

**GROUND LEASE AGREEMENT**

**BY AND BETWEEN**

**RMC 75 LAKE, LLC  
AS LANDLORD,**

**AND**

**BRAVOFLORIDA, LLC,  
AS TENANT**

**FOR**

**Near the SE Intersection of I 75 and SR 441  
Lake City, FL**

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## **GROUND LEASE AGREEMENT**

THIS LEASE AGREEMENT (this "Lease"), made and entered into this 31<sup>ST</sup> day of March, 2021, by and between RMC 75 LAKE, LLC, a Florida limited liability company with its principal office at 8902 N. Dale Mabry Hwy, Suite 200, Tampa, Florida 33614, herein referred to as "Landlord" and BRAVOFLORIDA, LLC, an Indiana limited liability company, with its principal office at 4220 Edison Lakes Parkway, Suite 300, Mishawaka, Indiana, 46545, herein referred to as "Tenant." The date this Lease is executed by both parties, and Tenant has received a fully executed counterpart of this Lease shall be considered the "Effective Date" of this Lease.

### **ARTICLE 1. DEMISE AND PREMISES**

1.1 Description of Premises. Landlord, in consideration of the rents hereinafter reserved and agreed to be paid by Tenant, hereby leases and demises to Tenant certain premises located at the Southeastern Intersection of I 75 and SR 441, City of Lake City, County of Columbia, State of Florida and more particularly described on Exhibit A hereof (hereinafter the "Premises"), together with all Landlord's easements and rights appurtenant to said Premises, in, over and upon adjoining and adjacent public and private land, highways, roads, streets, lanes and other areas reasonably required for the installation, maintenance, operation and service of any and all utilities and means of ingress and egress to or from the Premises, but only to the extent of Landlord's interest in such easements and rights appurtenant. Landlord represents to Tenant as follows: that Landlord is the contract purchaser to become the record owner of the Premises and that to Landlord's knowledge, the use of the Premises for the operation of a Burger King restaurant as contemplated by this Lease is permitted under applicable zoning laws and is not prohibited by any restrictions, agreements or encumbrances, recorded or otherwise, affecting the Premises.

1.2 Intentionally Deleted.

1.3 Conditions of the Lease. Landlord's lease and demise of the Premises to Tenant is subject generally to the terms and conditions hereinafter set forth and to the payment, performance and observance by Tenant of each and every term and condition herein contained.

1.4 Acquisition Contingency. Landlord shall have until September 1, 2021 to acquire fee simple title to the Premises and provide written notice thereof to Tenant (the "Acquisition Contingency"). If the Acquisition Contingency is not timely satisfied, it shall not be a default, but this Lease shall terminate and be of no further force or effect, provided however, Landlord shall reimburse Tenant for Tenant's documented out of pocket due diligence expenses and design costs incurred in connection with this Lease not to exceed [REDACTED]

### **ARTICLE 2. TERM**

2.1 Commencement and Duration. The original term of this Lease shall consist of the "Initial Contingency Period", the "Contingency Period" and a "Primary Term." The "Initial Contingency Period" shall commence on the Effective Date and shall expire sixty (60) days thereafter. The Contingency Period shall commence on the later of (i) the Effective Date; and (ii) the date Landlord provides Tenant with a copy of its plans and specifications for the Retaining Wall, as

hereinafter defined, in Autocad and pdf formats (the "Plan Date") and shall expire one hundred twenty (120) days after commencement thereof. The Primary Term shall commence on the date (the "Commencement Date"), which is the earlier to occur of (i) one hundred twenty (120) days after the later of (a) the expiration of the Contingency Period, as extended; or (b) the date Landlord delivers the Premises to Tenant with Landlord's Work, as hereinafter defined, completed; or (c) November 1, 2021; or (ii) the date Tenant opens for business. Notwithstanding the foregoing, in the event the expiration of the Contingency Period occurs on a date after June 1 and before September 30 of any year (the "Blackout Period"), then the Commencement Date shall not occur until the earlier of (1) the date Tenant opens for business; or (2) one hundred twenty (120) days after the end of the Blackout Period. The Primary Term will expire on the date which is fifteen (15) years after the Commencement Date.

2.2 Lease Year Defined. A "Lease Year" shall be defined in this Lease as that twelve (12) month period during the Primary Term or any Extended Term (as defined below) commencing on the Commencement Date or the annual anniversary thereof, as may be applicable; provided, however, that if the Commencement Date is a day other than the first day of a calendar month, then the first Lease Year shall include that period of time from the Commencement Date to the first day of the next calendar month, and any subsequent Lease Year shall be the twelve (12) month period beginning on the annual anniversary of the first day of such month.

2.3 Definition of Lease Month. A "Lease Month" shall be defined in this Lease as those successive calendar month periods beginning with the Commencement Date and continuing through the Primary Term or any Extended Term (as defined below) of this Lease; provided, however, if the Commencement Date is a day other than the first day of a calendar month, then the first Lease Month shall include that period of time from the Commencement Date up to the first day of the next calendar month, and each subsequent Lease Month shall be a calendar month beginning on the first day of such month. When the Primary Term is ascertainable, Landlord and Tenant shall enter into a supplemental agreement specifying the actual date for the expiration of the Primary Term. The Primary Term and any Extended Terms (as defined below) are sometimes collectively referred to herein as the "Term."

2.4 Options to Extend Term. Provided Tenant is not in default, Landlord does hereby grant to Tenant the right, privilege and option to extend this Lease for five (5) successive periods of five (5) years each (the "Extended Terms"), upon the same terms and conditions as herein contained, except for increases in rent as provided in Section 3 below. Tenant, if it elects to exercise any option, shall do so by giving Landlord written notice at least one hundred eighty (180) days prior to the expiration of the then current term. From and after the date of any extension or renewal of this Lease, references herein to the word "Term" include the period by which the Term will have been extended.

2.5 Failure to Give Notice. If Tenant shall fail to give notice to exercise any option period, Tenant's right to exercise its option shall nevertheless continue until fifteen (15) days after Landlord shall have given Tenant notice of Landlord's election to terminate such option and Tenant may exercise such option at any time until the expiration of said fifteen (15) day period. It is the intention of the parties to avoid forfeiture of Tenant's rights to extend the Term under any of the options granted through inadvertent failure to give notice of exercise thereof within the time limits prescribed. Accordingly, if Tenant shall fail to give notice to Landlord of Tenant's election to extend the Term for any of the aforesaid options and if Landlord shall fail to give notice to Tenant of

Landlord's election to terminate Tenant's right to extend this Lease under the option applicable thereto, then and so often as such event shall occur, the Term shall be automatically extended from year to year at the rent that would be applicable if the Tenant had extended the Term and upon all of the other terms and conditions then in effect, subject to Tenant's right under such option to extend the Term for the remainder of the option period and to Landlord's right to place the fifteen (15) day limit on such option by a notice in the manner provided above.

**2.6 Landlord's Work.** Within one hundred twenty (120) days after Tenant's waiver of the Conditions, Landlord shall (i) provide, or arrange for the provision, of electric service suitable for Tenant's needs to ten (10) feet inside the Premises in a location determined by Tenant; (ii) demolish any existing improvements on the Premises, including the existing hotel building and swimming pool, and all foundations and underground improvements and remove all debris; (iii) remove and replace all unsuitable material from the Premises as described in Landlord's geotechnical report dated March 11, 2020; and (iv) fill and compact the Premises including the swimming pool area with Appropriate Fill Material, as hereinafter defined; and (v) raise the building pad to an elevation of 76 feet above sea level and the balance of the Premises to 75 feet above sea level and construct a retaining wall with a top elevation of at least 74 feet above sea level, the design and construction of which shall be reasonably acceptable to Tenant, in the area marked on Exhibit D (the "Retaining Wall"). Landlord represents that Tenant's sanitary sewer line may be stubbed off of the existing onsite manhole that connects to the on-site county lift station. All fill materials used shall be homogenous and non-expansive, having a plasticity index between 4 and 12, and a liquid limit not less than 30. All fill shall be compacted to 95% of maximum dry density at 2% below and 3% above optimum moisture content as determined by standard proctor test (ASTM D-1557), and shall be capable of supporting 2500 pounds per square foot ("Appropriate Fill Material"). Landlord shall provide Tenant with written notice that Landlord's Work has been completed in accordance with this Section 2.6. Included with such notice shall be a certification from Landlord's geotechnical engineer, licensed in the state where the Premises is located, that the former swimming pool area is compacted in accordance with the requirements of this Section. All of the foregoing is referred to herein as "Landlord's Work."

### ARTICLE 3. RENT

**3.1 Primary Term.** Beginning on the Commencement Date, Tenant agrees and covenants to pay to Landlord or to such other person or entities at such place or places as Landlord may from time to time designate in writing, fixed minimum rent during, payable in advance (sometimes referred to herein as "Base Rent"), in equal monthly installments on the first day of each and every calendar month, time being of the essence, according to the following schedule:

| Lease Years  | Annual Rent | Monthly Rent |
|--------------|-------------|--------------|
| Years 1-10:  |             |              |
| Years 11-15: |             |              |

In addition, Tenant shall pay applicable sales tax (as defined in Section 8.3, below) thereon. Initially, and until further written notice designating otherwise, payments hereunder to Landlord shall be made to Landlord, at its address set forth above. If the Primary Term commences on a day other than the first day of a calendar month, such that the first Lease Year includes that period of time from the Commencement Date to the first day of the next calendar month, an additional amount of fixed

minimum rent shall be owed by Tenant to Landlord for such partial calendar month, prorated on a per day basis and paid on the Commencement Date. This amount shall be in addition to the amount set forth above for the Primary Term.

3.2 Extended Term(s). Tenant agrees and covenants to pay to Landlord or to such other person or entities at such place or places as Landlord may from time to time designate in writing, fixed minimum rent during the Extended Term(s) (which for purposes of this Section shall be referred to as Lease Years Sixteen (16) through Forty (40), inclusive, to the extent options to extend this Lease are exercised), payable in advance, in equal monthly installments on the first day of each and every calendar month according to the following schedule:

| Lease Years          | Annual Rent | Monthly Rent |
|----------------------|-------------|--------------|
| First Extended Term  |             |              |
| Years 16-20:         |             |              |
| Second Extended Term |             |              |
| Years 21-25:         |             |              |
| Third Extended Term  |             |              |
| Years 26-30:         |             |              |
| Fourth Extended Term |             |              |
| Years 31-35:         |             |              |
| Fifth Extended Term  |             |              |
| Years 36-40:         |             |              |

3.3 Service Charge. In the event a monthly rent installment is not received by the tenth (10th) of the month, a service charge of five (5%) percent of the monthly rent installment shall be charged to and paid by Tenant, plus all of Landlord's reasonable expenses, including attorney's fees, that arise from the failure to timely pay. This shall be in addition to all other rights and remedies of Landlord.

3.4 Conditions of Payments. Except as is otherwise expressly provided herein, all installments of rent and other sum payable by Tenant hereunder (collectively "Rent") shall be paid without notice, demand, counterclaim, setoff, deduction or defense, and without abatement, suspension, deferment or reduction, and the obligations and liabilities of Tenant hereunder shall in no way be released, discharged or otherwise affected.

