

GROUND LEASE

BETWEEN

HD POWERS LLC,

AS LANDLORD

and

CHICK-FIL-A, INC.,

AS TENANT

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GROUND LEASE

THIS GROUND LEASE (“**Lease**”) is entered into by and between HD POWERS LLC, a Colorado limited liability company (“**Landlord**”), and CHICK-FIL-A, INC., a Georgia corporation (“**Tenant**”).

In consideration of Ten and 00/100 Dollars (\$10.00), other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by Landlord and Tenant, Landlord and Tenant agree as follows:

Section 1. Effective Date; Critical Dates; Contingencies. Landlord and Tenant agree to the following critical dates and contingencies under this Lease:

(a) **Effective Date.** If this Lease is executed through manual wet ink signatures, then (i) the “**Effective Date**” is the date on which this Lease has been fully executed by Landlord and Tenant, and (ii) the party last executing this Lease will deliver a fully executed original counterpart to the other party by overnight delivery for receipt on the next succeeding business day, which will be the “Effective Date.” If this Lease is executed electronically, then the “Effective Date” is the date on which this Lease is signed by the last party to sign it, as indicated by the date inserted at the top of that party’s signature page to this Lease. Notwithstanding any of the foregoing, if the “Effective Date” determined in accordance with this paragraph is a Saturday, Sunday or holiday, then the “Effective Date” will for all purposes be automatically extended to the next succeeding business day.

(b) **Inspection Period.** The “**Inspection Period**” is the period expiring at 7:00 p.m., Eastern time, ninety (90) days after the Effective Date, subject to extension by Landlord in order to provide additional time to obtain any Third Party Consents (as defined below). Tenant has the right at all times to enter the Demised Premises (as defined in Section 2) and the Adjoining Property (as defined in Section 3) as needed to do what is reasonably necessary to investigate and plan for the use and development of the Demised Premises, provided that any intrusive tests shall be subject to Landlord’s consent, not to be unreasonably withheld, conditioned or delayed. Tenant may make tests related to surface, subsurface, topographic and environmental conditions of the Demised Premises. To the extent Tenant determines on the basis of Tenant’s Phase I environmental site assessment that a Phase II environmental site assessment is warranted, Tenant may extend the Inspection Period for a period of thirty (30) days upon written notice to Landlord. Tenant will restore any area of the Demised Premises and the Adjoining Property disturbed by Tenant to as near its original condition as reasonably possible. Tenant will indemnify Landlord against any claims or damages incurred by Landlord as a result of persons or firms entering the Demised Premises and Adjoining Property on Tenant’s behalf to complete the inspection of the Demised Premises and Adjoining Property. Tenant’s indemnity obligations will survive for a period of one (1) year from the earlier of the expiration of the Inspection Period or the termination of this Lease.

Tenant’s obligations under this Lease are conditioned on Tenant’s determination that the Demised Premises is satisfactory for the use and development intended by Tenant and that the development is economically feasible. Tenant has the right to terminate this Lease on written

notice to Landlord given at any time and for any reason on or before the expiration of the Inspection Period. On termination, Tenant will pay the sum of \$100.00 to Landlord, and all rights and obligations of the parties under this Lease will be of no further force or effect, except for obligations expressly stated as surviving the termination of this Lease. Landlord acknowledges and agrees that the sum of \$100.00 is good, adequate and sufficient consideration for the rights granted to Tenant under this Section 1(b). Whether or not this Lease is terminated pursuant to this Section 1(b), Tenant will have no liability with respect to any Hazardous Materials (as defined in Section 35) or underground storage tanks discovered as a result of any tests, inspections, or studies performed by Tenant under this Lease.

Landlord will deliver to Tenant, within five (5) business days after the Effective Date, true and complete copies of all due diligence materials related to the Demised Premises in the possession or control of Landlord. The materials will include, but are not limited to, environmental and soils reports, prior inspection reports, prior title policies, title exceptions, surveys, and the most recent property tax bills and assessments (collectively, “**Site Information**”). If Landlord fails to deliver the Site Information within five (5) business days after the Effective Date, the Inspection Period will be extended, automatically, for each day of delay.

