written notice of a condition requiring repair, and shall prosecute it diligently to completion. If the condition requiring a Landlord repair constitutes an emergency or hazardous condition or if the condition creates an unreasonable interference with Tenant's business, then Landlord shall commence such repair immediately following telephonic notice from Tenant of such condition, with written notice from Tenant of such condition to follow. If Landlord fails to make any repair required of it hereunder within thirty (30) days after Landlord's receipt of written notice Tenant may make such repair, charge Landlord with the costs thereof and, at its option, offset such costs against any payments owed or which become due to Landlord.

9.2 Except as otherwise provided in this Lease and after any applicable warranty period, Tenant shall repair and maintain as necessary all parts of the Premises not Landlord's responsibility in this Lease (except for ordinary wear and tear, loss by fire or other casualty or damage caused by Landlord), including all HVAC equipment and mechanical equipment serving the Premises exclusively. Notwithstanding anything contained herein to the contrary, Tenant shall not be responsible for any repair or improvement necessitated by the negligence or willful misconduct of Landlord, its agents, employees or servants under this Lease, or by the breach of or failure of Landlord to perform any of its covenants, obligations or agreements.

9.3 Landlord warrants and represents that it shall not exercise its control of the Center in any way, or take any action, or allow any action to be taken, whether temporary or permanent, which shall restrict access to, or visibility of, the Premises or Tenant's signs, impair in any way the operation of Tenant's business or affect in any way the number of parking spaces or location thereof or the ingress or egress including any driveways which are adjacent to or in the proximity of the Premises. Upon any breach of this warranty by Landlord, Tenant may, in Tenant's sole discretion, upon ten (10) days written notice to Landlord and opportunity to cure, remedy said restriction of access or visibility, impaired or affected business operation or parking, or ingress or egress at Tenant's sole discretion and deduct the cost thereof from Base Rent or other sums due Landlord from Tenant until said cost, and all related out of pocket expenses, are paid in full. Landlord acknowledges and agrees that, during the Term, Tenant shall have the right to have at least the number of seats shown on Tenant's plans for its initial improvements to the Premises (including outdoor patio seating) approved by Landlord. Landlord represents and warrants that during the Term, it will neither do, nor cause, anything to be done that would reduce the number of seats available to Tenant under this Lease or reduce the number of seats below that which is required by law.

ARTICLE 10 COMMON AREAS; COMMON AREA CHARGES

10.1 The term "Common Areas" means the parking areas, roadways, pedestrian sidewalks, mall whether open or closed, delivery areas, trash removal areas, landscaped areas, security areas, public washrooms and all other areas or improvements that may be provided by Landlord for the common use of tenants in the Center.

10.2 Landlord shall have the obligation to take appropriate action, including the posting of signs in the Common Areas, to discourage non-customer use. Landlord shall exercise its control of the Common Areas in such a manner so as to preclude, to the extent practicable, any impairment of visibility or access to the Premises, or closure of parking spaces or other interference with the operation of Tenant's business. Landlord shall keep the Common Areas in a neat, clean and orderly condition, properly surfaced, painted, landscaped and lighted in a manner consistent with a first class shopping center in **Oklahoma City, Oklahoma**, with sufficient casualty and liability insurance, and shall promptly repair any damage thereto.

10.3 Beginning on the Rent Commencement Date, Tenant agrees to pay Tenant's Proportionate Share of the actual, reasonable and necessary out of pocket costs incurred by Landlord directly attributable to maintaining, insuring and repairing the Common Areas of the Center (the "Common Area Charges"). Landlord shall use its best efforts to minimize Common

Area Charges in a manner consistent with good business practices, and there shall be no duplication in charges to Tenant. All Common Area Charges shall be based upon competitive charges for similar services and/or materials that are available in the general vicinity of the Center.

10.4 Common Area Charges shall not include, however: (a) leasing commissions and advertising expenses or any other costs incurred by Landlord in procuring new tenants; (b) costs disbursements and other expenses incurred in negotiations or disputes with tenants or prospective tenants; (c) renovating or improving space for tenants or other occupants; (d) depreciation and amortization of the Center; (e) interest, principal payments and financing costs incurred in connection with any debt associated with the Center; (f) major renovations to the Center; (g) repairs that are covered under warranties by either manufacturer of materials incorporated into any building located in the Center or developer of the Center; (h) replacements that have a useful life of more than three (3) years; (i) legal fees; (j) expenses paid by any tenant directly to third parties or those which Landlord is otherwise actually reimbursed by any third party or by insurance proceeds; (k) parking facilities' expenses, if charge is made for parking; (l) costs of a capital nature including, but not limited to, capital improvements, capital repairs, structural repairs, capital equipment, capital tools as determined in accordance with generally accepted accounting principles and/or the equivalent costs and fees of leasing or renting same; (m) advertising and promotional expenditures; (n) the costs of correcting any code violations; (o) any other expense that according to generally accepted accounting principles is not considered a normal maintenance or operating expense; (p) costs of replacing the roof of the Premises or any part of the Center; (q) the costs of completely resurfacing the parking lot that serves the Premises, provided, however, Landlord shall be permitted once every five (5) Lease Years to include the cost for resurfacing the parking lot in Common Area Charges for the Lease Year in which the resurfacing was performed (r) management and administrative fees which are duplicative or do not represent costs incurred for actual services; (s) interest, fines or penalties payable due to the failure of the Landlord to pay taxes, utilities or other charges in a timely manner; (t) expenses for the defense of the Landlord's title to the Center, or any part thereof; (u) any amounts expended by Landlord as environmental response costs for removal, enclosure, encapsulation, clean-up, remediation or other activities regarding Landlord's compliance with federal, state, municipal or local hazardous waste and environmental laws, regulations or ordinances; (v) costs to correct original defects in the design, construction or equipment of or latent defects in the Center, or any part thereof; (w) any other amounts as a result of Landlord's violation or failure to comply with any governmental regulations and rules or any court order, decree or judgment; (x) rental on ground leases or other underlying leases; or (y) the cost of earthquake or flood insurance.

10.5 Landlord shall deduct in each calendar year from the Common Area Charges any amounts recovered from insurers of damage claims relating to the Common Areas and amounts recovered from third parties for damages to the Common Areas.

10.6 Tenant shall pay its share of the Common Area Charges in equal monthly installments. The estimate of the Common Area Charges for the first Lease Year is set forth in Section 1.1, and Tenant shall, initially, pay its share on the basis of such estimate. On or before April 15 of each calendar year, Landlord shall forward to Tenant a detailed statement, certified

correct by Landlord, showing the Common Area Charges for the immediately preceding calendar year. Such statement shall be accompanied by reimbursement of any over-payment or by an invoice for any under-payment which shall be payable within thirty (30) days of receipt by Tenant. After the first calendar year, Tenant's estimated payments shall be based on the actual Common Area Charges for the previous calendar year, prorated if applicable.

10.7 Tenant, upon reasonable notice to Landlord, but no more than one (1) time in any calendar year, shall have the right to audit all of Landlord's bills and records relating to the Common Area Charges and Taxes. If Tenant's audit correctly reveals that Tenant's payments for the Common Area Charges or Taxes were excessive, Landlord shall promptly reimburse Tenant for such amount, or, at Tenant's option, Tenant may offset such overpayment from any charge required to be made by Tenant hereunder. In addition, if Tenant's audit correctly reveals that Tenant's payments for the Common Area Charges or Taxes exceed the actual Common Area Charges or Taxes by more than 5%, Landlord, shall in addition, pay all of Tenant's costs and expenses relating to the audit.

10.8 Tenant shall have no obligation to pay any franchise, excise, estate, inheritance, income or similar tax which may become payable by or imposed against Landlord or against the rents under this Lease or upon the income or profits of Landlord by reason of any law now in force or later enacted. Tenant shall not be liable for any special assessment or similar tax, levied, assessed, imposed or approved prior to or during the term of this Lease.

10.9 Notwithstanding anything herein to the contrary, if Landlord fails to bill Tenant for any Common Area Charges, Taxes or insurance charges within twenty four (24) months of the date that such charges are incurred, then Tenant shall not be required to pay such Common Area Charges, Taxes or insurance charges.

10.10 Tenant shall also have the nonexclusive use of the Common Areas and all rights, privileges, easements, appurtenances in, over and upon adjoining and adjacent public and private land, highways, roads and streets reasonably required for ingress or egress to or from the Premises by Tenant, its agents, servants, employees, contractors, customers and invitees and all others related to Tenant's use and occupancy of the Premises.

10.11 Tenant, its agents, servants, employees, contractors, customers and invitees shall be permitted to park, at no cost to Tenant, in a non-exclusive area in the Common Areas designated for parking. Landlord shall provide two (2) parking spaces directly in front of the Premises (as marked and shown on **Exhibit A**) dedicated for take-out orders for the exclusive use of Tenant's customers at no additional charge to Tenant, and Tenant shall have the right to post signs designating such use, at its sole cost and expense, on said parking spaces.

10.12 "Tenant's Proportionate Share", as defined in Section 1.1, may be expressed as a fraction, the numerator of which is the rentable area of the Premises, and the denominator of which is the rentable area of the Center, whether occupied or not. The Center consists of one (1) in line building containing a total rentable area of 42,113 square feet. If the number of square feet of rentable floor area in the Center increases during the Term, then Tenant's Proportionate Share shall be adjusted accordingly. Notwithstanding anything herein to the contrary, in no event shall Tenant's Proportionate Share increase unless the Center's total square feet of rentable floor

area is reduced by condemnation or casualty event, which square footage the City will not permit the Landlord to repair or replace and in no event shall the square footage of the Center used in the denominator for purposes of calculating Tenant's Proportionate Share be less than the square footage of the Center shown on **Exhibit A**.

10.13 Tenant's Proportionate Share of Common Area Charges and Tenant's Proportionate Share of Taxes under Section 12.1, for the first full Lease Year shall not collectively exceed \$2.48 per square foot of floor area in the Premises. Notwithstanding anything contained herein to the contrary, the increase in Tenant's Proportionate Share of Common Area Charges for each subsequent Lease Year shall not exceed the lesser of: (i) the actual increases in the costs comprising the Common Area Charges; or (ii) ten (10%) percent of the Common Area Charges actually paid by Tenant for the previous Lease Year (excluding Taxes, insurance, utilities and snow and ice removal costs which shall not be subject to the cap but shall increase at a rate that such costs actually increase).