3.5 Intentionally Deleted.

#### ARTICLE 4. IMPROVEMENT OF THE PREMISES.

4.1 The Leasehold Improvements. Tenant will improve the Premises by constructing, at its sole cost and expense, a building and other improvements (hereinafter the "Improvements") thereon generally in accordance with its current prototypical plans and specifications for a Burger King restaurant in the Central Florida region. Provided that Tenant complies with the foregoing, Tenant's plans and specifications for the Improvements are hereby deemed approved by Landlord. Subsequent to the initial construction of the Improvements, any structural changes to the Improvements must be approved in writing by Landlord (with such approval not to be unreasonably

withheld, delayed or conditioned), and once so approved, such changes shall be included as part of the plans and specifications for the Improvements.

4.2 Construction Responsibilities. Tenant shall be responsible for applying to governmental authorities for any variances, special use permits or other items necessary for the construction of the Improvements pursuant to this Lease, so that the construction of the Improvements and the use of the Improvements and Premises will conform to all applicable legal requirements, including all applicable zoning laws and other zoning requirements. Tenant shall be responsible for all "tap-in" fees in connection with obtaining utility services from the applicable public utility companies. Tenant will construct all Improvements in accordance with all state, local and federal regulations, statutes and building codes, and in accordance with all applicable rules, regulations and requirements of all departments, boards, bureaus, officials and authorities having jurisdiction thereof. Landlord will cooperate with Tenant in all respects in connection with the applications referred to in this Section. To the extent necessary, the obligation to cooperate includes the obligation to execute appropriate documents needed to support the applications and proceedings. Landlord shall not, however, be required to pay application fees or any other costs or expenses related to Tenant's construction.

4.3 Maintenance of Premises. Following construction of Tenant's Improvements, Tenant shall maintain the Premises and parking areas, drive lanes and aisles and landscaping on the Premises in good condition and in compliance with all applicable laws, codes, and ordinances applicable to the Premises.

4.4 Site Investigation. Landlord grants Tenant the right to enter upon the Premises to conduct a site investigation. The right to conduct a site investigation includes the right to take measurements, make inspections, make boundary and topographical surveys, and conduct other studies. The studies may include test borings and drainage studies. The right to conduct a site investigation also includes the right to gather information with respect to the availability of utilities for the Improvements to be constructed on the Premises. Tenant may exercise the rights granted pursuant to this Section at any time after the Effective Date of this Lease. Tenant shall take appropriate safety precautions to avoid the creation or maintenance of hazards as a result of the site investigation. Tenant shall repair any damage to the Premises caused by the site investigation. Notwithstanding anything to the contrary herein, prior to entering upon the Premises to conduct Phase II environmental testing, the Landlord, Tenant and the environmental consultant must enter into an access agreement, reasonably acceptable to both Landlord and Tenant, containing the following terms: (i) limits the nature and scope of testing to compounds reasonably suspected to be present upon the Property in the areas where such compounds are reasonably suspected of being present; (ii) requires the environmental consultant to maintain Contractor's Pollution Legal Liability Insurance Policy covering its contractor's liability during activities on the Property; (iii) requires the environmental consultant to remove and properly dispose of all sample waste materials that it generates in accordance with all applicable laws; (iv) specifies that the environmental consultant shall be solely responsible for the proper handling, storage, treatment and/or disposal of all waste or other material generated as a result of the sampling; and (v) prohibits the environmental consultant from identifying the Landlord or Tenant as the generator of any waste material relating to the sampling which is generated at or transported from the Premises. All such testing shall be kept confidential and shall not be disclosed to any third parties; provided however, in the event Tenant's environmental

consultant determines that disclosure is required under applicable law, Landlord may obtain a second opinion from Landlord's environmental consultant and/or counsel, and such opinion shall be conclusive. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all liability caused by Tenant's failure to comply with the terms and conditions of this Paragraph. Tenant shall use licensed and insured contractors to perform all site investigations, and Tenant shall provide certificates of insurance for all such contractors naming Landlord as additional insured, prior to entry upon the Premises.

4.5 Construction Conditions. Tenant shall begin construction as soon as practicable and construction shall be prosecuted diligently. Tenant shall cause any contractor that performs all or part of the construction to take reasonable steps to prevent any damage to the Premises. Tenant also shall cause any contractor that performs all or part of the construction to take reasonable steps to avoid excessive dust, rubble and odors from the construction. Construction shall be performed in accordance with applicable legal requirements, and shall be completed free of all mechanics' and materialmen's liens which might become a lien against the fee interest of the Premises and other liens, and clear of all financing statements under the Uniform Commercial Code and related statutes. The construction shall also be performed in a good and workmanlike manner and in accordance with good construction practices. Landlord acknowledges that the improvements are not for the immediate benefit of the Landlord.

4.6 Inspection By Landlord. Landlord shall, at all reasonable times, after forty-eight (48) hours written notice to Tenant, have the right to enter upon the Premises and any Improvements thereon, to inspect them during the course of construction.

4.7 Liens. All parties are hereby placed on notice that the interest of the Landlord shall not be subject to liens for improvements made by or on behalf of the Tenant upon the Premises, and Tenant shall have no authority to subject Landlord's interest to such claims or liens. Tenant shall advise all of its contractors of the above provision. Tenant shall pay for the cost of the site investigation and the construction. Should a lien be filed in violation of the above prohibition, Tenant shall discharge or bond over all liens arising from the site investigation and the construction. Such liens shall be discharged or bonded over within thirty (30) days after Landlord gives Tenant notice of the existence of a lien, or Tenant otherwise receives notice of a lien.

4.8 Construction Insurance. Tenant, or its general contractor, shall carry builder's risk insurance on a completed value basis with respect to the Improvements to be constructed. Tenant's obligation to do this shall begin when construction begins and end on substantial completion of construction. The builder's risk coverage shall conform to the requirements of Section 13 below.

## **ARTICLE 5. CONDITIONS.**

5.1 Warranty of Title. As of the Effective Date, Landlord represents, warrants, and covenants to Tenant as set forth below:

- a. To Landlord's knowledge, Landlord has good and marketable fee simple title to the Premises, which Premises are free and clear of all liens and encumbrances arising by, through or under Landlord, except as reflected on Exhibit B, possesses full

power and authority to deal therewith in all respects and no other party has any right or option thereto or in connection therewith.

- b. To Landlord's knowledge, there are no pending or threatened condemnation proceedings or actions affecting the Premises.
- c. To Landlord's knowledge, there are no pending or threatened actions or legal proceedings affecting the Premises or Landlord's interest therein.
- d. To Landlord's knowledge, there are no unpaid special assessments for sewer, sidewalk, water, paving, electrical or power improvements or other capital expenditures or improvements, matured or unmatured affecting the Premises.
- e. This Lease and the consummation of the transactions contemplated hereby shall be valid and binding upon Landlord and shall not constitute a default (or an event which with notice or passage of time, or both, will constitute default) under any contract to which Landlord is a party or by which Landlord is bound.
- f. Landlord has not received written notice nor has Landlord actual knowledge of any violation of any law, regulation, ordinance, order or other requirement of any governmental authority having jurisdiction over or affecting the Premises.
- g. The operation of a Burger King restaurant will not violate the terms and provisions of any restriction affecting the Premises.

## 5.2 Specific Conditions.

This Lease is further subject to and contingent upon the following conditions and provisions (the "Conditions"). During the Contingency Period, Tenant shall investigate any matters pertaining to it of interest to Tenant, including, but not limited to, the following within the time periods listed:

- a. Within sixty (60) days after the Effective Date (the "Initial Contingency Period"):
  - i. Tenant shall have confirmed that Tenant can obtain reasonable access to public streets and ingress and egress to the Premises.
  - ii. Tenant shall have obtained, at Tenant's cost and expense, a satisfactory environmental audit of the Premises prepared by an engineer or consultant selected by Tenant. Landlord will provide Tenant with its Phase I report from Universal Engineering Sciences dated 8/19/2019 upon execution of this Lease.
  - iii. Tenant shall have applied to Burger King Corporation ("Franchisor") for preliminary site approval.
  - iv. Tenant shall have received satisfactory evidence that all necessary utility services (including electricity, water, natural or propane gas, sanitary and storm

sewer, cable and telephone) are available to the Premises at costs acceptable to Tenant and in adequate quantities for its needs and use.

- b. Within ninety (90) days after the commencement of the Contingency Period:
  - i. Tenant shall have received Franchisor's preliminary site approval.
  - ii. Tenant shall have investigated and approved of the condition of the existing improvements, if any, and the suitability of the Premises for the use permitted hereunder and shall have determined that the Premises is adaptable to construction of improvements necessary for Tenant's intended use at costs acceptable to Tenant;
  - iii. Tenant shall have determined that the results of any inspections, soil test borings, drainage tests, topographical analysis, engineering and/or architectural drawings made by Tenant, at its sole cost, do not disclose that the Premises is unsuitable for the intended use. Tenant's entry onto the Premises shall be at its own risk.
- c. Prior to the expiration of the Contingency Period:
  - i. Tenant shall have obtained a building permit, or have determined, in its discretion, that it will reasonably be able to obtain a building permit, together with any required change in zoning or other governmental approvals necessary for the construction and operation of Tenant's intended use.
  - ii. Tenant shall have obtained approval of the Lease from the Board of Directors of its Manager.
  - iii. Tenant shall have obtained approval of its signage from any governmental authority having jurisdiction over such approvals and from Landlord.
  - iv. Tenant shall have obtained Franchisor's approval of the Premises for use as a Burger King restaurant and award of a standard franchise agreement.
  - v. Tenant shall have confirmed that no underground stormwater retention will be required by any governmental or quasi-governmental agency or division.
- d. On or before fifteen (15) days following the Effective Date of the Lease Tenant shall order at Tenant's sole cost and expense, (i) a title commitment, and then at closing, Landlord shall purchase for Tenant an owner's policy of title insurance in the amount of \$1,000,000.00, and (ii) an ALTA Minimum Standard Detail Survey of the Premises (the "Survey") with Table A Optional Items 1, 3, 5, 6 (a), 6 (b), 7 (a), 8, 11, 13, 14, 16, 17, 18, 19, and 20 (a) dated on or after the date of the Lease and certified to Tenant and the title company selected by Tenant. Not later than thirty (30) days after the later of Tenant's receiving a copy of the title commitment (with exception documents) and the Survey (but no sooner than 45 days after the Effective Date), Tenant shall give Landlord notice that the Commitment discloses

exceptions other than permitted exceptions ("permitted exceptions" being those exceptions which are acceptable to Tenant), and that the Survey discloses survey matters unacceptable to Tenant. Landlord shall have twenty (20) days from the date of such notice from Tenant (the "Cure Period") to have the exceptions removed from the Commitment or to correct the survey defects, or to have the title insurer insure against loss or damage that may be occasioned by the exceptions or survey defects, or to elect not to cure some or all of the objections. If Landlord fails to have the exceptions removed or to correct any such survey defects, or in the alternative to obtain the revised Commitment specified above as to such exceptions and survey defects within the specified time, or if Landlord advises Tenant that it shall not cure any such objection, Tenant may terminate this Lease by delivery of notice of termination or before five (5) days following the earlier of (i) expiration of the Cure Period, and (ii) receipt of notice from Landlord that Landlord elects not to cure some or all of such objections, and if Tenant fails to timely terminate this lease, such objections shall be deemed waived. If the Commitment is amended, Tenant shall promptly deliver to Landlord the amendment and provide legible copies of all additional instruments referred to in the amendment (collectively, the "Amendment"). Tenant shall have until the later of the expiration of the Contingency Period or ten (10) days from the date of Tenant's receipt of the Amendment to review and to object in writing to any easements, liens, encumbrances, or other exceptions contained within the Amendment which were not disclosed by the Commitment or a previous Amendment which materially and adversely affect (i) the marketability of title; or (ii) the ability of Tenant to use the Premises for Tenant's intended use ("Additional Title Objections"). If an Amendment is delivered to Tenant less than ten (10) days prior to expiration of the Contingency Period, Tenant may extend the Contingency Period by up to ten (10) days to review and/or object to the same. If Tenant fails to make additional title objections within the time specified, then any objection to the new exceptions contained in the Amendment shall be deemed waived. If Tenant makes Additional Title Objections, Landlord, within ten (10) business days after receipt of the Additional Title Objections, shall give Tenant notice ("Landlord's Additional Title Notice") of those Additional Title Objections which Landlord agrees to either eliminate or to ameliorate by the expiration of the Contingency Period. If Landlord does not elect in Landlord's Additional Title Notice to eliminate or ameliorate to Tenant's satisfaction any disapproved title matters or if Landlord fails to timely deliver to Tenant Landlord's Additional Title Notice, Tenant shall have the right, to either (i) terminate this Lease within seven (7) days after receipt of Landlord's Additional Title Notice (or the lapse of the time period to deliver such notice, if no notice is delivered) by written notice to Landlord, or (ii) waive any such matter(s). Tenant's failure to waive any such matters within such time period will be deemed to constitute a termination of this Lease.