Tenant acknowledges its use of the Demised Premises is subject to (i) all governmental approvals required from El Paso County, Colorado (the “**County**”), the City of Colorado Springs, Colorado (the “**City**”), the Pikes Peak Regional Building Department, and any other applicable governmental agencies, (ii) that certain Covenants for Operation, Maintenance and Reciprocal Easements recorded December 3, 1985 at Book 5095, Page 0982, as amended, including that certain Second Amendment to Covenants for Operation, Maintenance and Reciprocal Easements dated August 30, 2023 recorded in the Official Records of El Paso County, Colorado and the COMRE Supplement (defined below), and (iii) all restrictions of record. Except for the foregoing, Landlord hereby represents and warrants to Tenant that no, to Landlord’s actual knowledge, consents or approvals are required from any third parties for the lease of the Demised Premises to Tenant, the construction of Tenant’s building and related improvements at the Demised Premises, and Tenant’s subsequent use thereof for the operation of a Chick-fil-A restaurant with a double drive-thru lane and pickup window/door, dual order points, dual menu boards, drive-thru and pickup window canopies, monument signage, an optional children’s play area, and parking areas sufficient to accommodate the number of parking spaces sufficient for Tenant’s business needs and the requirements of the City (collectively, “**Third Party Consents**”). If Tenant determines during the Inspection Period that any such Third Party Consents are required for Tenant’s intended use of the Property, as determined by Tenant in its sole and absolute discretion, then upon notice to Landlord, Landlord shall be required to obtain all such Third Party Consents, at Landlord’s sole cost and expense, prior to the expiration of the Inspection Period. If Landlord fails to obtain all such Third Party Consents prior to the expiration of the Inspection Period, then Landlord shall have the option to extend the Inspection Period for up to an additional one hundred sixty (160) days upon written notice provided to Tenant on or before the expiration of the Inspection Period. If Landlord fails to obtain all such Third Party Consents during the Inspection Period (as previously extended, if applicable) as required by Tenant in its sole and absolute discretion, Tenant shall have the right to terminate this Lease as set forth above by providing written notice to Landlord on or before the expiration of the Inspection Period (as previously extended, if applicable).

(c) **Title Objections.** Landlord acknowledges that Tenant intends to obtain a leasehold title insurance policy issued by First American Title Insurance Company. Tenant will have until the expiration of the Inspection Period to advise Landlord in writing of any title or survey objections. In addition, from time to time prior to the Commencement Date, Tenant may update the effective date of its title examination or survey and give notice to Landlord of all new matters appearing subsequent to the effective date of its prior title examination or survey. Landlord will have fifteen (15) days after receiving Tenant's notice to advise Tenant in writing of the defects or objections Landlord will cure. However, Landlord will remove all monetary encumbrances (except for mortgages or deeds of trust for which Landlord has provided an SNDA (as defined in Section 18(b))). Landlord will deliver an owner's affidavit acceptable to Tenant's title insurer. Landlord will provide Tenant's title insurer with evidence of Landlord's authority to enter into this Lease. If required by Tenant's title insurer, Landlord will deliver an indemnity agreement in form and content reasonably satisfactory to Tenant's title insurer that will be sufficient to allow Tenant's title insurer to delete any exception for mechanic's liens and materialmen's liens arising by, through, or under Landlord and to insure the "gap" between the effective date of the title commitment and the date on which the policy is being issued. Executed copies (with original wet-ink signatures to the extent required by Tenant's title insurer) of the owner's affidavit, Landlord's authority documents, the gap indemnity (if applicable), any SNDA required pursuant to Section 18(b) (executed by the holder of the subject Security Instrument and to the extent applicable, Landlord), and any other instruments or documents Landlord has agreed or is required to deliver on or prior to the Commencement Date pursuant to this Lease (including those Landlord has agreed to deliver in response to Tenant's title objections), each in form and content reasonably satisfactory to Tenant's title insurer, are collectively referred to as "**Landlord's Commencement Documents**".