ARTICLE 11 UTILITIES

11.1 Tenant shall stub all utilities to the Premises in accordance with Tenant's plans and shall provide separate meters for all of Tenant's utilities. Tenant, at its own cost and expense, shall pay for all separately metered water, gas, heat, electricity, sewer charges, telephone, and any other utility or service charge related to its occupancy of the Premises. If through the fault of Landlord, its agents, contractors or employees, Tenant is unable to use the Premises as a result of interruption in utilities for more than 72 consecutive hours, the Base Rent and all other charges payable hereunder shall abate as set forth in Article 25 hereof until the utilities are restored, and Landlord agrees that it shall commence such repairs as soon as possible and diligently pursue such repairs to completion. If Landlord fails or neglects to make such repairs, Tenant shall have the right, but not the obligation, to make such repairs, and Tenant may offset the cost of such repairs against any charge to be paid by Tenant hereunder, including Base Rent. The cost of the repairs will be paid by Landlord or deducted from payments required under this Lease. During the Term, Tenant shall have the right to sufficient utilities and ventilation necessary to support its intended use of the Premises.

11.2 Landlord shall provide a concrete pad adjacent to the Premises in the location shown on **Exhibit A** sufficient in size to accommodate Tenant's trash receptacle and Grease Receptacle (as hereinafter defined). Tenant shall have the exclusive use of such concrete pad. Tenant shall provide its own trash receptacle and contract independently for its trash removal service. Tenant shall also have the right to locate a 4' x 5' grease receptacle ("Grease Receptacle") for Tenant's exclusive use within such concrete pad trash enclosure.

11.3 Landlord represents and warrants that all services and hook-ups will be currently paid as of the Possession Date.

ARTICLE 12
REAL ESTATE TAXES

12.1 In addition to Base Rent, Tenant agrees to pay Tenant's Proportionate Share of the amount of property taxes and assessments levied against the Center ("Taxes") for any year during the period between the Rent Commencement Date and the expiration of the Term of this Lease (the "Payment Period"). There shall be excluded from Taxes to which Tenant contributes (a) income, excess profits, estate, single business, inheritance, succession, transfer, franchise, capital or other tax assessment upon Landlord or the rentals payable under this Lease; or (b) Taxes on any part of the Center which are payable pursuant to a separate assessment. On or before the first day of the Term of this Lease, or as soon after that day as practicable, Landlord will give Tenant written notice of Landlord's estimate of the amount payable under this Section 12.1 for the remainder of that calendar year. Before the end of March of each calendar year or as soon after March 18, 2008 as practicable, Landlord will give Tenant notice of its estimate of the payments to be made pursuant to this Section 12.1 for the ensuing calendar year. On or before the first day of each month during the ensuing calendar year, Tenant will pay to Landlord one-twelfth (1/12th) of the estimated amount; however, if the notice is not given in December, Tenant will continue to pay on the basis of the prior year's estimate until the month after the notice is given. If at any time or times it reasonably appears to Landlord that the payments to be made under this Section 12.1 for the current calendar year will vary from its estimate by more than 5%, Landlord will, by notice to Tenant, revise its estimate for the year, and subsequent payments by Tenant for the year will be based upon the revised estimate. Tenant shall not be responsible for any interest, late charge or other penalty resulting from Landlord's late payment or non-payment of Taxes, except to the extent caused solely by Tenant's delinquent payment, nor any administrative or other charge which may be claimed by Landlord.

12.2 Within ninety (90) days after the close of each calendar year, or as soon after the ninety (90) day period as practicable, Landlord will deliver to Tenant: (i) copy of the tax bill(s) applicable to the Premises and Common Areas; and (ii) a statement of the payments made or to be made under Section 12.1 for the calendar year that has been prepared on the basis of such statement. If on the basis of such statement Tenant owes an amount that is less than the estimated payments for the calendar year previously made by Tenant, Landlord will credit the excess to the next succeeding monthly installment of Base Rent or, at Tenant's option, refund the excess to Tenant immediately. If on the basis of those statements Tenant owes an amount that is more than the estimated payments for such calendar year previously made by Tenant, Tenant will pay the deficiency to Landlord within thirty (30) days after delivery of those statements.

12.3 Landlord warrants and represents that as of the Rent Commencement Date, there are no pending general or special assessments on the Premises, and that all such assessments shall be paid current as of such date. Taxes for the tax year containing the Rent Commencement Date shall be prorated as of the Rent Commencement Date and taxes for the last year of the Term hereof shall be prorated as of the expiration of the Term so that Tenant shall only pay for such taxes which relate to the tax period included within the Payment Period.

12.4 With respect to any assessment which may be levied against or upon the Center or any portion thereof or which under the laws then in force may be evidenced by improvement or other bonds, or may be paid in installments, only the amount of such installment and statutory

interest shall be included within the computation of the annual taxes and assessments levied against the Center or any portion thereof; provided, however, that Tenant shall not be required to pay or reimburse Landlord for any special assessments which are levied or assessed by a special assessment district which is formed, directly or indirectly, by Landlord for the purpose of constructing or acquiring on-site or off-site improvements, and which special assessment district would not customarily or typically be formed by developers of projects similar to the Premises as a method to finance the construction or acquisition of on-site or off-site improvements, or which is formed after the date of execution of the Lease. Tenant shall have the right to pay under protest any assessment which increases the amount of Tenant's real estate taxes and assessments and to contest any such assessment subsequent to payment with the applicable governmental authorities. Any refund of any tax or assessment (including interest and penalties) which has been paid by Tenant, and which is allocable to the Premises, shall belong to Tenant.

12.5 In connection with performing an audit of Common Area Charges as specified in Article 10 above, Tenant shall have the right to audit Landlord's or Landlord's agent's records pertaining to Taxes in accordance with the terms of Section 10.7.

ARTICLE 13 INSURANCE

13.1 Tenant shall at all times during the Term hereof and at its own cost and expense procure and continue in force a policy of commercial general liability insurance (also known as broad form comprehensive general liability insurance), insuring against liability for bodily injury, property damage and personal injury arising out of the use, operation or occupancy of the Premises in an amount of not less than Three Million Dollars (\$3,000,000.00), combined single limit. Tenant shall provide to Landlord upon written request a Certificate of Insurance reflecting such coverage. Landlord shall be named as an additional insured on such policy.

13.2 Tenant shall procure and maintain at all times during the Term of this Lease at its sole cost and expense, "Special Form" property insurance coverage, with standard exceptions, covering its fixtures, equipment and personal property located on the Premises, together with insurance against vandalism and malicious mischief. Landlord shall have no interest in the proceeds of insurance maintained by Tenant under this Section 13.2 and will sign all documents which are necessary or appropriate in connection with the settlement of any claim or loss by Tenant.

13.3 Landlord agrees to insure or caused to be insured the Building, the Center and all improvements owned by Landlord or not, but excluding anything insured by Tenant in Section 13.2 above against loss or damage by any perils covered by a standard broad form all risk property insurance policy in an amount equal to the full replacement value. Landlord shall also maintain commercial general public liability insurance against claims for personal injury, death or property damage occurring in, on or about the Common Areas, the Center, portions of the Building not leased to Tenant and the sidewalks and areas adjacent to the Premises and the Center under Landlord's control to afford protection to the minimum limit of Three Million Dollars (\$3,000,000.00) for any personal injury, death or property damage. Subject to Article 22, all proceeds from such insurance policies shall be used for the restoration of the Building, the Center and the Premises pursuant to the terms of this Lease. Tenant shall pay Tenant's Proportionate Share of insurance premiums for such insurance as part of Common Area Charges.

13.4 Landlord and Tenant each hereby waive any and all rights of recovery against each other and the officers, employees, agents and representatives of such other party for loss of or damage to such waiving party or its property or the property of others under its control, arising from any cause insured against by any insurance policy in force (whether or not described herein) carried by such waiving party in lieu thereof, and each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy.

13.5 All required insurance shall be placed with insurance companies licensed in the state in which the Premises are located. The party obtaining such policy shall cause the insurance company to endeavor to give notice to the other party at least thirty (30) days' prior to the expiration thereof. All policies obtained by Landlord or Tenant under the terms of this Lease shall have an effective coverage date which is the same as the Possession Date. Any party may satisfy its obligations regarding insurance pursuant to an umbrella policy. Notwithstanding anything set forth in this Lease to the contrary, Tenant shall have the right to self insure with respect to any insurance required to be maintained by Tenant hereunder.

ARTICLE 14 RELEASE AND INDEMNITY

14.1 Tenant shall indemnify and hold harmless Landlord from and against any and all claims arising from: (a) Tenant's use of the Premises or the conduct of its business; (b) any negligent act or omission done, permitted or suffered by Tenant in or about the Premises; or (c) any breach or default in the performance of any obligation of Tenant under the terms of this Lease, all of which indemnities shall include court costs and reasonable attorneys' fees; provided, however, that the foregoing shall not extend to any claim arising out of the willful, reckless or negligent act or omission of, or breach of any provision of this Lease by Landlord, its agents, officers, servants, employees or contractors.

14.2 Landlord shall indemnify and hold harmless Tenant from and against any and all claims arising from: (a) Landlord's use and maintenance of the Common Areas or any injuries occurring in the Common Areas or any portion of the Building or the Center outside the Premises; (b) any negligent act or omission done, permitted or suffered by Landlord in, on or about the Premises, the Building or the Center; or (c) any breach or default by Landlord of any of the representations, warranties or covenants set forth in this Lease or in the performance of any obligation of Landlord under this Lease; all of which indemnities shall include court costs and reasonable attorneys' fees; provided, however, that the foregoing shall not extend to any claim arising out of the willful, reckless or negligent act or omission of Tenant, or breach of any provision of this Lease by Tenant, its agents, officers, servants, employees or contractors.