**5.3 Consequences of Failure of Satisfaction.** In the event any Conditions or provisions of Paragraph 5.2 (c) above are not satisfied to Tenant's satisfaction during the Initial Contingency Period or Contingency Period, as applicable, then Tenant may, at its option, either (i) terminate this Lease by providing written notice of termination to Landlord prior to the expiration of the Initial Contingency Period or Contingency Period, as applicable, or (ii) elect to waive any such condition or provision (as to a., b. or c. only) and permit or cause the early expiration of, the Contingency Period. Further, Tenant, in its sole discretion and by written notice to Landlord, may unilaterally extend the

Contingency Period two (2) times, each for thirty (30) days, in order to satisfy any contingencies set forth in this Article. The failure of Tenant to provide notice of termination to Landlord pursuant to subsection (i), above, or extend the Contingency Period as permitted herein, shall be deemed Tenant's election to proceed pursuant to subsection (ii), above.

5.4 Waiver of Conditions. In the event Tenant waives the Conditions or allows the Initial Contingency Period or Contingency Period, as applicable to expire without extending the Contingency Period or terminating this Lease, Tenant may, within fifteen (15) days of the waiver or the expiration of the Contingency Period, as applicable, purchase a leasehold policy of title insurance from the Title Company subject only to the permitted exceptions and with such additional coverage(s) or endorsements as are provided for in Section 5.2, if any.

5.5 Access. Landlord hereby grants to Tenant, its employees and agents, a license for access over and through the Premises for the purposes of conducting any of the foregoing tests, inspections or surveys, provided that Tenant shall indemnify defend and hold Landlord harmless from any liability, cost, damage or expense which Landlord may incur by reason thereof, including but not limited to attorney fees and costs. Tenant's entry onto the Premises shall be at its own risk.

#### **ARTICLE 6. USE OF DEMISED PREMISES.**

6.1 Permitted Uses. Tenant may use the Premises for a Burger King restaurant, or any other purpose which does not violate any of the Prohibited Uses set forth in Exhibit E attached hereto.

6.2 Intentionally Deleted.

6.3 Compliance with Regulations, Etc. Tenant shall comply with all zoning, subdivision, building, health, safety, noise and nuisance abatement, sign and illumination control, environmental, liquor control and all other laws, ordinances, rules and regulations of federal, state, county and municipal governments having jurisdiction, which are applicable to the Premises, including but not limited to the Americans with Disabilities Act.

6.4 Waste and Nuisance Prohibited. Tenant shall not cause, or permit there to be caused, waste to the Premises or to any Improvements constructed thereon, or to cause or permit any nuisance to others from the Premises or any Improvements constructed thereon.

6.5 Intentionally Deleted.

#### **ARTICLE 7. COVENANT OF QUIET POSSESSION.**

7.1 Escrow of Rent. If at any time, Landlord's title or right to receive rent hereunder is legitimately disputed by a person unrelated to Tenant, or if there is a change of ownership of Landlord's estate, Tenant may pay rent thereafter accruing into an escrow arrangement until Tenant is furnished proof as to the party entitled thereto.

7.2 Non-Disturbance By Landlord. Landlord further covenants with Tenant to keep Tenant in quiet possession of the Premises during the Term hereof, provided that Tenant keeps and performs all of the covenants, agreements and undertakings to be kept and performed by it.

## ARTICLE 8. TAXES.

8.1 Prior Taxes. Landlord represents that upon its signing of this Lease, all taxes on the Premises, except current taxes not delinquent, have been paid in full, and that Landlord shall timely pay any taxes on the Premises accruing prior to the Commencement Date. Promptly after receipt of any tax notice or bill on the Premises, Landlord shall furnish Tenant with a copy of such document.

8.2 Present and Future Taxes. Tenant covenants and agrees to pay before they become delinquent all real property taxes and assessments on the Premises and all improvements, buildings and the Improvements thereon, accrued from and after the Commencement Date and through the expiration or earlier termination of the Term, which are now, or hereafter may be payable during the Term hereof, on a due and payable basis, regardless of the time specified in the bill for which the taxes and assessments are owed.

8.3 Definitions. The terms "taxes and assessments," "tax" and "taxes" as used in this Article 8 shall mean the aggregate of the real estate taxes, assessments and other governmental charges and levies, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever which may be levied, assessed or imposed or become liens upon any part of the Premises or which arise out of the use, occupancy or possession of the Premises by Tenant or its tenants from time to time. Said terms shall also mean, and Tenant shall also pay, any sales tax owed pursuant to Fla. Stat. §212.031(1)(c), and/or any other sales tax on rent as may exist from time to time.

8.4 Contesting of Tax By Tenant. If Tenant desires to contest any ad valorem assessment or the validity of any tax and gives Landlord written notice of this intention, then Tenant may contest the assessment or tax without being in default hereunder, provided that (i) neither the Premises nor any part thereof nor interest therein would be in any danger of being sold, forfeited, lost or interfered with; (ii) Tenant shall have furnished such security, if any, as may be required in the proceedings or reasonably requested by Landlord; and (iii) all expenses incurred in connection with such proceedings shall be paid by Tenant. Tenant agrees to indemnify Landlord and hold Landlord harmless from all costs, expenses and damages of whatsoever nature arising out of any contest made by Tenant.

8.5 Exclusion from Tenant's Taxes. Nothing herein contained shall require Tenant to pay municipal, state or federal income taxes assessed against Landlord, or municipal, state or federal capital levy, estate, succession, inheritance, excise, gift, conveyance, transfer or excess profit taxes of Landlord, or corporate franchise taxes imposed upon any corporate owner of the fee of the Premises or any similar tax or assessment.

8.6 Payment of Taxes. In the event the Premises are not separately assessed when a bill for taxes and assessments is received, Landlord shall forward to Tenant a notice of the amount owing setting forth Landlord's reasonably detailed calculation of the amount due from Tenant together with reasonable supporting documentation. Taxes and assessments due during the Term of this Lease shall

be paid by Tenant within thirty (30) days thereafter. At such time as the Premises are separately assessed, Tenant shall pay the taxes and assessments directly to the taxing authority and provide Landlord with written verification of such payment prior to the due dates thereof. Landlord and Tenant agree to cooperate with each other to cause the Premises to be separately assessed.

8.7 Intentionally Omitted.

**ARTICLE 9. MAINTENANCE AND REPAIRS.**

9.1 Tenant's General Responsibility. Except for Landlord's Work, Tenant accepts the Premises in "as is" condition as of the Commencement Date. Tenant shall be responsible for all replacements, repairs and maintenance required to be made to the Premises and the Improvements. Tenant agrees to maintain said Premises and Improvements in good repair and condition throughout the Term. Tenant shall be responsible for keeping the windows and all exterior doors of the Premises clean and in good repair and condition. Without limiting the generality of the foregoing, Tenant shall also be responsible for general sweeping and cleaning of the Premises and shall keep and maintain in good order and repair the buildings, walkways, parking and paved areas, landscaping and all other improvements to be erected on the Premises or forming part thereof. All repairs, replacements and renewals shall be made promptly and be at least equal in quality and class to the original work.

9.2 Intentionally Deleted.

**ARTICLE 10. EQUIPMENT, FIXTURES AND SIGNS.**

10.1 Tenant's Property. All furnishings, fixtures, equipment and signs used on the Premises which have been supplied to or installed on the Premises by Tenant will be and remain the property of Tenant, and Tenant will have the right to remove same or any part thereof from the Premises during the Term, or at the expiration thereof; provided, however, that Tenant in so doing does not cause any irreparable damage to the Premises or the Improvements thereon which will remain the property of Landlord, and provided further, that Tenant will pay or reimburse Landlord for the reasonable expense of repairing the damage caused by such removal.

10.2 Sign Expenses and Restrictions. The expenses of obtaining permits and compliance with state and municipal and other local statutes, ordinances and regulations for all signs to be installed at the Premises shall be borne solely by Tenant.

10.3 Landlord's Cooperation. Landlord, upon request, agrees to fully cooperate in any proceedings and to execute any necessary consents or applications in respect thereto which may be required by law to permit the erection of Tenant's signs on the Premises, provided, however, that such necessary consents or applications shall be prepared and paid for in their entirety by Tenant.

10.4 Signs. Tenant shall be permitted to identify the Premises to the public by use of interior and exterior signs and other means consistent with Tenant's business practices and local laws, ordinances and regulations including Tenant's standard pole sign.

**ARTICLE 11. ALTERATIONS TO AND CARE AND SURRENDER OF THE PREMISES.**

11.1 Care and Surrender. Tenant agrees that it will commit no waste on the Premises. Upon termination of this Lease, Tenant shall promptly surrender possession of the Premises and the Improvements without notice, reasonable wear and tear, and with respect to a termination pursuant to Article 14 damage by fire or other casualty, excepted. Title to the Improvements on the Premises shall vest in Landlord at the termination of this Lease, and until the termination or expiration of the Term hereof, the building which constitutes a portion of the Improvements shall be Tenant's personal property.

11.2 Alterations. Following the initial construction of the Improvements Tenant may make non-structural alterations to the Premises without the prior written consent of Landlord. Tenant shall not make structural changes to the Premises without Landlord's prior consent, which consent shall not be unreasonably withheld, delayed or conditioned, provided, however, that Landlord's consent shall be deemed to have been given for any alterations approved or required by Franchisor, or its successors. Alterations to the Improvements shall become part of the Improvements. All work at the Premises, both before and after initial construction, is to be at Tenant's own expense and must be performed in a good and workmanlike manner, and in accordance with all municipal, state and federal requirements applicable thereto.