If Landlord fails to respond to Tenant's notice of title objections or advises Tenant that Landlord does not intend to satisfy or cure any specific non-monetary encumbrances, Tenant may elect either (i) to terminate this Lease by written notice to Landlord, or (ii) to accept its leasehold estate subject to the specific non-monetary encumbrances. Unless otherwise agreed by Landlord and Tenant, Landlord will have until the Commencement Date to satisfy or cure all objections which Landlord agrees to (or is obligated to) satisfy or cure.

Landlord acknowledges that if Landlord agrees to cure a title objection, Tenant will rely on Landlord's agreement to do so. If Landlord then fails or refuses to cure any objections which Landlord agreed to (or is obligated to) cure, Tenant will have, in addition to all other rights and remedies under this Lease, the option to (1) terminate this Lease by written notice to Landlord and to receive reimbursement of the costs incurred by Tenant in connection with this Lease, or (2) accept its leasehold estate subject to the defects and objections.

(d) **Permitting Period.** The "**Permitting Period**" is the period expiring the earlier of (a) three hundred (300) days after the expiration of the Inspection Period or (b) Landlord's receipt of written notice from Tenant of the date Tenant waives the balance of the Permitting Period. Tenant's obligations under this Lease are contingent on its receipt, without extraordinary costs or conditions impacting Tenant's proposed development that are unacceptable to Tenant, of all private approvals and easements required from third parties and of all unappealable permits, allocation of public water and sewer capacity and other governmental authorizations deemed necessary or appropriate by Tenant for the access to, and development and

operation of, the Demised Premises as a restaurant with a “drive-thru” window with multiple lanes, multi-lane order points and canopies, a pylon or monument sign, a children’s play facility and an outdoor seating area (collectively, including third party approvals, the “**Permits**”). Tenant agrees to make its initial submittal for the Permits (which will be applied for and pursued in the order appropriate in the relevant jurisdiction) no later than ninety (90) days after the expiration of the Inspection Period. Tenant will use commercially reasonable efforts to obtain its Permits. Landlord will cooperate with Tenant, at no expense to Landlord, in obtaining the Permits.

If Tenant does not obtain the Permits on or before the expiration of the Permitting Period, then Tenant may (i) extend the Permitting Period for a period not to exceed thirty (30) days, or (ii) terminate this Lease. If Tenant elects to extend and the Permits have not been obtained by the end of the Permitting Period, as extended, Tenant may (x) extend the Permitting Period for an additional period not to exceed thirty (30) days, or (y) terminate this Lease. If Tenant elects to extend and the Permits have not been obtained by the end of the Permitting Period, as further extended, Tenant may elect to terminate this Lease. Any election by Tenant to extend the Permitting Period or terminate this Lease, as applicable, will be given by written notice to Landlord delivered on or before the date that is ten (10) days after the expiration of the Permitting Period (as previously extended, if applicable). On any termination, all rights and obligations of Landlord and Tenant will be of no further force or effect except for obligations expressly stated as surviving termination of this Lease.

If Landlord’s approval or consent is required for any aspect of Tenant’s access to, or development or operation of, the Demised Premises (whether in Landlord’s capacity as a “declarant”, “owner”, “controlling party” or otherwise) under any instrument other than this Lease (as applicable, an “**Other Instrument**”), including, by way of example only, any declaration or other instrument filed of record that requires Landlord’s approval of any plans and/or specifications for Tenant’s intended development of the Demised Premises, Landlord hereby agrees that Landlord will be deemed to have given such approval and/or consent to the extent that Landlord has given the same approval and/or consent for purposes of this Lease, whether pursuant to the terms of this Lease or otherwise in writing with reference to this Lease or the Demised Premises, regardless of whether or not such Other Instrument is specifically referenced. Notwithstanding the foregoing, following Tenant’s written request, Landlord will promptly give any such approval and/or consent in a separate writing that references such Other Instrument.