ARTICLE 15 INSOLVENCY, ETC. OF EITHER PARTY

15.1 The filing of any petition in bankruptcy whether voluntary or involuntary, or the adjudication of Landlord or Tenant as bankrupt or insolvent, or the appointment of a receiver or trustee to take possession of all or substantially all of the Landlord's or Tenant's assets, or an assignment by Landlord or Tenant for the benefit of its creditors, or any action taken or suffered by

Landlord or Tenant under any State or Federal insolvency or bankruptcy act including, without limitation, the filing of a petition for or in reorganization, or the taking or seizure under levy of execution or attachment of the Premises or any part thereof, shall not constitute a breach of this Lease by Landlord or Tenant, unless Landlord or Tenant commits a Default as defined herein. Should an involuntary bankruptcy petition be filed against Landlord or Tenant, if Landlord or Tenant commences proceedings to dismiss such petition within ninety (90) days of written notice and such petition is dismissed, there shall be no breach hereof.

15.2 Neither this Lease nor any interest therein or thereunder, nor any estate thereby created in favor of Tenant, shall be an asset of Tenant in or under any bankruptcy, insolvency or reorganization proceeding, nor shall any of the same pass by operation of law under any State or Federal insolvency or bankruptcy law to any trustee, receiver or assignee for the benefit of creditors or any person.

ARTICLE 16 PERSONAL PROPERTY AND OTHER TAXES

16.1 Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises. When possible, Landlord shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

16.2 If any of Tenant's said personal property shall be assessed with Landlord's real property, Tenant shall pay to Landlord the taxes attributable to Tenant within thirty (30) days after receipt of a written statement including said tax bill setting forth the taxes applicable to Tenant's property.

ARTICLE 17 SIGNAGE

17.1 Tenant may install exterior signage at the Premises in accordance with Tenant's plans and specifications, subject to Tenant's receipt of approval from the relevant governmental authorities. Tenant may install and display any interior signage and advertising materials as Tenant deems appropriate. Additionally, any statements to the contrary notwithstanding, Tenant shall be entitled to, and is hereby granted, the exclusive use of the exterior of the building of the Premises, and no other party shall be allowed to install or maintain signage in such areas. Tenant shall be allowed to place appropriate signage on the entrances to the Premises advertising Tenant's hours of operation and other information and shall be allowed to install tasteful "Coming Soon" and "Now Hiring" banners.

17.2 Tenant shall be allowed to display its logo and other information on the monument/pylon sign serving the Center and be entitled to occupy the bottom position (where the existing China Olive restaurant sign is located) on both sides of said monument/pylon sign. Landlord shall maintain any monument or pylon sign structure that is utilized by more than one tenant in the Center and include the same, in Common Area Charges and, Tenant shall be responsible for the installation and maintenance of its sign panel on such sign. Tenant shall

design its sign panels, and shall be responsible for the cost of fabrication and installation of such panels.

ARTICLE 18
ASSIGNMENT AND SUBLETTING

18.1 Tenant may assign or transfer this Lease or Tenant's interest therein, and may sublet the Premises or any part thereof (collectively "Assign" or "Assignment"), without Landlord's consent: (a) to a parent, subsidiary, affiliate or similarly related entity; (b) in connection with a merger, acquisition, reorganization or consolidation; (c) in connection with the sale of Tenant's corporate stock or assets; or (d) to any franchisee or licensee of Tenant, any franchisor of Tenant, or any franchisee of Tenant's franchisor. Any other Assignment shall require Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

18.2 Without limiting the generality of the foregoing, Landlord shall have no right to any sums or economic consideration resulting from an Assignment, including any Assignment permitted without Landlord's consent. If Tenant desires at any time to enter into an Assignment of this Lease for which Landlord's consent is required, it shall first give written notice to Landlord of its desire to do so, which notice shall contain: (a) the name of the proposed assignee, subtenant or occupant; and (b) the nature of the proposed assignee's, subtenant's or occupant's business to be carried on in the Premises.

18.3 At any time within ten (10) days after Landlord's receipt of any notice specified in Article 18.2, Landlord shall, by written notice to Tenant: (a) consent to the Assignment; (b) reasonably withhold its consent; or (c) terminate the Lease. If the Landlord disapproves the Assignment, Landlord agrees to supply Tenant with a written statement setting forth the specific reasons for such disapproval. Failure by Landlord to supply this written statement within said ten (10) day period shall be deemed consent by Landlord to any such Assignment. If Landlord consents to the Assignment within said ten (10) day period, Tenant may thereafter enter into such Assignment of the Premises or portion thereof. If Landlord terminates the Lease by written notice to Tenant within such ten (10) day period, Tenant may, within ten (10) days of receipt of such termination notice, elect in Tenant's sole discretion to reinstate the Lease, in which case the Lease with Tenant shall remain in full force and effect as if no Assignment was attempted.

18.4 No consent by Landlord to any Assignment by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease whether arising before or after the Assignment. The consent by Landlord to any Assignment shall not relieve Tenant of the obligation to obtain Landlord's express written consent to any other Assignment.

18.5 For purposes of the Lease, any sale or transfer of capital stock including redemption or issuance of additional stock of any class, will not be deemed an assignment, subletting or transfer of the Lease.

ARTICLE 19
IMPROVEMENTS, ALTERATIONS AND SURRENDER

19.1 Tenant shall provide its plans and specifications for its initial improvements to the Landlord for its review and approval. As part of its initial improvements, Tenant shall be permitted to alter the exterior of the Premises to exhibit Tenant's trade dress. Tenant shall also be allowed to incorporate its standard design and material elements in the store design, and to relocate any existing doors and incorporate its standard wood stile and rail windows and doors in the Premises, subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord agrees to approve or disapprove Tenant's plans and specifications within ten (10) days of delivery of same to Landlord, and to provide specific reasons and instructions regarding any disapproved matters. If Landlord fails to so respond within such ten (10) day period, the plans and specifications shall be deemed approved.

19.2 Tenant shall without the prior written consent of Landlord, have the right at any time and from time to time during the Term of this Lease, to, at Tenant's sole cost and expense, erect, alter, remodel, renovate, rehabilitate, reconstruct, rebuild, replace and remove any interior, non-mechanical, non-structural portion of the Premises, all to Tenant's specifications which cost \$50,000 or less in any calendar year. Except as set forth in Section 19.1, Tenant shall not make any interior, non-mechanical, non-structural portion of the Premises which cost more than \$50,000 in any calendar year or any exterior, mechanical or structural alteration to the Premises without Landlord's prior consent, which shall not be unreasonably withheld, delayed or conditioned. Tenant shall give Landlord five (5) days' advance notice before commencing any work under this Section 19.2 to permit Landlord to post notices of non-responsibility. Tenant shall provide plans and specifications for any work requiring Landlord's consent under this Section 19.2 to Landlord for its review and approval. Landlord agrees to approve or disapprove the performance of the alterations, and Tenant's plans and specifications therefor, within ten (10) days of delivery of same to Landlord, and to provide specific reasons and instructions regarding any disapproved matters. If Landlord fails to so respond within such ten (10) day period, the alterations and the plans and specifications therefor shall be deemed approved. Tenant, at its sole cost and expense, shall have the option to install antennas and satellite dishes on the roof of the Premises subject to applicable codes. There shall be no additional rent charged for such use of the roof, and Tenant shall be allowed to remove these items upon the expiration or sooner termination of this Lease.

19.3 At any time during the Term of this Lease and within thirty (30) days after termination or expiration thereof, notwithstanding anything in this Lease to the contrary, Tenant may at its sole option, (but shall not be obligated to), remove any or all additions, improvements, fixtures, installations, moveable trade fixtures, furniture and other personal property which were placed in the Premises by Tenant and funded by Tenant, provided Tenant shall repair any damage occasioned by such removal. All work with respect to any alterations, additions and changes shall be done in a good and workmanlike manner. Any such changes, alterations and improvements shall be performed in accordance with the laws and ordinances relating thereto. Notwithstanding anything to the contrary expressed or implied in this Lease, upon the termination or expiration of this Lease, Landlord shall not use or permit anyone holding under Landlord to use any trademark, trade name, trade dress, millwork or sign used by Tenant in the Premises, or that is, or is similar to,

any other item protected by Tenant's intellectual property rights. This shall apply to anything left on the Premises by Tenant for any reason.

ARTICLE 20
DEFAULT AND REMEDIES

20.1 The occurrence of any one or more of the following events shall constitute a breach and default of this Lease by Tenant ("Tenant Default"):

(a) The failure by Tenant to make any payment of the Base Rent, Common Area Charges or Taxes as and when due, where such failure shall continue for a period of ten (10) days after receipt by Tenant of written notice thereof from Landlord; or

(b) Except as otherwise provided in this Lease, the failure by Tenant to make payments, observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in paragraph (a) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's noncompliance is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said thirty (30) day period and thereafter prosecutes such cure to completion.

20.2 In the event of any Tenant Default, then in addition to any and all other remedies available to Landlord at law or in equity, Landlord shall have the right to immediately terminate this Lease and all rights of Tenant hereunder by giving written notice to Tenant of its election to do so. If Landlord shall elect to terminate this Lease, then it may recover from Tenant:

(a) The worth at the time of the award ("Award") by a court of competent jurisdiction, of the unpaid Base Rent payable hereunder which had been earned at the date of such termination; plus,

(b) The worth at the time of the Award by a court of competent jurisdiction of the amount by which the unpaid Base Rent which would have been earned after termination and until the time of the Award exceeds the amount of such rental loss which could have been reasonably avoided; plus,

(c) The worth at the time of the Award of the amount by which the unpaid Base Rent for the balance of the Term after the time of the Award exceeds the amount of such rental loss which could be reasonably avoided; plus,

(d) Any other reasonable amounts necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations hereunder;

(e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted by applicable state law from time to time; and

20.3 As used in subparagraphs (a) and (b) above, the "worth at the time of the Award" is computed by allowing interest at the rate of ten percent (10%) per annum, or the maximum rate

permitted by applicable law, whichever is lower. As used in subparagraph (c) above, the "worth at the time of the Award" is computed by discounting such amount to present value at the rate of 12% per annum.

20.4 In the event of any Tenant Default, Landlord shall also have the right to terminate Tenant's right of possession by any lawful means, to re-enter the Premises by legal means and remove all property and persons therefrom, and any such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant.

20.5 If Landlord has not elected to terminate this Lease, Landlord may maintain Tenant's right to possession in which case Landlord may recover all Base Rent as it becomes due.