## **ARTICLE 12. INDEMNITY.**

12.1 Tenant's Indemnity. Tenant shall defend, indemnify and save Landlord and its shareholders and their respective trustees, members, directors, officers, employees, agents, managers, representatives, successors and assigns (collectively, "Landlord Indemnitees") harmless from and against legal action, damages, loss, liability and any other expense, including reasonable legal costs, in connection with loss of life, bodily or personal injury or property damage caused by the negligence of Tenant, unless due to the gross negligence of Landlord. The foregoing indemnity for the benefit of Landlord shall be deemed to be for the benefit of Landlord and the other Landlord Indemnitees and shall survive the expiration or sooner termination of this Lease.

12.2 Intentionally Deleted.

## **ARTICLE 13. INSURANCE.**

13.1 Commercial General Liability Insurance. Tenant shall procure and maintain in full force and effect throughout the term of this Lease the following coverages and limits with respect to the Premises: commercial general liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about the Premises, or arising out of injuries to persons or property or the death of any person or for property damage resulting from the negligence of Tenant or those for whom Tenant is legally responsible, with a limit of not less than [REDACTED] per occurrence for both bodily injury and property damage, and not less than [REDACTED] annual general aggregate for umbrella/excess liability (excluding automobile liability), including coverage for bodily injury, personal injury and property damage liability. Tenant shall provide Landlord with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the

property covered by this Lease. Such insurance shall provide that the same may not be canceled without ten (10) days prior written notice to Landlord. Landlord may request that the foregoing limits of insurance be periodically increased to account for inflation in accordance with industry standards for insurance maintained for retail shopping centers, and Tenant shall not unreasonably deny such request. Landlord and any designated mortgagee of Landlord shall be named as additional insured on Tenant's Commercial General Liability policy.

13.2 Fire and Extended Coverage. Tenant agrees that it will, at its cost and expense, obtain and keep in force and effect and name Landlord "loss payee" as its interests may appear, a Causes of Loss-Special Form insurance policy or policies, or the insurance industry equivalent, protecting the building and all Improvements on the Premises from loss or damage within the coverage of such insurance policy(ies) for a sum not less than one hundred percent (100%) of the greater of the full insurable value thereof or the replacement value, if available, of said building(s) and Improvements, excluding foundation and site work.

13.3 Insurance Policy Requirements. Under all policies of insurance referred to in Section 13.2 above, the holder of any mortgage on the Premises, if any, shall be named as "loss payee". Tenant agrees to cause the insurance companies issuing the aforesaid policies of insurance to forward to Landlord certificates of insurance. All insurance provided by Tenant as required by this Section shall be procured from companies authorized to do business in the State of where the Premises are located. Evidence of all such insurance policies shall be delivered to Landlord at least ten (10) days prior to the expiration dates of the respective policies. All such policies shall contain a provision that they shall not be canceled without the insurer endeavoring to give at least ten (10) days' prior written notice to Landlord. All insurance provided for in this Lease may be in the form of a general coverage, floater policy or so-called blanket policy which may be furnished by Tenant or any entity related to Tenant. Such policies shall have commercially reasonable deductibles, provided however, so long as Bravoflorida, LLC is Tenant under this Lease, and maintains a tangible net worth of not less than [REDACTED] Tenant may maintain deductibles or self-insured retention limits in the following amounts: an amount up to [REDACTED] for the Causes of Loss-Special Form insurance policy and [REDACTED] for the commercial general liability insurance policy. Any deductibles or retention amounts in excess of the foregoing shall require Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion. The policy, policies or endorsement must not include any cross-liability exclusion, and shall be issued by an insurer with a policy holder's rating of at least A:VI in A.M. Best's Insurance Guide.

13.4 Tenant Property. In addition to all other insurance required in this Lease to be carried by Tenant, Tenant shall carry insurance to cover other property, fixtures, furnishings, equipment and inventory, and such policy or policies shall include waiver(s) of subrogation as required in Section 15, below. Tenant shall also carry business interruption insurance in an amount sufficient to cover not less than 12 months of Rent payments.

13.5 Insurance Proceeds. Landlord and Tenant agree that in the event of loss under any policy or policies required hereunder, Tenant shall proceed with the repair and restoration of the damaged or destroyed buildings and other Improvements in accordance with Section 14 hereof and that the insurance proceeds, (i) if less than [REDACTED], shall be

paid to Tenant for application to such repair and restoration and (ii) if in excess of [REDACTED] shall be paid to and held by Landlord to be paid out upon architect's certificates, contractors' and subcontractors' sworn statements and waivers of lien for the expense of repairing or restoring the buildings and any other Improvements which have been damaged or destroyed. In the event Tenant elects not to rebuild pursuant to Section 14.2 (b), all insurance proceeds will be paid solely to Tenant, and allocated between Landlord and Tenant as set forth in Section 14.2.

13.6 Intentionally Deleted.

**ARTICLE 14. OBLIGATION TO REBUILD.**

14.1 Conditions of and During Rebuilding. Subject to the provisions of Section 14.2, in the event the Improvements on the Premises are damaged or rendered totally or partially untenantable by fire or other casualty, Tenant will immediately give Landlord written notice thereof, and Tenant will repair or restore the Improvements to their condition prior to such fire or casualty. Repair and restoration hereunder shall include rebuilding the building and other Improvements in order that the Premises shall contain buildings and other improvements of the same general type of construction or better. Rent payable hereunder will not be abated while the Premises or any buildings or Improvements thereon remain untenantable. The proceeds of the pertinent insurance policy or policies, hereinabove mentioned, shall be applied to the cost of repairing or restoring said buildings and Improvements, and Tenant shall pay the balance, if any, of the cost of repairing or restoring same.

14.2 Tenant's Right to Avoid Rebuilding.

(a) If the Improvements, or any material part thereof, should be destroyed or damaged by fire or other casualty, then Tenant shall promptly deliver written notice thereof to Landlord.

(b) If the Improvements should be damaged by fire or other casualty at any time before the expiration of the Primary Term or any Extended Term, then Tenant shall, by written notice delivered to landlord within ninety (90) days after such casualty, elect either to (i) restore the Improvements to their prior condition or (ii) discontinue operations at the Premises, but at all times continue to pay fixed minimum rent and other charges which become due and payable pursuant to the terms and provision of this Lease, and, in the event Tenant elects to proceed pursuant to subsection (ii), above, pay to Landlord a percentage of the insurance proceeds received by Tenant in an amount equal to the percentage of amortization of the Tenant's Improvements as of the date of casualty, based on a straight line forty (40) year amortization. For example, if the building suffers a casualty at the expiration of the 10<sup>th</sup> year of the Term, and Tenant elects not to restore the Tenant improvements, Landlord shall be entitled to 25% of the insurance proceeds ( $10/40=0.25$ ). In the event Tenant elects to discontinue operations or not recommence operations, then Tenant shall at Landlord's election either (i) proceed with reasonable diligence to raze any remaining portion of the Improvements, remove all debris, and grade and landscape the Land, or (ii) put the building into a safe and secure condition. If Tenant elects to restore the Improvements to their prior condition, then Tenant shall proceed with all reasonable diligence to rebuild and repair the Improvements to substantially the condition in which they existed prior to such damage.

## ARTICLE 15. WAIVER OF SUBROGATION.

Tenant and Landlord, respectively, release each other from any and all liability or responsibility to the other for anyone claiming by, through or under it or them by way of subrogation or otherwise for any loss or damage to property of such party, to the extent such loss or damages is covered or would have been covered by any insurance required to be carried herein, regardless of whether such coverage was actually carried, and without regard to the amount of any deductible or self insured retention. The foregoing releases shall not be limited to the liability of the parties to each other, but shall also apply to any liability to any person claiming through or under the parties pursuant to a right of subrogation or otherwise. The releases shall apply even if the loss or damage shall have been caused by the fault or negligence of a party or any person for whom a party may be responsible. Each fire and casualty insurance policy carried by Tenant with respect to Tenant's property shall include a waiver of subrogation clause or endorsement.

## ARTICLE 16. CONDEMNATION.

16.1 Total Condemnation. In the event that all of the Premises are taken or condemned by any competent authority for any public or quasi-public use or purpose, this Lease will terminate as of the date of the title transfer. If there is a condemnation, but it is less than total condemnation of the Premises, but the remainder of the Premises are not, in Tenant's reasonable judgment, conducive for Tenant to effectively carry on its business therein, then this Lease shall terminate as of the date of the title transfer.

16.2 Partial Condemnation. If there is a condemnation, but it is less than total condemnation of the Premises, the rent shall be equitably adjusted by the parties to reflect the extent of such partial taking or condemnation and impact on Tenant's ability to use the Premises for its business operations. In such event, Tenant will promptly commence and complete the restoration of the Premises and Improvements as nearly as possible to their value, condition and character immediately prior to such taking or condemnation, unless such partial condemnation occurs during the last two (2) years of the Primary Term or any Extended Term, and Tenant delivers written notice to Landlord stating that Tenant has elected not to undertake such restoration.

16.3 Restoration of Premises. In the event of a partial taking which shall not result in termination of this Lease, the net award allocated by the condemning authority for the restoration of the Premises shall be applied to pay the cost of restoration of the Improvements in the manner provided in Section 13 for paying out insurance proceeds. The balance, if any, shall be paid to Landlord.

16.4 Distribution of Condemnation Award. Subject to the provisions of Sections 16.1, 16.2 and 16.3 and except as specifically set forth below, the entire compensation award for any taking shall belong to and be the property of Landlord, including, but not limited to, all damages as compensation for diminution in value of the leasehold, reversion and fee, without any deduction therefrom for any present or future estate of Tenant, and Tenant hereby assigns such award to Landlord, except that Tenant shall be entitled to receive such portion thereof as may be allocated to compensation for Tenant's trade fixtures and costs of removal of Tenant's property and relocation

expenses and any other award that does not have the effect of reducing Landlord's award, provided that Tenant proves such damages in any condemnation proceeding.

#### **ARTICLE 17. ENTRY BY LANDLORD.**

Landlord, its agents and representatives may, at any reasonable time upon reasonable prior notice enter the Premises and Improvements for the purpose of inspection thereof, provided, however, that in so doing Landlord, its agents or representatives shall not interfere with the use and occupancy of the Premises by Tenant.

#### **ARTICLE 18. ASSIGNMENT OR SUBLETTING.**

18.1 Permitted Assignment and Subletting. Tenant shall retain the right to sublease the Premises, or any right or privilege connected therewith, by first obtaining the written consent of Landlord, which consent shall not be unreasonably conditioned, delayed or withheld. Tenant and any guarantor shall remain liable under this Lease in the event of any sublease. Notwithstanding the foregoing, Tenant may, without Landlord's prior consent, assign this Lease or sublet the Premises to the following categories of transferees: (1) to any bona-fide Burger King restaurant operating company or any franchisor, franchisee or developer of Burger King restaurants or quick service dining concept franchised by Burger King Corporation or its successors; (2) to any corporation that is in the food industry and which has its voting stock listed on a recognized securities exchange or which is wholly-owned by another corporation whose voting stock is so listed; or (3) to any corporation, partnership or other entity that is controlled by or under common control with Tenant, or any entity resulting from a merger or consolidation with Tenant, or which acquires all or substantially all of Tenant's assets. Any assignee must expressly assume all obligations under this Lease as a condition to such assignment, and Tenant shall promptly provide Landlord with written evidence of such assumption. Tenant shall remain liable and shall not be released hereunder following any such assignment until the later of (i) expiration of the then current Term or Extended Term, or (ii) if less than one year of the then current Term or Extended Term remains, for the remainder of such period and for the duration of the first Lease Year in the proceeding Extended Term (if exercised by such assignee). Tenant shall be automatically released from all obligations under this Lease upon the occurrence of (i) or (ii) set forth in the previous sentence, whichever is applicable; however, Landlord agrees to confirm such release in writing upon request of Tenant.