(e) **Commencement Date.** Subject to the satisfaction of Tenant’s contingencies in this Lease and Landlord’s delivery of Landlord’s Commencement Documents to Tenant’s title insurer, the “**Commencement Date**” will be not later than the date that is ten (10) days after the expiration of the Permitting Period. In the event Landlord’s Commencement Documents are not delivered to Tenant’s title insurer on or prior to the date that is five (5) days prior to the outside Commencement Date, the Commencement Date will be automatically extended one (1) day for each day of delay (and provided further, that after five (5) days of delay, Tenant will receive one (1) day of free rent for each additional day of delay).

(f) **Rent Commencement Date.** The “**Rent Commencement Date**” is the date which is the earlier of (i) two hundred ten (210) days after the Commencement Date, or (ii) the date Tenant opens for business to the public. However, if the Commencement Date occurs during the months of December, January or February, the Rent Commencement Date is the earlier of

(i) thirty (30) days after the first (1st) day of April immediately following the previously specified months or (ii) the date Tenant opens for business to the public. On establishing the Rent Commencement Date, Landlord and Tenant will enter into an Agreement Regarding Dates in the form attached as Exhibit H.

(g) **Existing Leases Restrictions.** For so long as the “Vasa Lease” (as defined below) is in full force and effect, the Demised Premises shall not be used in violation of that certain Lease dated April 21, 2023 (the “**Vasa Lease**”) by and between Landlord, as landlord, and Fitness Group of Colorado Springs – North Powers LLC, a Utah limited liability company (together with its successors and assigns, “**VASA**”), as tenant, which includes certain restrictions stating (i) that the building located on the Demised Premises may not be larger than 10,000 square feet and no higher than twenty-eight feet (28’); and (ii) certain exclusive uses as a health/physical fitness club and: aerobic classes, yoga, Pilates, indoor cycling, boxing, personal training, weight training, volleyball, swimming, sports and rehabilitation therapy, cardiovascular and resistance machine operation and tanning. Except for the foregoing Vasa Lease, Landlord hereby represents and warrants to Tenant that there are not any existing leases, licenses or comparable agreements encumbering the Land or the Adjoining Property (as such terms are defined below) that restrict the Demised Premises or provide any third party with rights to restrict, occupy or use the Demised Premises.

Section 2. Demised Premises. Effective as of the Commencement Date, Landlord leases to Tenant, and Tenant leases from Landlord, on the terms and conditions of this Lease, the parcel of land (the “**Land**”) and all improvements on the Land, consisting of approximately 1.42 acres of land located in the City of Colorado Springs, El Paso County, State of Colorado, described on Exhibit A, together with any and all improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining to the Land, expressly including the easements and rights established in Section 3 of this Lease (collectively, the “**Demised Premises**”). The Demised Premises shall include space for a restaurant building with a double drive-thru lane and pickup window/door, dual order points, dual menu boards, drive-thru and pickup window canopies, monument signage, an optional children’s play area, and parking areas sufficient to accommodate the number of standard-sized parking spaces sufficient for Tenant’s business needs and the requirements of the County and City. If Tenant at any time obtains a survey of the Land, then Tenant and Landlord agree to amend this Lease by substituting a description of the Land based upon such survey in place of the description or site plan attached as Exhibit A; provided, however, if Landlord reasonably disagrees with Tenant’s survey, Landlord may obtain its own survey at Landlord’s cost and the parties shall use commercially reasonable efforts to agree upon a replacement of the legal description attached hereto as Exhibit A.

Section 3. Easements Benefiting Land; Restrictions on Adjoining Property.