20.6 Tenant acknowledges that late payment by Tenant to Landlord of Base Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any installment of Base Rent due from Tenant is not received by Landlord or Landlord's designee within five (5) days after written notice that such amount shall be due, Tenant shall pay to Landlord an additional sum of Two Hundred Dollars (\$200.00) with the overdue Base Rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant.

20.7 In the event of a Tenant Default, Landlord has an affirmative obligation to obtain another tenant for the Premises at fair market rent and to otherwise mitigate its damages.

ARTICLE 21 LANDLORD DEFAULT

21.1 In the event that Landlord shall at any time be in default in the observance or performance of any of the terms, covenants, conditions or agreements hereunder and any such default shall continue for a period of: (a) five (5) days after written notice to Landlord in any emergency situation (unless the nature of such emergency requires faster action, in which case the time period shall be determined by the specific set of circumstances); or (b) thirty (30) days after written notice to Landlord where there is no emergency (if such default is incapable of being cured in a reasonable manner within thirty (30) days then if Landlord has not commenced to cure the same within such thirty (30) day period and thereafter diligently prosecutes the same to completion), then Tenant, at its option, with written notice to Landlord or any other person, shall have the right to exercise any one or more of the following described remedies: (i) to cure such default for the account of Landlord, and Landlord shall reimburse Tenant for any amount paid and any expense or contractual liability so incurred, (ii) to pursue the remedy of specific performance; (iii) to seek money damages for loss arising from Landlord's failure to discharge its obligations under the Lease; or (iv) to terminate the Lease; and in addition, Tenant shall be entitled at its election, to exercise concurrently or successively, any one or more of the rights or remedies at law or in equity provided hereunder or under the laws of the United States or the State where the Premises are located for Landlord's default. Tenant shall have the option, at its sole discretion, of offsetting any payments due or payable to Landlord, until such time as Tenant has been completely

reimbursed for its expenses or costs resulting from any Landlord breach or liability under this Lease. Nothing herein contained shall relieve Landlord from its duty to effectuate the repair, replacement, correction or maintenance required to restore the affected services or utilities, or to perform of any other of its obligations to the standard prescribed in this Lease, nor shall this Section be construed to obligate Tenant to undertake any such work.

ARTICLE 22
DAMAGE OR DESTRUCTION

22.1 If, at any time prior to the expiration or termination of this Lease, the Premises or the Building are damaged or destroyed by any casualty covered by insurance maintained under Article 13 (or required to be maintained under Article 13), Landlord shall promptly cause the same to be fully repaired and restored to the condition existing immediately prior to such damage or destruction (subject to changes necessary to comply with then existing laws applicable thereto and any changes in design approved by Landlord and Tenant).

22.2 If, at any time prior to the expiration or termination of this Lease, the Premises or the Building are totally or partially damaged or destroyed from a casualty, which loss to Landlord is not fully covered (except for any deductible) by insurance maintained by Landlord or for Landlord's benefit (or required to be maintained pursuant to Article 13), which damage renders the Premises inaccessible or unusable to Tenant in the ordinary course of its business, Tenant may, at its option, upon written notice to Landlord within sixty (60) days after notice to Landlord of the occurrence of such damage or destruction, require Landlord to repair or restore such damage or destruction, or Tenant may elect to terminate this Lease. Notwithstanding the foregoing, Tenant may not elect to terminate this Lease if the uninsured portion of the damage is less than twenty percent (20%) of the replacement cost of the Building, in which event Landlord shall rebuild the Building. During the period of such repair or restoration, this Lease shall continue in full force and effect. If Tenant does not provide written notice to Landlord to repair such damage within such sixty (60) days, the Lease shall be deemed automatically terminated.

22.3 Notwithstanding anything to the contrary contained in Sections 22.1 and 22.2, if the Premises or the Building are wholly or partially damaged or destroyed within the final twelve (12) months of the Primary Term of this Lease or, if an applicable Extension Option has been exercised, during the last year of any Extended Term, so that Tenant shall be prevented from using the Premises for ten (10) consecutive days due to such damage or destruction, then either Landlord or Tenant may, at its option, by written notice to the other party within sixty (60) days after the occurrence of such damage or destruction, elect to terminate the Lease. However, if Tenant at that time has an exercisable Extension Option to extend this Lease, then Tenant may preserve this Lease by, within thirty (30) days following the receipt of Landlord's notice or before the expiration of the time provided in such Extension Option for its exercise, whichever is later ("Exercise Period"), exercising such Extension Option. If Tenant duly exercises such Extension Option during said Exercise Period, Landlord shall, at Landlord's expense, repair such damage in accordance with the provisions of Section 22.1 or 22.2, as applicable, and this Lease shall continue in full force and effect. If Tenant fails to exercise such option during said Exercise Period, then Landlord may at Landlord's option terminate this Lease as of the expiration of said sixty (60) day period following the occurrence of such damage by giving written notice to Tenant of Landlord's election to do so

within ten (10) days after the expiration of the Exercise Period, notwithstanding any term or provision in the grant of option to the contrary.

22.4 In the event that this Lease shall remain in full force and effect pursuant to the provisions of this Article, the Base Rent and all other charges payable by Tenant hereunder shall be reduced or abated as of the date of the occurrence of such damage or destruction.

22.5 If the Premises should be damaged by any casualty except condemnation, such that rebuilding or repairs cannot be completed within one hundred eighty (180) days from the date of such damage, Tenant may, (at its option), within thirty (30) days of the date of the happening of such damage, on written notice to Landlord, terminate this Lease as of the date of the occurrence of such damage or destruction. The determination of whether the Premises can be rebuilt or repaired within one hundred eighty (180) days from the date of any damage shall be in the mutual judgment of both Landlord and Tenant within twenty (20) days of the occurrence of the damage or destruction. If Landlord and Tenant cannot agree, the determination shall be made by an independent contractor mutually acceptable to both Landlord and Tenant. However, if Landlord does not commence any repair or rebuilding as contemplated by the terms of this Article within sixty (60) days after the occurrence of such damage or destruction and with reasonable and prompt dispatch continue to restore the Premises or if Landlord shall fail to diligently complete any repair or rebuilding as contemplated by the terms of this Article within one hundred eighty (180) days after the occurrence of such damage or destruction, Tenant shall have the right, upon written notice to Landlord, in addition to other rights provided herein, to terminate this Lease as of the date of the occurrence of such damage or destruction.

22.6 If the existing laws do not permit restoration of the Premises to substantially the same condition as they were in immediately before destruction, then Tenant at its option, may (a) require Landlord to restore the Premises so as to comply with the then existing laws or codes and, if appropriate, reduce the Base Rent on a pro rata basis, or (b) terminate this Lease immediately by giving written notice to Landlord, in which case the Lease shall cease as of the date of the occurrence of the damage or destruction.

ARTICLE 23 MECHANICS' LIENS

23.1 Both parties agree that they will pay or cause to be paid all costs for work done by them or caused to be done by them on the Premises, and will keep the Premises free and clear of all mechanics' liens on account of work done by them or persons claiming under them. Landlord shall have the right at any time and from time to time to post and maintain on the Premises such notices as Landlord deems reasonably necessary to protect the Premises and Landlord from mechanics', material or any other liens. Upon completion of such work, the party doing such work shall file for record in the office of the Clerk and Recorder of the County where the Premises is located a notice of completion if required by law. The party doing such work may contest the validity of the amount of any such lien and may appeal any adverse judgment or decree, provided, however, that at the reasonable written request of the other party, the party doing such work shall, at its option, either post a bond sufficient to remove such lien pending contest or cause a title company to insure the other party in a manner reasonably satisfactory to it, against the enforcement of the lien against it. If the party doing such work shall default in paying any charge for which a mechanic's lien and suit

to foreclose the lien have been filed, and shall not be taking appropriate actions to contest the validity or amount of such lien, the other party may (but shall not be required to), after written notice to the party doing such work, pay said claim and any costs related thereto, and the amount so paid, together with reasonable attorney's fees incurred in connection therewith, shall be immediately due and owing from the party doing such work to the other party, and shall be paid upon demand. Should any claim of lien be filed against the Premises or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

ARTICLE 24
EMINENT DOMAIN

24.1 If any or all of the Premises, the Building, the Common Areas or any access area related to the Building shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain (or similar law authorizing the involuntary taking of private property, which shall include a sale in lieu thereof to a public body), Tenant shall have the right, at its option: (a) to terminate this Lease as of the earlier of the date of title transfer or the date of the taking of possession by the condemning authority in which event the Term hereof and Base Rent and all other charges shall be abated and any unearned Base Rent paid or credited will be refunded by Landlord to Tenant; or (b) to continue this Lease in full force and effect with a reduced fixed Base Rent commensurate with the reduced area and reduced utility of the Premises, in lieu of the amount of Base Rent hereinabove provided, which reduced Base Rent will become effective upon the earlier of the date of title transfer or the date of such taking. Tenant shall elect among these rights and give written notice to Landlord of its election within sixty (60) days after the date when possession of the portion of the Premises is required by the condemning authority. Landlord and Tenant respectively, shall be entitled to any awards permitted by applicable law resulting from any such taking.

24.2 If Tenant does not elect to terminate this Lease as set forth herein, then this Lease shall continue in full force and effect and the proceeds of the award shall be used by Landlord to restore the remainder of the improvements on the Premises so far as practicable to a complete unit of like quality and condition to that which existed immediately prior to the taking, and the Base Rent and all other charges payable hereunder shall be reduced in proportion to the square feet of the Premises taken and Landlord and Tenant respectively, shall be entitled to any award permitted by applicable law.

24.3 If Landlord does not commence within thirty (30) days of receipt of the award, and with reasonable dispatch continue, to restore the portion of the Premises as aforesaid, Tenant shall have the right, upon giving notice to Landlord, in addition to other rights provided herein, to terminate this Lease upon written notice to Landlord, and all Base Rent and all additional charges shall be abated as of the date of such notice.

24.4 If the taking or appropriation has included all or any part of the other Common Areas of the Center or any access area, Tenant shall have the right, at its option, to terminate this Lease or continue this Lease with a reduced Base Rent, all as set forth in Section 24.1 above. Said right shall be exercised by Tenant based upon various factors, including whether or not the local codes or laws will permit continued operation on the reduced Premises. If the taking or

appropriation has included only the Building of which the Premises are a part, Section 24.1 shall apply.