18.2 Other Assignment, Sublease or Transfer. Except as specifically set forth in Paragraph 18.1 above, Tenant may not assign, sublease or transfer its interest in this Lease or the Premises or any part thereof without the express written consent of Landlord, which shall not be unreasonably withheld. In determining whether to grant consent to Tenant's request to assign, sublet or transfer, Landlord may consider any reasonable factor. Landlord and Tenant agree that any one of the following factors, or any other reasonable factor will be reasonable ground for denying Tenant's request: (i) the business reputation of the proposed assignee or transferee is not in accordance with generally acceptable commercial standards; (ii) the use of the Premises by the proposed assignee or transferee is in violation of law or governmental regulation; (iii) Tenant is in default under this Lease; (iv) the proposed use of the Premises violates any other agreement affecting the Premises. In no event shall Tenant assign or transfer this Lease, or sublease or relet the Premises, for a use

prohibited in Section 6 hereof. Tenant shall notify Landlord in writing of a requested transfer, which notice (the "Transfer Notice") shall include (i) the proposed effective date of the transfer, (ii) a description of the portion of the Premises to be transferred (the "Subject Space"), and (iii) a current financial statement of the proposed transferee certified by an officer, partner or owner thereof, and any other information reasonably required by Landlord (all of which information Landlord agrees to keep confidential at all times), which will enable Landlord to determine the financial responsibility, character, and reputation of the proposed transferee, nature of such transferee's business and confirm that the proposed use of the Subject Space shall not be inconsistent with this Lease. Except as permitted herein, any assignment, transfer, hypothecation or mortgage of this Lease without Landlord's express written consent shall entitle Landlord to re-enter and repossess the Premises and pursue any and all other remedies available hereunder. Any assignment, transfer, hypothecation or mortgage of this Lease without Landlord's express written consent or as herein restricted shall entitle Landlord to re-enter and repossess the Premises. Any approved assignee must expressly assume all obligations under this Lease as a condition to such assignment, and Tenant shall promptly provide Landlord with written evidence of such assumption.

#### **ARTICLE 19. DEFAULT.**

19.1 Events of Default. In the event Tenant fails to pay when due any of the rentals or other amounts provided for herein or fails to promptly keep and perform any other affirmative covenant in this Lease, Landlord, prior to taking any other action, shall give Tenant notice specifying the default(s). Tenant shall have ten (10) days after receipt of said notice to correct any default in the payment of Rents (provided Landlord shall only be obligated to provide notice twice during any consecutive twelve month period, and upon the third late payment of Rent not received within ten (10) days of the due date, Tenant shall be in default without requirement of additional notice), and thirty (30) days after receipt of said notice to correct any other default(s). If Tenant fails to correct said default(s) within the specified time; or if Tenant shall file a petition in voluntary bankruptcy under the federal bankruptcy act or similar law, state or federal, whether now or hereafter existing, or any answer admitting insolvency or inability to pay its debts, or fails to obtain a vacation or stay of involuntary proceedings within ninety (90) days, as hereinafter provided; or if Tenant shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for Tenant or for all of its property or the major part thereof in any involuntary proceedings, or any court shall have taken jurisdiction of the property of Tenant or the major part thereof in any involuntary proceeding for reorganization, dissolution, liquidation, or winding up of Tenant, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise within ninety (90) days; or if Tenant shall make an assignment for the benefit of its creditors or if Tenant shall be in default on any mortgage secured by Tenant's interest in this Lease or affecting the Premises beyond any applicable cure periods; then in any such event Landlord may elect any one of the following:

(a) terminate Tenant's right to possession of the Premises and with or without electing to terminate this Lease, which election shall only be made in writing, re-enter the Premises and the buildings and any other improvements thereon, with or without process of law, and take possession thereof by reasonable force, without such re-entry and repossession working a termination of this Lease with forfeiture of the rents to be paid and the covenants to be performed by Tenant during the

full term of this Lease; and/or Landlord may relet the Premises at a commercially reasonable rental rate. Tenant shall remain liable for the deficiency, if any, between (i) the rental received by Landlord on any reletting less Landlord's commercially reasonable expenses of reletting (including but not limited to advertising costs, leasing brokerage fees, cost of repairs, alterations, and remodeling necessary to put the Premises in a condition acceptable to the new tenant, tenant improvement allowances, rent abatement periods and reasonable legal fees), and (ii) the rental provided for herein. The deficiency shall be paid monthly. If Tenant fails to make any monthly deficiency payment on or before 10 days following written notice of non-payment, then Landlord may accelerate and declare immediately due and payable all of such deficiency for the balance of the then existing Lease term, discounted to the then present value based on a discount rate of 10% per annum, together with all sums due and payable for any portion of the Lease term prior to the acceleration;

(b) to terminate the Lease and obtain damages from Tenant calculated as follows:

(i) the amount of any unpaid rent that is owed as of the date of termination;  
plus

(ii) the net present value of the amount by which any unpaid rent which would have been owed after the termination date for the balance of the Term in which the default occurred exceeds the fair market rent for the Premises; plus

(iii) any other amount necessary to compensate Landlord for all of the detriment proximately caused by Tenant's failure to perform its obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom, including but not limited to all reasonable estimated expenses of re-letting the Premises, repairing the Premises, reasonable attorney's fees and an implied vacancy factor for the time necessary to relet the Premises.

For purposes of clauses (i) and (ii) above, the amount owed "as of the date of termination" shall be calculated by adding interest at the rate of ten percent (10%) per annum or the highest rate allowed by law, whichever is less.

(c) Perform such obligation (other than payment of rent) on Tenant's behalf and charge the cost thereof, to Tenant which will be immediately due and payable as Additional Rent hereunder.

(d) Specifically enforce any obligation of Tenant hereunder, provided, however, that in no event shall this Section be interpreted as granting Landlord the right or ability to force Tenant to operate a business at the Premises other than as is expressly set forth in this Lease.

19.2 Additional Tenant Notice. In the event that this Lease is assigned or transferred by Tenant with Landlord's consent, but without Tenant's being released hereunder, and should any default occur requiring notice as hereinbefore provided in this Section 19, Landlord agrees that it will furnish Tenant with a copy of such notice at the same time that it is sent to such assignee or transferee. In the event that such default is not corrected by such assignee or transferee during the specified time periods, Tenant shall have an additional period of ten (10) days to correct such default, and, upon

correction of such default, Tenant shall have the right and option to resume actual possession of said Premises as Tenant hereunder for the unexpired term of the Lease.

19.3 Remedies Cumulative. The foregoing provisions for the termination of this Lease, at Landlord's election for any default, shall not operate to exclude or suspend any other remedy of Landlord for breach of any portion of the Lease by Tenant or for the recovery of rent, additional rent, any other sums owing hereunder, or any advance by Landlord made under this Lease. Each right, power and remedy of Landlord provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights, powers or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all such other rights, powers or remedies. Landlord hereby waives the right to seek consequential, incidental or punitive type damages against Tenant.

19.4 Diligent Cure of Default. If any default by Tenant occurs, other than in the payment of money, which cannot with due diligence be cured within a period of thirty (30) days, and if Tenant commences to eliminate the cause of such default within said thirty (30) day period and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and does so cure the default(s) and notifies Landlord accordingly, (but subject to Section 39.3, below, such cure must be completed in any event on or before one hundred eighty (180) days following receipt of the notice of default), then Landlord shall not have the right to declare the Lease terminated by reason of such default.

19.5 Landlord Default. If Landlord fails to perform any of its obligations under this Lease following Tenant's reasonable written notice thereof, then Tenant shall have the right, but not be obligated, to perform any such obligations on behalf of Landlord, and thereafter demand payment from Landlord, and Landlord shall promptly reimburse Tenant for any and all such reasonable costs. If Landlord does not promptly reimburse Tenant for such costs, Tenant shall have the right to deduct such amount from its Rent payments (up to 50% of each payment of Rent, per month, and until Tenant has been fully reimbursed for all such costs). Tenant shall further have the right, at all times prior to the expiration or earlier termination of this Lease, to seek specific performance of the terms hereof and to recover actual damages suffered by Tenant as a result of Landlord's breach of same, provided Tenant hereby waives the right to seek consequential, incidental or punitive type damages against Landlord. Notwithstanding the forgoing, Landlord shall have thirty (30) days to cure a default before Tenant exercises any remedy. If any default by Landlord occurs which cannot with due diligence be cured within a period of thirty (30) days, and if Landlord commences to eliminate the cause of such default within said thirty (30) day period and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and does so cure the default(s) and notifies Landlord accordingly, then Tenant may not exercise self-help or any other remedy.

## **ARTICLE 20. BANKRUPTCY OR INSOLVENCY.**

If at any time during the term hereof proceedings in bankruptcy shall be instituted by or against Tenant which result in an adjudication of bankruptcy or if Tenant shall file, or any creditor of Tenant

shall file, or any other person or persons shall file any petition under the Bankruptcy Code of the United States of America, as the same are now in force or may hereafter be amended, and Tenant be adjudicated bankrupt, or if a receiver of the business or assets of Tenant be appointed and such appointment not be vacated within ninety (90) days after notice thereof to Tenant, or Tenant makes an assignment for the benefit of creditors, or any sheriff, marshal, constable, or keeper take possession thereof by virtue of any attachment or execution proceedings and offer same for sale publicly, then Landlord may, at its option, in either or any of such events, immediately take possession of the Premises and terminate this Lease. Upon such termination, all installments of rent earned to the date of termination and unpaid shall at once become due and payable, and in addition thereto Landlord shall have all rights provided by the bankruptcy laws relative to the proof of claims on an anticipatory breach of an executory contract. Nothing in this Section 20 shall be construed to diminish Landlord's remedies and rights identified in Section 19, above.

#### **ARTICLE 21. ATTORNEY'S FEES.**

Landlord and Tenant agree that in the event either receives a court's judgment against the other, the unsuccessful party shall pay all court costs, including the other party's reasonable attorney's fees, that may be incurred because of any adjudicated breach by either party of any condition or covenant in this Lease.

#### **ARTICLE 22. WAIVER.**

The failure of Landlord or Tenant to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Lease, or to exercise any option herein conferred, in any one or more instances, except as to the option(s) to extend or renew the Term, shall not be construed as a waiver of the same or any other term, condition, undertaking or option.

#### **ARTICLE 23. NOTICES.**

All notices, requests, demands and other communications hereunder shall be in writing and shall be personally delivered or sent to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a recognized overnight delivery service, or delivered or sent by facsimile and shall be deemed received (i) if personally delivered, the date of delivery to the address of the person to receive such notice (ii) if mailed three (3) business days after the date of posting by U.S. Mail, (iii) if given by Federal Express, Airborne Express or a similar overnight delivery service, the following business day:

Landlord: RMC 75 LAKE, LLC  
c/o RMC Property Group  
8902 N. Dale Mabry Hwy, Suite 200  
Tampa, Florida 33614  
Attn: Chief Real Estate Officer

With a copy to:

Greg W. Dworzanowski, P.A.