(a) The Land is a pad site located in the retail development known as Powers & Palmer Park (the “**Shopping Center**”). The Land is contiguous to certain real property and described on Exhibit B (the “**Adjoining Property**”) currently owned by Landlord and encumbered by the VASA Lease. All areas located on the Adjoining Property and which are not occupied by buildings and which are generally made available for the common use and enjoyment of the tenants and occupants of the Land and the Adjoining Property are the “**Common Areas**.” Tenant shall have certain rights and easements over the Common Areas located on the Adjoining Property, as

shall be memorialized in that certain Supplement No. 1 to Covenants for Operations, Maintenance and Reciprocal Easements for HD Powers Subdivision (the “**COMRE Supplement**”) attached hereto as Exhibit K to be recorded in the Official Records of the County at such time as mutually acceptable to Landlord and Tenant to amend and supplement those certain existing Covenants for Operations, Maintenance and Reciprocal Easements for HD Powers Subdivision dated February 15, 1982 and recorded on October 13, 1982 in the Official Records of the County as Instrument No. 00909263 at Page 592 of Book 3621 (the “**CC&Rs**”), which recordation of the COMRE Supplement shall be a condition precedent to this Lease. The general rights and easements over the Common Areas as set forth in the CC&Rs, and as amended by the COMRE Supplement, are as follows and which are more fully set forth therein:

- (i) A general vehicular and pedestrian access and parking;
- (ii) General utility easements as set forth in the CC&Rs;

(iii) An easement (as applicable for areas outside of the Demised Premises) and right to install, maintain, repair and replace a sign panel identifying Tenant’s business on (i) the bottom fifty percent (50%) of the pole sign for the Shopping Center located on the Demised Premises as depicted on Exhibit E attached hereto (the “**Pole Sign**”), (ii) the bottom fifty percent (50%) of the monument sign for the Shopping Center located on the Adjoining Property as depicted on Exhibit E attached hereto (the “**Monument Sign**”), and (iii) no less than approximately twenty-five percent (25%) of the panel spaces on both sides of any future monument or pylon signs at the Shopping Center, including an access easement over those portions of the Adjoining Property as reasonably necessary in connection with Tenant’s exercise of its rights pursuant to this paragraph. The size of Tenant’s sign panel(s) will be not less than the size of the panel of any other owner or tenant identified on the sign. If a sign panel position was not available for Tenant’s use on any multi-panel pylon and/or monument sign(s) (other than the Pole Sign and the Monument Sign) as of the Effective Date of this Lease, then Landlord will notify Tenant at such time as a sign panel position becomes available, and at Tenant’s election, Tenant will be granted, at no additional cost to Tenant, the foregoing easement and rights with regard to such sign panel position. For purposes hereof, a sign panel position will be deemed “available” at such time as no party has a contractual right, which right was granted prior to the Effective Date of this Lease, to utilize such sign panel position. Landlord’s and Tenant’s obligations to install, operate, illuminate, maintain, repair and replace each sign that is or becomes the subject of the easements granted pursuant to this paragraph are set forth in Section 9 below;

(iv) An easement to place, maintain, repair and replace directional signage upon the Adjoining Property as reasonably necessary to direct the flow of traffic to and from the Demised Premises, subject to approval of third parties as set forth in Section 3(c) of the COMRE Supplement.

If Tenant acquires title to the Land at any time, the foregoing rights and easements will be set forth in a separate agreement, in recordable form, to be delivered by Landlord (and its lender, if applicable) at the closing.

(b) Landlord agrees that the Adjoining Property shall be subject to the following restrictive covenants for the term of this Lease, which shall be a condition precedent to

this Lease, for Tenant's benefit, and set forth in the Declaration and Short Form Lease that will be recorded against the Adjoining Property to benefit the Land for the term of the Lease as further described in the COMRE Supplement and Section 29:

(i) Landlord will not lease, rent, sell or occupy, or permit to be leased, rented, sold or occupied, any portion of the Adjoining Property for any use that is not consistent with the uses of comparable shopping centers located in Colorado Springs, Colorado.