ARTICLE 25

ABATEMENT OF RENT WHEN TENANT IS PREVENTED FROM USING PREMISES

25.1 In the event that Tenant is prevented from using, and does not use, the Premises or any portion thereof for five (5) consecutive business days at any time during the Term or ten (10) consecutive calendar days in any twelve (12) month period (the "Eligibility Period") as a result of any damage or destruction caused by Landlord, its agents, contractors or employees to the Premises, or any repair, maintenance or alteration performed by Landlord after the Rent Commencement Date and required or permitted by the Lease, which interferes with Tenant's use of the Premises, or any failure to provide utilities, services or access to the Premises or the Building which could, in Tenant's business judgment, pose a health risk to occupants of the Premises, then Tenant's Base Rent and all other charges payable by Tenant hereunder shall be abated or reduced, as the case may be, for such time that Tenant continues to be so prevented from using, and does not use, the Premises or a portion thereof, in the proportion that the rentable area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total rentable area of the Premises. However, in the event that Tenant is prevented from so conducting, and does not conduct, its business in any portion of the Premises, and the remaining portion of the Premises is not sufficient to allow Tenant to effectively conduct its business therein, and if Tenant does not conduct its business from such remaining portion, then for such time during which Tenant is so prevented from effectively conducting its business therein, the Base Rent for the entire Premises and all other charges payable by Tenant hereunder, shall be abated; provided, however, if Tenant reoccupies and conducts its business from any portion of the Premises during such period, the Base Rent and all other charges payable by Tenant hereunder allocable to such reoccupied portion, based on the proportion that the rentable area of such reoccupied portion of the Premises bears to the total rentable area of the Premises, shall be payable by Tenant from the date such business operations commence. Tenant's abatement period shall continue until Tenant has been given sufficient time, and sufficient access to the Premises, to rebuild or restore the portion of the Premises Landlord or Tenant is required to rebuild, repair or restore as the case may be, to install its property, furniture, fixtures and equipment, and to move in over one (1) weekend. To the extent Tenant is entitled to abatement because of an event covered by Articles 22, 24 or 43, then the Eligibility Period shall not be applicable and abatement of Base Rent and all other such charges shall occur pursuant to those provisions.

ARTICLE 26

EVIDENCE OF TITLE, COVENANT OF TITLE AND QUIET POSSESSION

26.1 Landlord warrants and represents to Tenant that the Landlord is solely vested with fee simple title to the Premises and the Center and has full right and lawful authority to lease the Premises to Tenant. Landlord further warrants and represents that there are no legal proceedings, liens, encumbrances, mortgages, easements, or any other matters affecting title or not which would preclude or otherwise adversely affect Tenant's intended use of the Premises or other rights or benefits under this Lease. Landlord covenants with Tenant that it will, during the Term of this Lease and any Extended Term hereof, keep the Premises free and clear of all legal proceedings, liens, encumbrances, mortgages, easements or any other matters affecting title or not which would

preclude or otherwise adversely affect Tenant's possession or use of the Premises or Tenant's other rights and benefits under this Lease. If at any time Landlord's title or right to receive Rent hereunder is disputed, or if there is a change in ownership of Landlord's estate by act of the parties or operation of law, Tenant may withhold Rent thereafter accruing until Tenant is furnished proof, satisfactory to it, as to the party entitled thereto. In the event of a sale of the Premises or a change in ownership of Landlord's estate, or if there is an assignment or transfer of this Lease by Landlord for other than security purposes, Landlord shall cause the new owner or Landlord's assignee or transferee, as applicable, to assume the provisions of this Lease and notice of such assignment or transfer, as well as a copy of the effective instrument of transfer, shall be given to Tenant within fifteen (15) days after the date of transfer. Tenant shall be entitled to continue to pay Rent and give all notices to Landlord until Tenant has received the foregoing from Landlord. Landlord shall deliver all funds in which Tenant has an interest including but not limited to Tenant's security deposit, if any, to Landlord's purchaser or assignee. Notwithstanding anything contained in the Lease to the contrary, Landlord covenants with Tenant to keep Tenant in quiet possession of the Premises during the Term of this Lease and any extensions thereof.

26.2 Landlord represents and warrants that the terms of this Lease, including, without limitation, the intended use of the Premises by Tenant, are not in violation of or inconsistent with any other agreement or covenant of any kind whatsoever which relates to the Premises. Landlord further covenants that it will, during the Term of this Lease, comply with the terms of any other agreement or covenant of any kind whatsoever relating to the Premises or this Lease and will keep the Premises free and clear of all agreements or covenants of any kind whatsoever which would preclude or otherwise adversely affect Tenant's possession or use of the Premises or Tenant's other rights and benefits under this Lease.

ARTICLE 27 ESTOPPEL CERTIFICATES

27.1 Tenant shall, within fifteen (15) business days after Tenant's receipt of Landlord's written request thereof, execute, acknowledge and deliver to Landlord an Estoppel Certificate certifying such factual matters relating to this Lease as Landlord may reasonably require.

27.2 Landlord shall, within fifteen (15) business days after Landlord's receipt of Tenant's written request thereof, execute, acknowledge and deliver to Tenant an Estoppel Certificate certifying such factual matters relating to the Lease as Tenant may reasonably require.

27.3 Such Estoppel Certificates shall be for the purpose of facilitating either party's financing, refinancing or sale activities only, and shall not affect or prejudice any rights or remedies of either party against the other.

ARTICLE 28 SEVERABILITY

28.1 The invalidity of any provision of this Lease as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

ARTICLE 29
TIME OF ESSENCE

29.1 Time is of the essence with respect to the obligations to be performed under this Lease. Notwithstanding anything herein to the contrary, whenever under the terms and provisions of this Lease the time for performance falls upon a Saturday, Sunday or legal holiday, such time for performance shall be extended to the next business day.

ARTICLE 30
INCORPORATION OF PRIOR AGREEMENTS; AMENDMENTS

30.1 This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior or contemporaneous agreement or understanding, whether oral or written, pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

ARTICLE 31
NOTICES

31.1 Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, followed by a copy in regular U.S. mail, overnight mail or by certified mail, and if given personally or by mail, shall be deemed sufficiently given when received by the intended addressee (whether accepted or rejected) if addressed to Tenant or to Landlord at the address noted in Section 1.1. Either party may by notice to the other specify a different address for notice purposes. A copy of all notices required or permitted to be given to Landlord and Tenant hereunder shall be concurrently transmitted to such party or parties at such addresses as Landlord and Tenant may from time to time hereafter designate by notice to the other party.

ARTICLE 32
WAIVER

32.1 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. Each party's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of such party's consent to or approval of any subsequent act by the other party.

ARTICLE 33
RECORDING

33.1 Either Landlord or Tenant shall, upon the reasonable request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes in the form attached hereto as **Exhibit F**.

ARTICLE 34
HOLDING OVER

34.1 If Tenant remains in possession of the Premises or any part thereof after the expiration of the Term hereof, such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Tenant.

ARTICLE 35
CUMULATIVE REMEDIES

35.1 No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

ARTICLE 36
APPLICABLE LAW

36.1 This Lease shall be governed by the laws of the State where the Premises are located.

ARTICLE 37
CONFIDENTIALITY OF FINANCIAL INFORMATION

37.1 All statements delivered to Landlord by Tenant and all information obtained by Landlord about Tenant, including, without limitation, financial information, in the exercise of Landlord's rights hereunder shall be held in strict confidence and shall not be disclosed to any party other than: (a) Landlord's personnel having the explicit need to know such information, for which Landlord agrees to get such personnel to similarly keep all such information confidential and Landlord shall have such personnel, at the request of Tenant, execute a written confirmation of its confidential obligation hereunder to Tenant containing terms and conditions acceptable to Tenant; or (b) any current or prospective mortgagee, upon written request from such mortgagee to Tenant, in contemplation of an actual and bona fide transaction, for which Landlord agrees to get such mortgagee to similarly keep all such information confidential and Landlord shall have such mortgagee, at the request of Tenant, execute a written confirmation of its confidential obligation hereunder to Tenant containing terms and conditions acceptable to Tenant.

ARTICLE 38
ATTORNEY'S FEES

38.1 In the event of any proceeding, claim or action being filed or instituted between the parties with respect to this Lease, the prevailing party will be entitled to receive from the other party all costs, damages and expenses, including reasonable attorney's fees, incurred by the prevailing party in connection with that action or proceeding upon the controversy being reduced to final judgment or award.

ARTICLE 39
LANDLORD'S ACCESS

39.1 Landlord's and Landlord's agents, upon 72 hours' prior written notice to Tenant, shall have the right to enter the Premises at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders or lessees within ninety (90) days of the end of the Term, and making such alterations, repairs, improvements or additions to the Premises or the Building as Landlord may be required to make pursuant to the terms hereof.

ARTICLE 40
SUBORDINATION AND NON-DISTURBANCE

40.1 Contemporaneously with the execution of this Lease, Landlord shall cause each holder of a lien upon the Premises (and/or the Center or Building of which the Premises are a part) to enter into a Subordination, Non-Disturbance and Attornment agreement, a form of which is attached hereto as **Exhibit G**. In the event that Tenant does not receive a Subordination, Non Disturbance and Attornment Agreement in the form attached as **Exhibit G** or in any other commercially reasonable form, Base Rent and all other sums due hereunder by Tenant shall abate until Tenant receives such agreement. Should any future holder of a lien upon the Premises whose lien is capable of foreclosure wish to become superior to this Lease, Tenant agrees to subordinate to such lienholder so long as Landlord has such lienholder execute for the benefit of Tenant, a Non-Disturbance Agreement in a form and of a substance acceptable to Tenant. The provisions of this Section to the contrary notwithstanding, this Lease shall remain in full force and effect for the full Term and any extension hereof, and a foreclosure under the deed of trust shall not terminate this Lease or affect Tenant's right of possession pursuant to this Lease.

ARTICLE 41
FORCE MAJEURE

41.1 Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of nature, inability to obtain labor or materials or reasonable substitute therefor, governmental restrictions, regulations or controls, enemy or hostile governmental action, riot, civil commotion, fire or other casualty, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage, except as otherwise stated in this Lease to the contrary, except there shall be no such excuse as to Landlord's ability to deliver the Premises to Tenant on the Possession Date.