5422 Bay Center Drive, Suite 110  
Tampa, Florida 33609  
Attn: Greg Dworzanowski, Esq.

Tenant: Bravoflorida, LLC  
Attention: President  
4220 Edison Lakes Parkway, Suite 300  
Mishawaka, Indiana 46545

With a copy to:

Bravoflorida, LLC  
Attention: General Counsel  
4220 Edison Lakes Parkway, Suite 300  
Mishawaka, Indiana 46545

Any party desiring change of address or facsimile number shall make such change known in writing to the other party. Properly sent notices that are delivered to the place to which they are properly addressed shall be effective when received. If a properly sent notice is delivered to the place to which it is properly addressed and is refused or unclaimed, notice shall be effective when delivered nevertheless. In the event a properly addressed and sent notice from Landlord to Tenant is refused or unclaimed, Landlord may effectively serve such notice by delivery to the Premises, or by ordinary U.S. Mail effective upon mailing.

#### **ARTICLE 24. RECORDATION, SHORT FORM.**

This Lease shall not be recorded. Landlord agrees that it will, upon Tenant's request, execute a short form of this Lease, entitled Memorandum of Lease, as shown on Exhibit C. Tenant may record such short form Lease at its sole cost and expense. The provisions of this Lease shall control, however, in regard to any omissions from said short form, or in respect of any provisions hereof which may be in conflict with such short form.

#### **ARTICLE 25. PARTIES BOUND.**

The terms, covenants, agreements, conditions and undertakings contained herein shall be binding upon and shall inure to the benefit of the heirs, successors in interest and assigns of the parties hereto. Where more than one party shall be Landlord or Tenant in this Lease, the word "Landlord" or "Tenant," whenever used in this Lease, shall include all landlords or tenants respectively, jointly and severally.

#### **ARTICLE 26. ESTOPPEL.**

Tenant and Landlord shall, from time to time, and upon written request by the other party (but in no event shall either Party make such a request of the other Party more than three (3) times in any calendar year), furnish the requesting party with a written statement, signed by an authorized signatory of such party and addressed to the person designated in such request, on the status of any matter

pertaining to the Lease, including that, at the date of such statement to the best of such party's knowledge and to the extent accurate that (i) the provisions and conditions of the Lease have been complied with, (ii) there are no defaults by either party known to the party signing such statement, (iii) the Lease is still in full force and effect, (iv) there has been no notice received by such party of any default which has not been cured, (v) certifying that there have been no amendments, (vi) specifying the rent commencement date, term and remaining options. If any or all of (i), (ii), (iii) or (iv) are not stated in the affirmative in the statement, the statement shall describe the facts and matters which such party alleges prevents such affirmative statement.

#### **ARTICLE 27. ENTIRE AGREEMENT, MODIFICATION, SEVERABILITY.**

This Lease contains the entire agreement between the parties hereto and no representations, inducements, promises or agreements, oral or otherwise, entered into prior to the execution of this Lease, will alter the covenants, agreements and undertakings herein set forth. This Lease shall not be modified in any manner, except by an instrument in writing executed by the parties. If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

#### **ARTICLE 28. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT.**

28.1 Subordination. Subject to the following condition precedent, this Lease shall be subject and subordinate to the lien of all mortgages and underlying leases which may now or hereafter affect the Premises and to all renewals, extensions, modifications, amendments, replacements and consolidations thereof, provided Landlord shall, promptly after execution of this Lease, deliver to Tenant from each then existing mortgagee and ground lessor, a properly executed and acknowledged, recordable subordination non-disturbance agreement in form and substance reasonably acceptable to Tenant, stating that as long as Tenant is not in default under this Lease beyond the applicable grace or cure periods:

- a. Such mortgagee or ground lessor shall honor this Lease in accordance with its terms;
- b. Such mortgagee or ground lessor shall not disturb Tenant in its possession of the premises;
- c. Such mortgagee or ground lessor shall not name Tenant in any foreclosure proceedings;
- d. Such mortgagee or ground lessor shall cause Landlord's obligations under this Lease to be performed from and after the date it succeeds to Landlord's interest; and

provided however, such mortgagee shall not be (i) liable for any damages or other relief attributable to any act or omission of any prior landlord under the Lease (except for Tenant's offset rights under

Section 19.5, above, which shall expressly survive any transfer of Landlord's interest in this Lease); (ii) liable for any damages or other relief attributable to any latent or patent defects in construction with respect to the Premises; (iii) bound by any rent or additional rent that Tenant might have paid in advance to prior Landlord for any period beyond the month in which Mortgagee succeeds to the interest of Landlord under the Lease, (iv) bound by any waiver or forbearance by Landlord under the Lease or bound by any agreement or modification of the Lease made without the prior written consent of Mortgagee; or (v) bound by any covenant made by Landlord to complete any construction or to pay any sums to Tenant in connection therewith, unless Mortgagee shall have expressly consented thereto in writing.

28.2 Subsequent Mortgages. Landlord shall promptly notify Tenant prior to Landlord's execution of any new mortgages or ground leases on the Premises. Promptly after the execution of any new mortgage or ground lease, Landlord shall deliver to Tenant a properly executed, acknowledged, recordable non-disturbance agreement in accordance with Section 28.1 above from such new mortgagee or ground lessor. Tenant's subordination and agreement to attorn to any mortgagee or ground lessor are expressly conditional upon Tenant's receipt of all such non-disturbance agreements.

28.3 Landlord's Right to Subordinate. Subject to the provisions of Sections 28.1 and 28.2, Landlord reserves the right to subject and subordinate this Lease to the lien of any mortgage or mortgages now or hereafter placed upon Landlord's interest in the Premises and on the land and buildings of which the Premises are a part.

28.4 Tenant's Right to Perform. If Landlord defaults in making payment under any mortgage or mortgages, or if Landlord is in breach or in default of any such mortgage or mortgages in any respect, Tenant shall have the right to make all rental payments thereafter becoming due under this Lease to the mortgagee in lieu of Landlord, and payments so made shall discharge the obligation of Tenant hereunder respecting the payment of rent. Should Landlord, in connection with the future mortgaging of the Premises or the tract of which the Premises are a part, execute a conditional assignment of rentals, Tenant will execute an acceptance of such assignment, provided the assignment recognizes Tenant's rights hereunder.

## **ARTICLE 29. UTILITIES PAYMENTS.**

Tenant will pay when due all usage charges for gas, water, electricity and any other utility service provided to or used on the Premises by or for Tenant. In the event there is a failure of a utility company to provide heat, electricity or other power, there shall be no liability on the part of Landlord or reduction of rent therefor unless caused by Landlord's negligence or misconduct.

## **ARTICLE 30. NUMBER AND GENDER.**

All of the terms and words used in this Lease, regardless of the number and gender in which they were used, shall be deemed and construed to include any other number (singular or plural), and any other gender (masculine, feminine or neuter) as the context or sense of this Lease or any paragraph or clause hereof may require, the same as if the words had been fully and properly written in the appropriate number and gender.

## ARTICLE 31. ENVIRONMENTAL MATTERS.

Tenant and Landlord agree that during the Lease Term and throughout Tenant's occupancy of the Premises, each party shall be responsible for environmental matters related to the Premises as follows:

- a. The term "Hazardous Substance" as used in this Lease, shall mean any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive, radioactive material, urea formaldehyde (such as foam insulation), asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, or any other substances the removal of which is required or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which is restricted, prohibited, regulated or penalized by any federal, state, county or municipal statute, law, ordinance or regulation now or at any time hereafter in effect, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. §§9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. §§1801 *et seq.*), the Resource Conservation and Recovery Act (RCRA, 42 U.S.C. §§6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. §§1251 *et seq.*), the Clean Air Act (42 U.S.C. §§7401 *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. §§2601 *et seq.*), the Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§11001 *et seq.*), and the Occupational Safety and Health Act (OSHA, 29 U.S.C. §§651 *et seq.*), as these laws have been amended or supplemented.
- b. Tenant shall not cause: (A) any violation of any federal, state or local law, ordinance or regulation now or thereafter enacted, related to environmental conditions on, under or about the Premises, or arising from Tenant's use or occupancy of the Premises, including without limitation, soil and ground water conditions; or (B) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under, or about the Premises, or the transportation to or from the Premises of any Hazardous Substance, except for use and storage only of substances customarily and ordinarily used in a business such as Tenant's provided the same are used and stored in accordance with all applicable Laws and regulations.
- c. Tenant shall, at Tenant's own expense, comply with all laws regulating the use, generation, storage, transportation, or disposal of Hazardous Substances used by Tenant ("Laws").
- d. Tenant shall indemnify, defend and hold harmless Landlord, and its partners and employees from all fines, suits, procedures, claims, damages, judgments, and actions of every kind, and all costs associated therewith (including attorney's and consultant's fees) arising out of or in any way connected with any deposit, spill, discharge, or the release of a Hazardous Substance caused by Tenant, its, agents,

employees or contractors that occurs during the term of this Lease, at or from the Premises. Without limitation of the foregoing, if Tenant causes or permits the presence of any Hazardous Substance (not existing on the Premises prior to the Effective Date of this Lease) on the Premises and such results in contamination, Tenant shall promptly, at its sole expense, take any and all necessary actions to return the Premises to the condition existing prior to the presence of any such Hazardous Substance on the Premises.

e. Landlord shall indemnify, defend and hold harmless Tenant, and its officers, directors and employees from all fines, suits, procedures, claims, damages, judgments and actions of every kind and all costs associated therewith (including attorney's and consultant's fees) arising out of or in any way connected with any deposit, spill, discharge or other release of a Hazardous Substance caused by Landlord, its agents or employees.

Tenant's and Landlord's obligations and liabilities under this Section 31 shall survive the expiration of this Lease.

## **ARTICLE 32. LEASEHOLD MORTGAGE.**

32.1 Right to Mortgage Leasehold. Tenant shall have the right to mortgage its interest in this Lease to a bank, insurance company or other bona fide institutional lender without the necessity of obtaining any additional consent or approval from Landlord, provided that any such leasehold mortgage shall be subject and subordinate to the rights of Landlord hereunder, and the rights of any present or future mortgagee of Landlord which uses the Premises as security. In no event shall Landlord be required to subordinate its fee simple title in the Premises to Tenant's leasehold mortgage or mortgagee. Within ten (10) days after written request, Landlord agrees to execute documentation reasonably requested by Tenant or its lender to evidence Landlord's agreement to the terms of this Article 32.

32.2 Notice to Leasehold Mortgagee. If Tenant shall mortgage its interest in this Lease in accordance with this Section 32, and if Tenant or the leasehold mortgagee shall have notified Landlord in the manner hereinafter provided for the giving of notice by Tenant to Landlord of the address to which any notices to the leasehold mortgagee are to be mailed, then Landlord shall not be empowered to terminate this Lease by reason of the occurrence of any default, unless and until Landlord shall have given the leasehold mortgagee a copy of its notice to Tenant of such default and leasehold mortgagee has received an opportunity to cure such default as provided in Section 32.3 below.

32.3 Leasehold Mortgagee's Right to Cure. The leasehold mortgagee shall have the right to remedy any default under this Lease or to cause the same to be remedied and Landlord shall accept such performance by or at the instance of such leasehold mortgagee as if the same had been made by Tenant. There shall be added to any grace period allowed by the term of this Lease to Tenant for curing any default, an additional ten (10) days (or if a non-monetary default cannot be reasonably cured within said ten-day period, and the leasehold mortgagee thereafter diligently pursues to cure such default, such additional period as is required), for such leasehold mortgagee to cure the same

beyond the time allowed to Tenant, but in no event more than thirty (30) days beyond Tenant's outside cure date.