(ii) Landlord will not lease, rent, sell or occupy, or permit to be leased, rented, sold or occupied, any portion of the Adjoining Property for any of the following: a theater of any kind; bowling alley, skating rink, amusement park, carnival or circus; meeting hall, place of instruction, sporting event or other sports facility, auditorium or any other like place of public assembly; a gym or fitness center, including Pilates, yoga, indoor cycling, boxing, personal training, weight training, basketball, volleyball, racquetball, swimming, cardiovascular and resistance machines, spa services, and related ancillary services including weight loss advising, chiropractic services, tanning, therapeutic massage, sports and rehabilitation therapy, child care, operation of a juice bar and/or sale of beverages typically sold in a juice bar, sale of hot and cold beverages, smoothies, juice, sports beverages, yogurt, vitamins, supplements, nutrition bars, sports and workout apparel, spa related produces and limited food service incidental the gym and/or fitness use (provided that such restriction shall not apply to the portion of the Adjoining Property leased to VASA Fitness, and any other gym or fitness center then existing in such VASA Fitness space in the future); mortuary or funeral parlor; establishment selling cars or other motor vehicles, motor vehicle maintenance or repair shop or gas station, or any establishment selling trailers; billiard parlor; tavern, pub, bar or liquor store; pawn shop; flea market; massage parlor; "disco" or other dance hall; tattoo or body piercing parlor (provided that beauty salons will be allowed to provide permanent makeup tattoos and cosmetic ink on an incidental basis only, as part of the cosmetic services offered by such salons); casino, gaming room, or "off track betting" operation; for the sale of paraphernalia for use with illicit drugs or for the sale of marijuana; vape shop; or for the sale, rental or display of pornographic materials.

(iii) No portion of the Adjoining Property will be leased, used or occupied as a restaurant selling or serving chicken as a principal menu item. For the purposes of this Lease, "a restaurant selling or serving chicken as a principal menu item" means a restaurant deriving twenty-five percent (25%) or more of its gross sales from the sale of chicken. A "restaurant" includes any business establishment, including, without limitation, a kiosk, stand, booth, food truck or area located inside another business facility. Notwithstanding the foregoing, such restriction on the sale or serving of chicken as described in this Section 3(b)(vi) shall not apply to VASA under the VASA Lease so long as VASA is open and operating in its premises at the Adjoining Property under such existing lease as a full -service fitness center. Notwithstanding the foregoing, if under the provisions of the VASA Lease or any other existing leases at the Shopping Center, any such tenant must obtain Landlord's consent to change its existing use of its space in the Premises at the Shopping Center, Landlord shall, if permitted to do so, refuse to consent to such change in use if it would violate the foregoing chicken restriction under such existing Lease.

(iv) No portion of the Adjoining Property will be leased, used, or occupied by or for any of the following uses: McDonald's, CosMc's, Boston Market, Kentucky

Fried Chicken, Popeye's, Raising Cane's, Super Chix, Slim Chickens, Church's, Bojangle's, Mrs. Winner's, Chicken Out, Zaxby's, Ranch One, El Pollo Loco, Pollo Campero, Pollo Tropical, Raise the Roost Chicken & Biscuits, Dave's Hot Chicken, Bird Call, Chester's, Bush's Chicken, Biscuitville, Chicken Now, PDQ, ChikWich, Ezell's Famous Chicken, Roy Rogers, Chicken Shack, Buffalo Wild Wings, Angry Chickz and Wing Stop.

(v) In the event that, in order to permit the sale of chicken in violation of Section 3(b)(vi) above or any of the named competitors described in this Section 3(b)(vii), Landlord's consent is required or requested from any other property owner owning any other portion of the Shopping Center or other property in the immediate vicinity of the Land, Landlord shall immediately notify Tenant of such request and Landlord shall withhold its consent thereto unless approved in advance by Tenant in its sole discretion.