ARTICLE 42
RIGHT TO CLOSE BUSINESS

42.1 Nothing set forth in this Lease shall be construed, in any manner whatsoever, as an express or implied covenant on the part of Tenant to commence business operations or to thereafter continuously operate any business operations on the Premises, and Landlord specifically acknowledges that there is no covenant of initial or continuous operation on the part of Tenant, express or implied. Tenant may, in its sole discretion, close its business at any time and for any reason whatsoever. Such closing shall not release Tenant from any of its obligations herein until such time as the Lease is terminated or expires by its terms. In the event that Tenant

has failed to operate its business from the Premises for a period of sixty (60) consecutive days, and such failure is not due to remodeling, casualty or condemnation or other causes beyond the reasonable control of Tenant, Landlord shall have the right (as its sole right and remedy due to such failure to operate) to terminate this Lease and recapture the Premises by providing Tenant with written notice thereof at least thirty (30) days prior to the recapture date. Notwithstanding the foregoing, Tenant shall have the right to elect to nullify the Landlord's election to recapture the Premises by reopening for business in the Premises within such thirty (30) day period. Upon the recapture date, both Landlord and Tenant shall be released from any and all duties, liabilities and obligations under this Lease accruing on or after the recapture date.

ARTICLE 43 HAZARDOUS MATERIALS

43.1 Landlord represents and warrants that any handling, transportation, storage, treatment or usage of Hazardous Material (as defined below) that has occurred on the Premises or the Center, or the land on which the same are located, to date has been in compliance with all applicable federal, state and local laws, regulations and ordinances. Landlord further represents and warrants that the soil, groundwater and soil vapor on or under the Premises and the Center are free of Hazardous Material as of the Possession Date. Landlord, at its sole cost and expense, shall test for and remove any asbestos or asbestos contaminated materials from the Premises prior to the Possession Date.

43.2 Landlord covenants that it will during the Term of this Lease provide to Tenant a copy of all citations or notices of violations received from any governmental authority with regard to any Hazardous Material within five (5) days of receipt by Landlord.

43.3 If any Hazardous Material is deposited, released, stored, disposed, discovered or present in or on the Premises, the Building, the Center or the land on which the same are located, Landlord, in a manner that complies with all applicable Laws (as defined below), shall at Landlord's cost and expense (except as it relates to Hazardous Materials on the Premises caused directly by Tenant's introduction of such Hazardous Materials to the Premises in which event the expense shall be borne by Tenant) remove, transport and dispose of such materials and perform all remediation and cleanup of the Premises, the Building, the Center and land necessary or advisable to remediate any damage to persons, property or the environment as a result of the presence of such Hazardous Material. Landlord covenants that it shall be responsible for all costs incurred in complying with all federal, state and local laws, rules, regulations, guidelines, policies, codes and ordinances of any governmental body having jurisdiction over the same (individually and collectively "Laws") which relate to Hazardous Material that exists at any time in, on or about the Center and the Premises, and the land on which the same are located, including, without limitation, the cost of any required or necessary repair, remediation, cleanup, removal, disposal or detoxification, excluding however, any such costs relating to Hazardous Material on the Premises caused directly by Tenant's introduction of Hazardous Material to the Premises.

43.4 Landlord covenants that it shall and hereby does indemnify, protect, defend and hold Tenant, its directors, officers, employees and agents and any successor to Tenant's interest in the Premises, free and harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims,

attorneys' fees, consultant fees and expert fees) and all foreseeable and unforeseeable consequential damages, whether known or unknown, which might directly or indirectly or in whole or in part be caused by, arise out of or be related to Hazardous Material that exists at any time in, on or about the Center or the Premises, or the land on which the same are located, excluding Hazardous Material on the Premises that is introduced by Tenant.

43.5 Tenant covenants that it shall and hereby does indemnify, protect, defend and hold Landlord, its directors, officers, employees and agents and any successor to Landlord's interest in the Premises, free and harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) and all foreseeable and unforeseeable consequential damages, whether known or unknown, which might directly or indirectly or in whole or in part be caused by, arise out of or be related to Hazardous Material that is introduced to the Premises or the Center by Tenant.

43.6 As used herein, the term "Hazardous Material" means petroleum products, asbestos, and any other hazardous or toxic substance, material or waste, which is or becomes regulated by any applicable state, local or federal governmental authority, whether originating from the Premises or the Building, or the land on which the same are located, or migrating, flowing, percolating, diffusing or in any way moving onto or under the Premises or the Building. The provisions of this Article shall survive the termination of this Lease.

ARTICLE 44 TENANT IMPROVEMENT ALLOWANCE

44.1 Intentionally Omitted.

ARTICLE 45 CONSENTS

45.1 Wherever in this Lease the consent of one party is required for an act of the other party, unless otherwise specified, such consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 46 AUTHORITY

46.1 Each of Landlord and Tenant represents that each individual executing this Lease on behalf of Landlord and Tenant is duly authorized to execute and deliver this Lease on its behalf.

ARTICLE 47 CAPTIONS AND HEADINGS

47.1 The Article and Section captions and headings are for convenience of reference only, and in no way shall be used to construe or modify the provisions set forth in this Lease.

ARTICLE 48
BINDING ON HEIRS, SUCCESSORS, AND ASSIGNS

48.1 The covenants and agreement of this Lease shall be binding upon the heirs, executors, administrators, successors and assigns of both parties hereto, except as hereinabove provided.

ARTICLE 49
LANDLORD'S LIENS

49.1 Landlord waives all statutory and contractual liens or any other so-called "landlord's lien" which it may be entitled to assert against any of Tenant's property as security for the payment of Base Rent or the performance of any other obligation of Tenant hereunder.

ARTICLE 50
TENANT'S RIGHT TO GRANT SECURITY INTEREST

50.1 Tenant shall have the absolute right from time to time during the Term, and without Landlord's prior approval, written or otherwise, to grant and assign a mortgage or other security interest in Tenant's interest under the Lease and all of Tenant's property to Tenant's lenders in connection with Tenant's financing arrangements. Landlord agrees to execute such confirmation certificates and other documents as Tenant's lenders may reasonably request in connection with any such financing.

ARTICLE 51
BROKERAGE FEES AND COMMISSIONS

51.1 Each of Landlord and Tenant represents and warrants that it has not dealt with any broker in connection with this Lease, except for Landlord's Broker and Tenant's Broker, respectively. Landlord shall pay a commission to Landlord's Broker in accordance with a separate agreement. Landlord shall indemnify and hold harmless Tenant from any payments owed to Landlord's Broker and Tenant's Broker.

ARTICLE 52
EXHIBITS AND ADDENDA

52.1 The exhibits and addenda listed below are incorporated by reference in this Lease:

- (a) **Exhibit A:** Site Plan.
- (b) **Exhibit A-1:** Legal Description.
- (c) **Exhibit B:** Dimensions of Premises.
- (d) **Exhibit C:** Reserved.
- (e) **Exhibit D:** Reserved.

- (f) **Exhibit E:** Stipulation of Term of Lease.
- (g) **Exhibit F:** Memorandum of Lease.
- (h) **Exhibit G:** Subordination, Non-Disturbance and Attornment Agreement.
- (i) **Exhibit H:** Guaranty of Lease

ARTICLE 53
GUARANTY

53.1 Contemporaneously with the execution of this Lease, Chipotle Mexican Grill, Inc., a Delaware corporation, shall execute a Guaranty in the form attached hereto as **Exhibit H**.

[The remainder of this page intentionally left blank]

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

LANDLORD:

BR MIDLAND CENTER, LLC,
a ~~California~~ ^{Delaware} limited liability company

By: [Signature]

Name: Bernardo Restrepo

Title: Managing Director

Date: 6/18/08

Landlord's Federal Tax Identification Number:
95-4677741

TENANT:

CHIPOTLE MEXICAN GRILL OF
COLORADO, LLC,
a Colorado limited liability company

By: [Signature]