32.4 Holder Through Foreclosure. The leasehold mortgagee may become the legal owner and holder of Tenant's leasehold estate under this Lease by foreclosure of its leasehold mortgage or as a result of the assignment of Tenant's leasehold interest in lieu of foreclosure.

32.5 New Lease with Leasehold Mortgagee. In the event of termination of this Lease or of any succeeding lease made pursuant to the provisions of this Lease prior to its expiration date, Landlord will enter into a new lease of the Premises with the leasehold mortgagee, for the remainder of the term, effective as of the date of such termination, at the rent, additional rent and upon the covenants, agreements, provisions and terms hereof, including the options to extend, provided that the leasehold mortgagee makes written request to Landlord for such new lease within thirty (30) days from the date of such termination and such written request is accompanied by payment of all amounts then due to Landlord and by curing of any other defaults which are susceptible of being cured by the payment of money.

### **ARTICLE 33. REAL ESTATE BROKER.**

Landlord and Tenant each represent and warrant to the other that they have not dealt with any real estate broker or agent or any finder in connection with the transaction represented by this Lease other than RMC Leasing and Management ("Broker"). Each party shall indemnify the other for any breach of the foregoing representation. Landlord shall pay Broker all commissions due as a result of the Lease.

### **ARTICLE 34. ADVERTISEMENT OF PREMISES.**

In the event the parties hereto have not executed a renewal lease within one hundred twenty (120) days prior to the expiration of this Lease, or Tenant has not exercised one of its options to extend this Lease as required above, then Landlord or its agent shall have the right to enter the Premises and Improvements at all reasonable times upon forty-eight (48) hours' prior written notice for the purpose of exhibiting the same to others.

### **ARTICLE 35. SALE OF PROPERTY BY LANDLORD.**

In the event of the sale, transfer or assignment by Landlord of the Premises or the real estate of which the Premises form a part, it shall be sold subject to this Lease. Provided the transferee assumes in writing all of Landlord's obligations under this Lease and such written instrument is provided to Tenant within thirty (30) days of the transfer, the original Landlord shall then be released of all obligations under this Lease accruing subsequent to the date of transfer, and the new owner shall be responsible, as the new Landlord, under the terms and conditions of this Lease. It is the intent that this Lease shall run with the land and not be personal to the landowners.

### **ARTICLE 36. CORRECTION OF DEFAULT BY MORTGAGE LENDER.**

It is understood and agreed that any institutional mortgage lender to Landlord, present or future, loaning or having loaned money with the Premises as security, and so long as Tenant has been provided written notice of such secured interest in the Premises (prior to the date on which it initially gives notice of any default to Landlord), shall have the right to correct any default on the part of Landlord within thirty (30) days after receipt of written notice from Tenant, specifically identifying said default. Tenant shall not be entitled to terminate this Lease without giving this notice to the mortgage lender.

#### **ARTICLE 37. INTENTIONALLY DELETED.**

#### **ARTICLE 38. RIGHT OF FIRST REFUSAL.**

If Landlord receives a bona-fide offer from a third party which is acceptable to Landlord, for sale or transfer of the Premises separate and apart from any other real property owned by Landlord, Landlord shall notify Tenant of the sale or transfer, the name of the offeror, the offered consideration and shall provide Tenant with a fully executed copy of such offer. Within ten (10) business days after receipt of Landlord's notice, Tenant may elect by notice to Landlord to purchase the Premises, for the consideration upon the other provisions stated in Landlord's notice; except that title shall close the later of thirty (30) days after Tenant elects to purchase or the date agreed upon by the offeror. Should Tenant fail to exercise this right to purchase within the time and in the manner required above, or waives such right in writing, Landlord shall be free to consummate the sale or transfer to the named offeror for the consideration and upon the other provisions set forth in Landlord's notice to Tenant; however, Landlord agrees that such sale or transfer shall be subject to the provisions of the Lease, including this right of first refusal. If Tenant fails to timely exercise the right of first refusal, upon request of Landlord, Tenant agrees to execute a recordable waiver of Tenant's right of first refusal with respect to the subject transaction only. If such sale or transfer is not consummated within six (6) months after the expiration of the earlier of the date Tenant fails to exercise its right as hereinabove required or the date Tenant waives such right in writing, the rights granted to Tenant in this Article shall once again apply to the offer described above as well as to any new offer. Following a waiver of Tenant's right of first refusal, Landlord may enter into negotiated amendments to the purchase contract, provided if the purchase price is reduced by more than two and one-half percent (2.5%), then the right of first refusal shall be reinstated.

This provision shall not apply to a sale or transfer of the Premises pursuant to a foreclosure of any institutional first mortgage or deed of trust, or deed in lieu of foreclosure, covering the Premises; or transfer of less than a controlling interest in the membership interests of Landlord provided, or less than arms-length transfers to any affiliated entity, however, that the restrictions contained in this paragraph shall bind the Landlord's heirs, executors, distributees, representatives, successors, permitted assigns, transferees and grantees other than the first mortgagee or any successor, permitted assignee, grantee or transferee of the first mortgagee.

#### **ARTICLE 39. MISCELLANEOUS PROVISIONS.**

39.1 Captions. Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease or the intent of any provision hereof.

39.2 Applicable Law, Venue and Jurisdiction. This Lease shall be construed under the laws of the State of Florida and shall not be construed strictly in favor of or against either Landlord or Tenant in resolving ambiguities or disputes concerning its terms. Venue for any actions or proceedings arising out of this Lease or the Landlord-Tenant relationship shall be in the county or circuit court in and for the county where the Premises is located.

39.3 Force Majeure. In the event there is a strike, riot, act of God, shortage of material or other thing or item beyond the control of Landlord or Tenant preventing Landlord or Tenant from performing under this Lease, it shall not constitute a breach or other violation of this Lease for so long as Landlord or Tenant is disabled by such act or governmental regulation from performing hereunder, provided, however, that Tenant shall not be excused from paying the Rent reserved under this Lease solely by reason of this Section 39.3.

39.4 Severability. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Lease invalid or unenforceable under any applicable law. If any term of this Lease shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Lease shall in no way be affected thereby.

39.5 Business Day. Whenever this Lease requires that something be done within a specified period of days, that period shall: (i) not include the day from which the period commences; (ii) include the day upon which the period expires; (iii) expire at 5:00 p.m. EST on the day upon which the period expires; and (iv) except as otherwise provided, be construed to mean calendar days; provided, that if the final day of the period falls on a Saturday, Sunday, or legal holiday in the State of Florida, the period shall extend to the first (1<sup>st</sup>) business day thereafter.

39.6 Successors and Assigns; Counterparts. This Lease (i) shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, (ii) may not be changed orally, but only by a writing signed by the party against whom enforcement is sought, (iii) may be executed in two or more counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument and (iv) may be executed by facsimile signatures (or by copies of physically signed documents exchanged via email attachments in PDF format or equivalent).

39.7 Collateral Assignment. Notwithstanding anything to the contrary contained in this Lease, Tenant may from time to time, assign its interest in the Lease as collateral to an institutional lender or lenders as partial security for a loan or loans, and Landlord shall, along with the execution of this Lease, execute a consent to collateral assignment in a form reasonably acceptable to Landlord. Upon request from Tenant, Landlord shall promptly execute documents evidencing its approval of an assignment consistent with this provision. Furthermore, Landlord hereby agrees to subordinate any statutory lien it may have on Tenant's property to any third party institutional financing permitted herein.

39.8 Liability of Landlord. Notwithstanding anything contained in this Lease, at law or in equity to the contrary, Tenant expressly acknowledges and agrees that there shall at no time be or be construed as being any personal liability by or on the part of Landlord under or in respect of this Lease

or in any way related hereto or the premises. If Landlord, or its officers, directors or principals are ordered to pay Tenant or its officers, directors or principals a money judgment arising from breach of this Lease or the Landlord-Tenant relationship, Tenant's sole remedy to satisfy the judgment shall be limited to Landlord's fee simple interest in the Premises.

39.9 Radon Gas. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

39.10 Net Lease. It is the intent of Landlord and Tenant that this Lease be an absolute net lease, meaning that Tenant shall be responsible for the payment of all insurance, utilities, repairs, maintenance, replacement, sales and use taxes, property taxes, and charges and impositions relative to the Premises and/or Tenant's use and occupancy thereof, including, without limitation, special assessments relating specifically to the Premises and charged applicable to the Premises and/or under the REA if applicable except that Tenant shall not be responsible, inter alia, for the payment of any mortgages or other liens placed upon the Premises by Landlord nor for the payment of any income or inheritance taxes of Landlord, or for the cost of any liability insurance maintained by Landlord.

39.11 Holding Over. Should the Tenant or any party claiming under Tenant hold over in possession at the expiration of the Term, such holding over shall not be deemed to extend the Term or renew this Lease, and such holding over shall be an unlawful detainer and such parties shall be subject to immediate eviction and removal. Upon holding over and without any demand from Landlord, Tenant shall pay to Landlord as rent during any period while Tenant or such party shall hold the Premises after expiration of the Term or after Landlord's terminates Tenant's right of possession hereunder as a result of Tenant's breach or default, rent in an amount equal to one hundred fifty percent (150%) the monthly rate of monthly rent in effect for the last month of the Term preceding the expiration or termination as applicable, and Tenant shall also pay all damages, (but expressly excluding consequential, incidental, special or punitive damages), sustained by Landlord by reason of such holding over.

**[SIGNATURES APPEAR ON NEXT PAGE]**

IN WITNESS WHEREOF, the said Landlord and the said Tenant, by their duly authorized officers or partners, have set their hands in duplicates as of the date first written above.

WITNESS

By:   
Name: Angela Villagrana

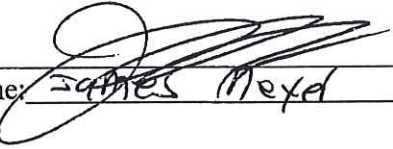
By:   
Name: KRISTI KIM JOHNSON

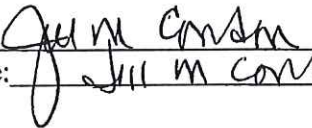
LANDLORD:

RMC 75 LAKE, LLC  
a Florida limited liability company

By:   
Name: H. Robert Eggleston, III  
Its: Manager

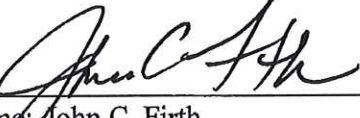
WITNESS

By:   
Name: James Meyer

By:   
Name: John M. Condon

TENANT:

BRAVOFLORIDA, LLC,  
an Indiana limited liability company

By:   
Name: John C. Firth  
Its: President 

## EXHIBIT A

### Legal Description for Premises

#### LEGAL DESCRIPTION :

##### PARCEL A:

SECTION 3, TOWNSHIP 8 SOUTH, RANGE 17 EAST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:  
COMMENCE AT THE NORTHEAST CORNER OF SECTION 3, TOWNSHIP 8 SOUTH, RANGE 17 EAST, AND RUN S 88°15'56" W ALONG THE NORTH LINE OF SECTION 3, A DISTANCE OF 1337.0 FEET TO A POINT ON THE CENTERLINE OF STATE ROAD NO. 25 (U.S. HIGHWAY NO. 41 & 441); THENCE S 1°33'04" E ALONG THE CENTERLINE OF SAID STATE ROAD NO. 25 A DISTANCE OF 223.10 FEET; THENCE N 88°15'56" E 60.00 FEET; THENCE S 1°33'04" E ALONG THE EAST RIGHT-OF-WAY OF STATE ROAD NO. 25, 02.30 FEET TO THE POINT OF BEGINNING; THENCE N 88°26'54" E, 129.0 FEET; THENCE S 1°33'04" E, 122.71 FEET; THENCE S 88°20'50" W, 125.0 FEET TO THE EAST RIGHT-OF-WAY OF STATE ROAD NO. 25; THENCE N 8°19'53" W, 2.71 FEET; THENCE N 1°33'04" W ALONG SAID EAST RIGHT-OF-WAY 110.0 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH EASEMENT RECORDED IN OFFICIAL RECORDS 751, PAGE 1600, OF THE PUBLIC RECORDS OF COLUMBIA COUNTY, FLORIDA.