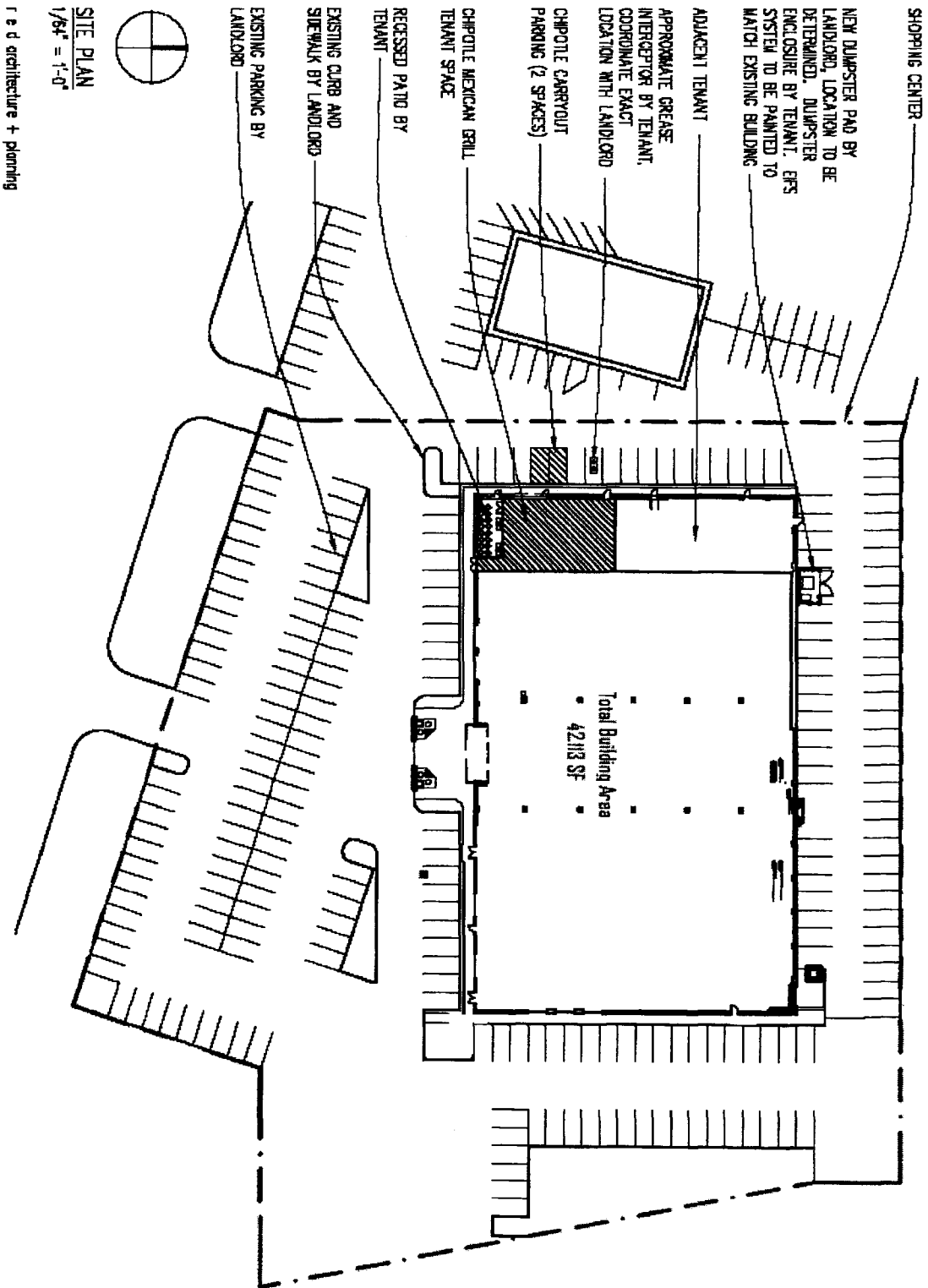
Name: Rex Jones

Title: Chief Development Officer

Date: June 13, 2008

EXHIBIT A

SITE PLAN



{00212073 / 2}

EXHIBIT A-1

LEGAL DESCRIPTION

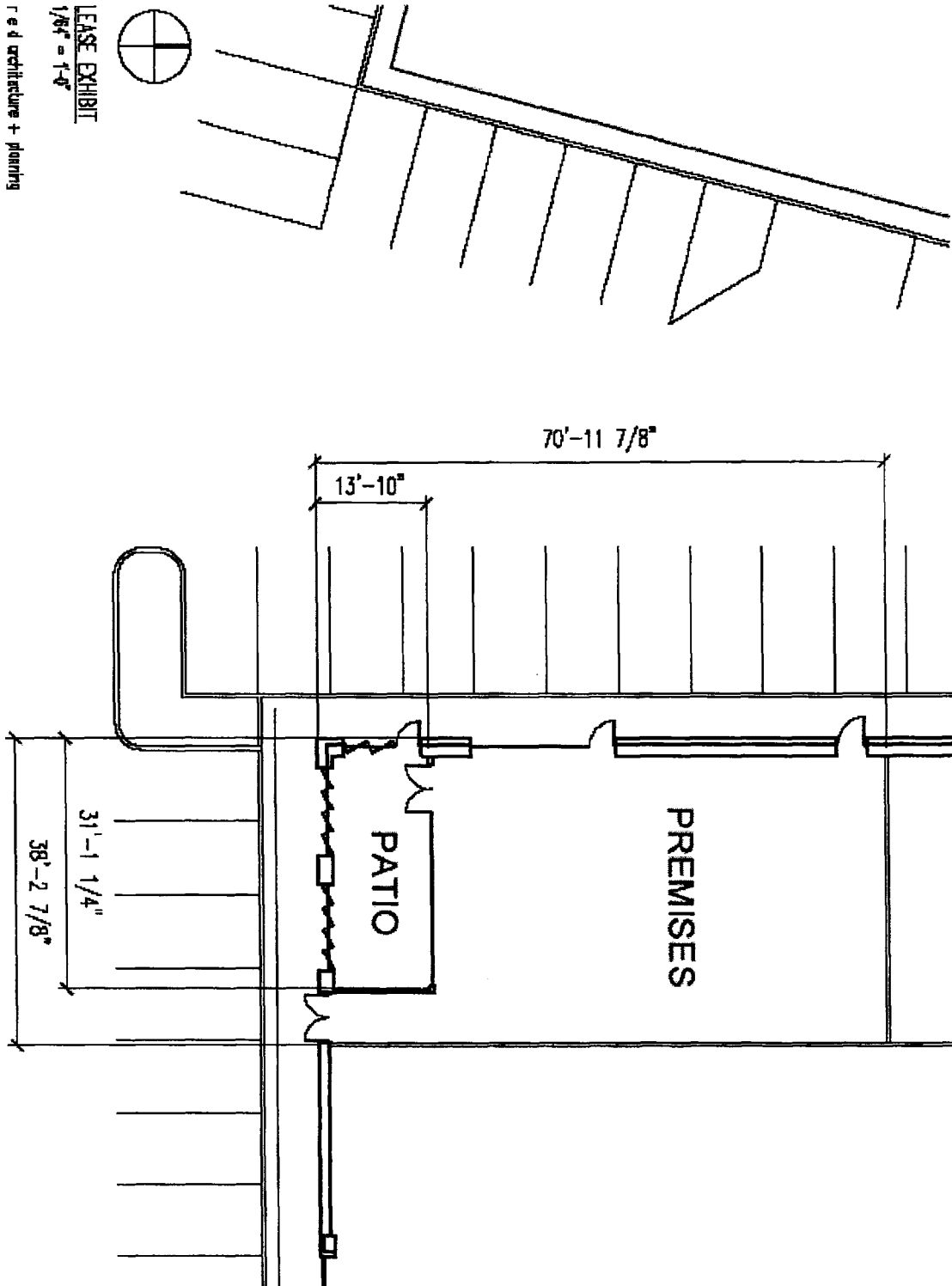
Smith Highland Hills Blk. 7 Lot 0
PRT OF LOT 10 BEG NE/C TH NWLY 328FT SWLY 320.82FT SELY 350FT NELY 101.75FT ELY
101.75FT N307.92FT TO BEG

{00212073 / 2}

A-1-1

EXHIBIT B

DIMENSIONS OF PREMISES



LEASE EXHIBIT
1/8" = 1'-0"

read architecture + planning

EXHIBIT C

RESERVED

{00212073 / 2}

C-1

EXHIBIT D

RESERVED

{00212073 / 2}

D-1

1

EXHIBIT E

STIPULATION OF TERM OF LEASE

CHIPOTLE SITE: _____

THIS STIPULATION OF TERM OF LEASE (this "Stipulation") is executed as of this _____ day of _____, 200__ by **CHIPOTLE MEXICAN GRILL OF COLORADO, LLC**, a Delaware limited liability company ("Tenant") and **BR MIDLAND CENTER, LLC**, a California limited liability company ("Landlord"), with respect to that certain Lease dated _____, as the same may have been amended (the "Lease") pursuant to which Tenant has leased from Landlord certain premises consisting of approximately _____ square feet and being known generally by street and number as _____, located in _____, Oklahoma (the "Premises").

In consideration of the mutual covenants and agreements set forth in the Lease, Landlord and Tenant hereby acknowledge and stipulate as follows:

1. All initially capitalized terms used herein shall have the meanings set forth for such terms in the Lease.
2. The initial term of the Lease is _____ years. Tenant has _____ options to extend the Term of the Lease for _____ years each.
3. The Possession Date occurred on _____.
4. The Rent Commencement Date occurred on _____.
5. The initial term expires on _____.
6. If properly exercised by Tenant, the first extended term shall commence on _____ and expire on _____. Tenant must give written notice of its exercise of the first extended term on or before _____.
7. If properly exercised by Tenant, the second extended term shall commence on _____ and expire on _____. Tenant must give written notice of its exercise of the second extended term on or before _____.
8. If properly exercised by Tenant, the third extended term shall commence on _____ and expire on _____. Tenant must give written notice of its exercise of the third extended term on or before _____.
9. If properly exercised by Tenant, the fourth extended term shall commence on _____ and expire on _____. Tenant must give written notice of its exercise of the fourth extended term on or before _____.
10. The Lease is unmodified and in full force and effect.

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Stipulation as of the date first set forth above.

TENANT:

CHIPOTLE MEXICAN GRILL OF
COLORADO, LLC,
a Colorado limited liability company

By: _____

Name: Rex Jones

Title: Chief Development Officer

LANDLORD:

BR MIDLAND CENTER, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT F

[Leave Space for recording – State Specific]

MEMORANDUM OF LEASE

This Memorandum of Lease is made this ____ day of _____, 200__, by and between, BR MIDLAND CENTER, LLC, a California limited liability company (“Landlord”), whose address is _____, and CHIPOTLE MEXICAN GRILL OF COLORADO, LLC, a Colorado limited liability company (“Tenant”), whose address is 1543 Wazee Street, Suite 200, Denver, Colorado 80202.

1. Leased Premises. Landlord hereby grants, demises and leases to Tenant, and Tenant hereby leases from Landlord, the Premises with improvements and appurtenant easements, if any, containing approximately ____ square feet and designated as _____ (“Premises”), situated in the building and surrounding land known as _____, in the City of _____, County of _____, State of _____, which land is described on Exhibit A, attached hereto and made a part of this Memorandum of Lease.

2. Term. To have and to hold for a term commencing on _____, 20____, and ending _____, 20____.

3. Option to Extend. Landlord grants to Tenant the option to extend the term of the lease at the expiration of the original term for ____ successive periods of ____ years each aggregating ____ years.

4. Exclusive Use. Landlord agrees *[insert exact language from the Lease and an additional exhibit for the restricted property.]*

5. Successors and Assigns. The conditions and provisions hereof shall inure to the benefit of and shall be binding upon Landlord, Tenant, and their respective personal representatives, executors, successors, heirs and assigns and shall run with the land.

6. Memorandum. The rentals to be paid by Tenant and all of the obligations and rights of Landlord and Tenant are set forth in the Lease dated _____ (“Lease”) and executed by the parties. This instrument is merely a memorandum of the Lease and is subject to all of its terms, conditions and provisions. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall prevail.

IN WITNESS WHEREOF, Landlord and Tenant or their authorized representatives or officers have signed This Memorandum of Lease this _____ day of _____, 20____.