##### PARCEL B:

SECTION 3, TOWNSHIP 8 SOUTH, RANGE 17 EAST, COLUMBIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SAID SECTION AND RUN S 88°15'56" W ALONG THE NORTH LINE OF SECTION 3, A DISTANCE OF 1337.0 FEET TO A POINT ON THE CENTERLINE OF STATE ROAD NO. 25 (U.S. HIGHWAY NO. 41 & 441); THENCE S 1°33'04" E ALONG THE CENTERLINE OF SAID STATE ROAD NO. 25 A DISTANCE OF 223.10 FEET; THENCE N 88°26'54" E, 60.00 FEET TO THE POINT OF BEGINNING; THENCE N 88°26'54" E, 240.00 FEET; THENCE S 3°32'04" E, 245.0 FEET; THENCE S 88°16'30" W, 110.00 FEET; THENCE N 1°33'04" W PARALLEL TO SAID STATE ROAD NO. 25 CENTERLINE 223.71 FEET; THENCE S 88°26'54" W, 129.0 FEET TO THE EAST RIGHT-OF-WAY LINE OF SAID STATE ROAD NO. 25; THENCE N 1°33'04" W ALONG SAID EAST RIGHT-OF-WAY LINE OF STATE ROAD NO. 25, 02.30 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH EASEMENT RECORDED IN OFFICIAL RECORDS BOOK 408, PAGE 582, OF THE PUBLIC RECORDS OF COLUMBIA COUNTY, FLORIDA.

PARCEL A CONTAINS 15849.9 SQUARE FEET OR 0.3612 ACRES, MORE OR LESS (M)  
PARCEL B CONTAINS 25770.4 SQUARE FEET OR 0.5912 ACRES, MORE OR LESS (M)

## **EXHIBIT B**

### **Schedule of Liens and Encumbrances**

**EXHIBIT C**

**MEMORANDUM OF LEASE AGREEMENT**

Prepared By, and When Recorded  
Return To:

James R. Meyer, Jr.  
Bravoflorida, LLC  
4220 Edison Lakes Parkway, Suite 300  
Mishawaka, IN 46545

Parcel No. \_\_\_\_\_

**MEMORANDUM OF LEASE AGREEMENT**

This Memorandum of Lease Agreement is made by and between RMC 75 LAKE, LLC, a Florida limited liability company ("Landlord"), and BRAVOFLORIDA, LLC, an Indiana limited liability company, with its offices at 4220 Edison Lakes Parkway, Suite 300, Mishawaka, Indiana, 46545 ("Tenant").

WHEREAS, the parties executed a Lease as of \_\_\_\_\_, 2021 (the "Lease") that relates to the premises described herein;

WHEREAS, the parties desire to set forth a Memorandum of Lease for the purpose of recording the same in the Alachua County Clerk's Office, State of Florida.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the parties agree as follows:

1. Description of Premises.

Landlord and Tenant have entered into a lease whereby Landlord leased to Tenant and Tenant leased from Landlord the following described premises:

**See Exhibit A.**

2. Commencement and Term.

Said Lease is for an initial term of fifteen (15) years commencing on \_\_\_\_\_ and expiring \_\_\_\_\_, unless terminated sooner as provided in

the Lease. The Lease also grants Tenant the right and option to extend the term for five (5) consecutive terms of five (5) years each.

3. Complete Lease.

A complete lease is in the possession of both Landlord and Tenant. It is understood that this Memorandum of Lease shall be recorded in the Columbia County Clerk's Office.

4. Right of First Refusal.

The Lease grants Tenant a right of first refusal to purchase the Premises as set forth in Section 38 of the Lease.

5. Liens. All parties are hereby placed on notice that the interest of the Landlord shall not be subject to liens for improvements made by or on behalf of the Tenant upon the Premises, and Tenant shall have no authority to subject Landlord's interest to such claims or liens. Tenant shall advise all of its contractors of the above provision.

6. Conflicts.

In the event any conflicts exist between the terms of this Agreement and the terms of the Lease, the terms of the Lease shall control. Terms not defined herein have the same meaning as set forth in the Lease.

**[SIGNATURES APPEAR ON NEXT PAGE]**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

WITNESS

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

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

LANDLORD:

RMC 75 LAKE, LLC  
a Florida limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

WITNESS

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

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

TENANT:

BRAVOFLORIDA, LLC,  
an Indiana limited liability company

By: \_\_\_\_\_  
Name: John C. Firth  
Its: President

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared on this date, the \_\_\_\_\_ of RMC 75 LAKE, LLC, a Florida limited liability company, and acknowledged the execution of the foregoing document as the free act and deed of said corporation and his or her free act and deed as such Officer.

Witness my hand and Notarial Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(signature)

My commission expires on:  
\_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
(typed or printed name)

Notary Public  
My county of residence is: \_\_\_\_\_ State

STATE OF INDIANA )  
 ) SS  
COUNTY OF ST. JOSEPH )

Before me, a Notary Public in and for said County and State, personally appeared on this date, John C. Firth, the President of BRAVOFLORIDA, LLC, an Indiana limited liability company, and acknowledged the execution of the foregoing document as the free act and deed of said limited liability company and his or her free act and deed as such Officer.

Witness my hand and Notarial Seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
(signature)

My commission expires on:  
\_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
(typed or printed name)

Notary Public  
My county of residence is: \_\_\_\_\_ State

This document was prepared by James R. Meyer, Jr., 4220 Edison Lakes Parkway, Suite 300, Mishawaka, IN 46545.

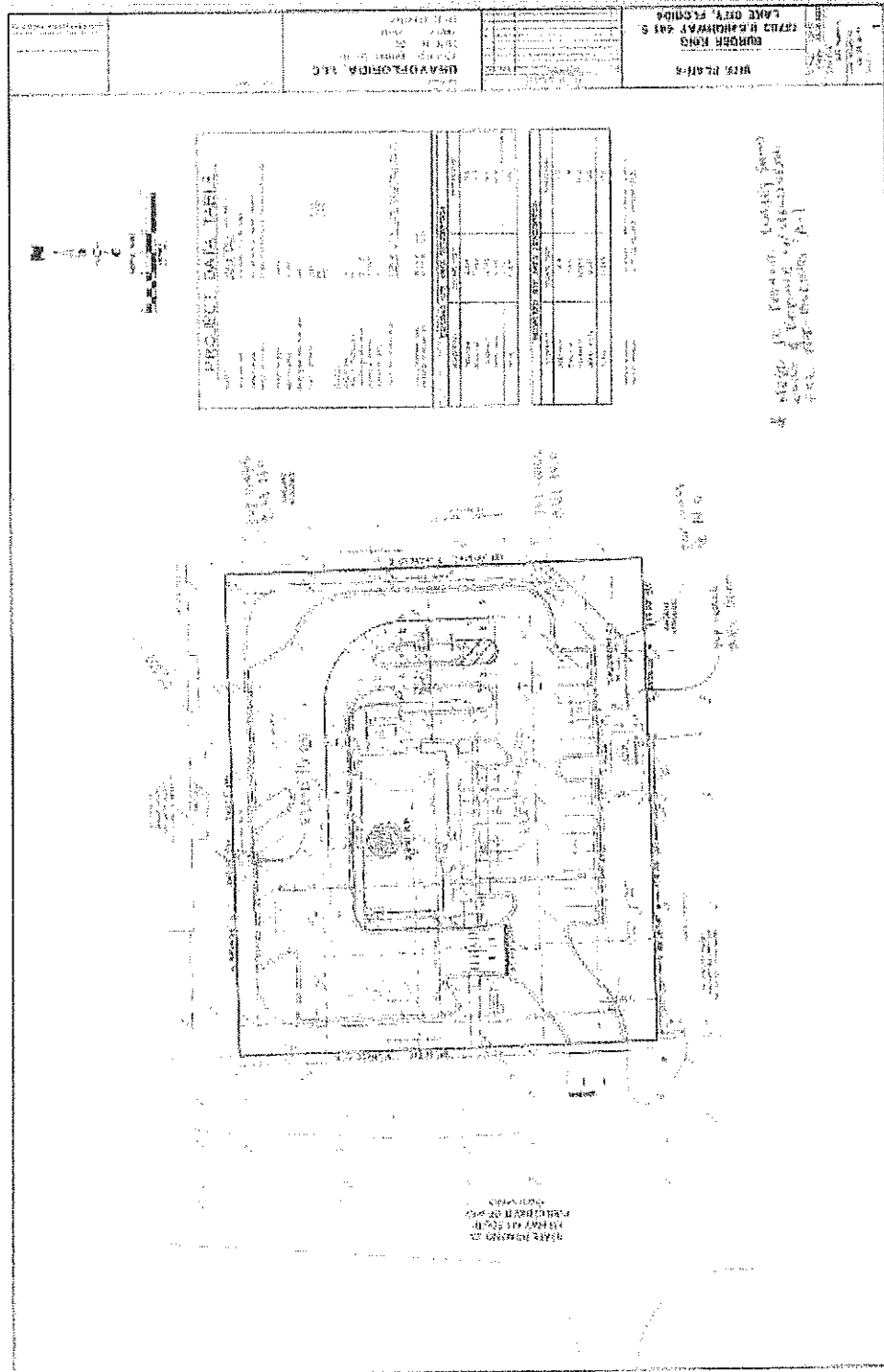
**Exhibit A**  
**to Memorandum of Lease**

**The Premises**

**EXHIBIT D**

**SITE PLAN**

**[Show retaining wall]**



## **EXHIBIT E**

### **Prohibited Uses**

I. In no event may the Premises be used for any of the following uses:

1. Adult book store selling or exhibiting pornographic materials;
2. Bail bonds business;
3. Carnival;
4. Disposal or dumping of garbage or refuse (except normal disposal of garbage or refuse of retail tenants as is typical in shopping centers);
5. Flea market;
6. Head shop (drug paraphernalia);
7. Junk yard;
8. Massage parlor, except as part of, and ancillary to, a separate primary use that is permitted hereunder (such as foot massage services offered by a shoe store); excludes stores such as Massage Envy, Massage Heights or similar operations that operate on a membership basis;
9. Public or private nuisances (leased premises emitting or resulting in strong, unusual or offensive odors, fumes, dust or vapors, noises or sounds which are objectionable, or creating a hazardous condition, provided normal odors from a restaurant are deemed not to be a public or private nuisance);
10. Any use in violation of any restriction recorded in the Public Records of Pinellas County applicable to the Premises, if any.