TENANT:

CHIPOTLE MEXICAN GRILL OF
COLORADO, LLC,
a Colorado limited liability company

By: _____

Name: Rex Jones

Title: Chief Development Officer

LANDLORD:

BR MIDLAND CENTER, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

WITNESS

ATTEST:

By: _____

WITNESS

[ATTACH ACKNOWLEDGEMENTS]

Attachment – Exhibit A

**Please Return to:
Messner & Reeves, LLC
1430 Wynkoop Street, Suite 400
Denver, CO 80202
Attention: Jason T. Moilanen**

EXHIBIT G

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of the ____ day of _____, _____, by and between **CHIPOTLE MEXICAN GRILL OF COLORADO, LLC**, a Colorado limited liability company ("Tenant"), whose address is 1543 Wazee Street, Suite 200, Denver, Colorado 80202, Attn: Real Estate Legal Department, _____, a _____, whose address is _____ ("Lender"), and **BR MIDLAND CENTER, LLC**, a California limited liability company, whose address is _____ ("Borrower").

A. Lender has entered into a loan agreement dated _____, _____ (the "Loan Agreement") with Borrower secured by, among other things, a mortgage on the leasehold interest (the "Mortgage") in that certain real property legally described on **Exhibit A** attached hereto (the "Premises"); and

B. Tenant is the present lessee under a lease dated as of _____, made by the Borrower, as landlord, demising the Premises (said lease and all amendments thereto being referred to as the "Lease"); and

C. Lender is agreeable to not disturbing Tenant's possession of the Premises so long as Tenant is not in default under the Lease.

NOW, THEREFORE, the parties agree as follows:

1. Subordination. The Lease, and all estates, rights and interest contained or created thereunder, are and shall be and continue to be subject and subordinate in all respects to the lien of the Mortgage, and to all renewals, modifications and extensions of the Mortgage.

2. Tenant Not to be Disturbed. So long as Tenant is not in default (beyond any period given Tenant by the terms of the Lease to cure such default) in the payment of rent or additional rent or of any terms, easements, or conditions of the Lease on Tenant's part to be performed: (a) Tenant's possession of the Premises, and its rights and privileges under the Lease, including but not limited to any extension or renewal rights, shall not be diminished or interfered with by Lender; and (b) Lender will not join Tenant as a party defendant in any action or proceeding foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease.

3. Tenant to Attorn to Lender. If Lender shall become the owner of the leasehold or the leasehold shall be sold to the Lender by reason of foreclosure or other proceedings brought to enforce the Mortgage or the leasehold shall be transferred to the Lender by deed in lieu of foreclosure, the Lease shall continue in full force and effect as a direct Lease between the Tenant and the Lender who shall succeed to the rights and duties of the Borrower under Lease. Tenant shall attorn to Lender who shall succeed to the rights and duties of the Borrower under Lease.

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Tenant shall attorn to Lender as its landlord, said attornment to be effective and self-operative without the execution of any further instruments. Tenant shall be under no obligation to pay rent to Lender until: (a) Tenant receives written notice and a certified copy of an executed transferring document or certified court order from Lender that it has succeeded to Borrower's interest under the Lease; or (b) receives written notice from Lender that it is entitled to receive such rent pursuant to an assignment document executed by Borrower and Tenant is furnished with a copy of such executed assignment agreement. The notices described in the immediately preceding sentence shall be provided to Tenant at least thirty (30) days prior to Tenant having any obligation to pay rent to Lender pursuant to the immediately preceding sentence.

4. Lender's Option to Cure Borrower's Default. Tenant agrees that Borrower shall not be in default under the Lease unless written notice specifying such default is given to Lender. Tenant agrees not to terminate the Lease until: (i) it has given written notice of any act, omission, or default of the Borrower to Lender or its successors and assigns; and (ii) Lender, or its successors or assigns shall, within thirty (30) days of the receipt of such notice, have failed to cure or failed, with reasonable diligence, to commence, pursue or complete reasonable action to cure or remedy any act, omission or default of Borrower. Tenant further agrees not to invoke any of its remedies under the Lease until said thirty (30) days have elapsed.

5. Notice of Discharge. Borrower shall give thirty (30) days prior written notice to Tenant of the reconveyance or other release of the Mortgage; provided, however, that no such notice shall be binding on the Lender.

6. Limitation. Neither this Agreement nor the mortgage shall apply to any furniture, equipment or personal property owned or leased by Tenant which is now or hereafter placed or installed on the Premises, and Tenant shall have the full right to remove said items at any time during or at the expiration of the Lease term.

7. Successors and Assigns. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon and shall insure to the benefit of the parties hereto and their representatives, successors and assigns.

8. Successor Liability. If Lender shall succeed to the interest of the Borrower under the Lease, Lender shall not be:

(a) liable for any act or omission of any prior or succeeding landlord (including Borrower) except those acts or omissions that are continuing after Lender succeeds to the interest of Borrower under the Lease; or

(b) bound by any rent or additional rent which Tenant might have paid for more than the then current month to any prior to succeeding landlord (including Borrower).

9. Prepayment. Tenant agrees that it will not, without the written consent of Lender, pay rent or any other sums becoming due under the Lease more than one (1) month in advance.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed as
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of the date first above written.

TENANT:

**CHIPOTLE MEXICAN GRILL OF
COLORADO, LLC,**
a Colorado limited liability company

By: _____
Name: Rex Jones
Title: Chief Development Officer

LENDER:

_____,
a _____

By: _____
Name: _____
Title: _____

BORROWER:

BR MIDLAND CENTER, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENTS

STATE OF COLORADO)
) ss.
COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by Rex Jones, as Chief Development Officer of Chipotle Mexican Grill of Colorado, LLC, a Colorado limited liability company.

Witness my hand and seal.

Notary Public
My Commission expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by _____, as _____ of _____, a _____.

Witness my hand and seal.

Notary Public
My Commission expires: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by _____, as _____ of _____, a _____.

Witness my hand and seal.

Notary Public
My Commission expires: _____

EXHIBIT H

GUARANTY OF LEASE

For and in consideration of the execution of a lease ("Lease") of even date herewith between BR Midland Center, LLC, a California limited liability company, as Landlord, and Chipotle Mexican Grill of Colorado, LLC, a Colorado limited liability company, as Tenant, whereby certain space located in the City of Oklahoma City, and State of Oklahoma are demised to Tenant upon the terms, covenants, and conditions contained in the Lease, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, Chipotle Mexican Grill, Inc., a Delaware corporation, ("Guarantor") hereby covenants and agrees as follows:

1. The Guarantor hereby absolutely and unconditionally guarantees to Landlord and Landlord's successors and assigns the prompt payment of rent and other sums of money and the full and timely performance of the covenants and agreements to be made and performed by Tenant under the Lease (collectively the "Obligations"). If Tenant shall at any time and in any manner default in the payment or performance of any of the Obligations, then the Guarantor shall immediately: (i) pay to Landlord the full amount of any defaulted Obligations and other sums then or thereafter due under the Lease; (ii) fully satisfy and perform any defaulted Obligation; and (iii) pay to Landlord the amount of damages, costs, and expenses incurred by Landlord by reason of such default and any subsequent default by Tenant.
2. This Guaranty is absolute and unconditional, and shall continue in full force and effect without in any way being affected by: (i) the bankruptcy or insolvency of Tenant or its successors or assigns; (ii) the lack of notice to Guarantor of any default by Tenant under the Lease; (iii) modifications of or amendments to the Lease; or (iv) the disaffirmance or abandonment by any trustee or receiver of Tenant or its successors or assigns.
3. The obligations of Guarantor hereunder shall in no way be affected or impaired by Landlord's assertion of any rights against Tenant.
4. Guarantor hereby expressly waives notice of non-payment, non-performance, or non-observance and proof, notice, and demand of or for the foregoing. Guarantor agrees that the validity of this instrument and all obligations of Guarantor hereunder shall continue as to any modification of the Lease, throughout the Lease term, and during any period that Tenant shall occupy the Premises demised in the Lease.
5. Guarantor shall be liable under this Guaranty notwithstanding the assignment or transfer of the Lease or the subletting of the Premises, by operation of law or otherwise.

GUARANTY OF LEASE

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1. The Guarantor hereby absolutely and unconditionally guarantees to Landlord and Landlord's successors and assigns the prompt payment of rent and other sums of money and the full and timely performance of the covenants and agreements to be made and performed by Tenant under the Lease (collectively the "Obligations"). If Tenant shall at any time and in any manner default in the payment or performance of any of the Obligations, then the Guarantor shall immediately: (i) pay to Landlord the full amount of any defaulted Obligations and other sums then or thereafter due under the Lease; (ii) fully satisfy and perform any defaulted Obligation; and (iii) pay to Landlord the amount of damages, costs, and expenses incurred by Landlord by reason of such default and any subsequent default by Tenant.
2. This Guaranty is absolute and unconditional, and shall continue in full force and effect without in any way being affected by: (i) the bankruptcy or insolvency of Tenant or its successors or assigns; (ii) the lack of notice to Guarantor of any default by Tenant under the Lease; (iii) modifications of or amendments to the Lease; or (iv) the disaffirmance or abandonment by any trustee or receiver of Tenant or its successors or assigns.
3. The obligations of Guarantor hereunder shall in no way be affected or impaired by Landlord's assertion of any rights against Tenant.
4. Guarantor hereby expressly waives notice of non-payment, non-performance, or non-observance and proof, notice, and demand of or for the foregoing. Guarantor agrees that the validity of this instrument and all obligations of Guarantor hereunder shall continue as to any modification of the Lease, throughout the Lease term, and during any period that Tenant shall occupy the Premises demised in the Lease.
5. Guarantor shall be liable under this Guaranty notwithstanding the assignment or transfer of the Lease or the subletting of the Premises, by operation of law or otherwise.
6. This Guaranty may not be amended, modified, discharged, or terminated in any manner unless in writing signed by Landlord and Guarantor.

7. The obligations of Guarantor hereunder shall not, to the extent permitted by law, be affected, modified, or impaired by any event, action, claim, or defense concerning Guarantor which could result in the release or discharge of Guarantor from the observance or performance of any obligations or agreement of Guarantor hereunder.

CHIPOTLE MEXICAN GRILL, INC.,
a Delaware corporation

By: [Signature]
Rex Jones
Chief Development Officer

STATE OF COLORADO :
CITY AND COUNTY OF DENVER: : SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Rex Jones, the Chief Development Officer of Chipotle Mexican Grill, Inc., a Delaware corporation, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Denver, Colorado this 13 day of June, 2008.

[Signature]
NOTARY PUBLIC