(vi) The area provided by Landlord for parking will at all times include no less than the number of parking spaces currently existing at the Shopping Center as of the Effective Date of this Lease, which parking spaces shall remain available for use by Tenant in common with the other tenants and occupants of the Shopping Center (*e.g.*, such parking spaces shall not be converted to reserved spaces).

(c) Landlord agrees that the restrictions set forth in Section 3(b)(vi) and Section 3(b)(vii) are not intended to bind Tenant, its successors or assigns on any portion of the Adjoining Property. In the event any owner, tenant or other occupant in the shopping center or the Adjoining Property, or any party subject to restrictions under any declaration, reciprocal easement agreement or other recorded instrument affecting the shopping center and/or the Adjoining Property, approaches Landlord for its consent or approval for, or its execution of an amendment or other documentation allowing, any proposed use, design, layout, plan, alteration, modification or other action, Landlord will not grant said consent or approval, or execute such amendment or other documentation, if it contravenes or would result in the violation of any of the restrictions set forth in Section 3(b). Landlord agrees that the easements, covenants and restrictions set forth in Sections 3(a) and 3(b) will run with the title to the Land and the Adjoining Property for the term of this Lease and will be in the Declaration and Short Form Lease prepared by Tenant as provided in Section 29. If any of the easements, covenants and/or restrictions set forth in Sections 3(a) and 3(b) will expire by law during the term of the Lease, the parties agree that such easements, covenants and/or restrictions will, to the extent permitted by law, automatically be renewed for the term of the Lease. Landlord further agrees that the easements, covenants and restrictions set forth in Sections 3(a) and 3(b) will also be set forth in any lease or deed that Landlord enters into after the Effective Date leasing or conveying any portion of the Adjoining Property.

(d) Landlord acknowledges that Tenant is relying on the restrictive covenants in Section 3(b) in executing this Lease. Landlord specifically agrees that (i) if any of the covenants in Section 3(b)(i) through (b)(vi) above are breached (each, a "**Restrictive Covenant Breach**") or (ii) upon the occurrence of a Common Areas Violation (as defined in Section 8(i) below) following written notice thereof from Tenant and Landlord's failure to remedy such breach within a reasonable cure period thereafter, Tenant will be entitled to pay reduced rent at the rate of fifty percent (50%) of minimum rent for the period of time that the violation exists (a) from and after the commencement thereof with respect to any Restrictive Covenant Breach or (b) from and after

the expiration of the applicable cure period with respect to any Common Areas Violation. In connection with any Common Areas Violation, Landlord acknowledges that twenty-four (24) hours shall be a reasonable cure period if the Common Areas Violation materially and adversely affects access to and from the Demised Premises and/or Tenant's ability to operate for business from the Demised Premises. The total amount abated will be liquidated damages for such breach and not a penalty, the parties agreeing that Tenant will sustain proximate, substantial and irreparable damages from such breach, but that it will be very difficult if not impossible to ascertain the amount of such damages. Accordingly, in addition to any other remedies allowed by law, including the liquidated damages agreed to in this Lease, Landlord and Tenant agree that all of the covenants will be enforceable in equity. Tenant may pursue injunctive and any other appropriate relief, whether under the provisions of this Lease or otherwise. Tenant may, at its option and without waiver of any rights and remedies against Landlord, directly enforce the restrictive covenants in this Section 3 against other tenants or occupants of the Adjoining Property, and Landlord will cooperate in good faith with Tenant in connection with such enforcement. Landlord's duty of cooperation will include, without limitation, serving as a nominal plaintiff if necessary.

Notwithstanding the foregoing, Tenant agrees that if Landlord properly restricts a tenant or occupant of the Adjoining Property as required by this Section 3 but the tenant or occupant is violating the restrictive covenant set forth in Section 3(b)(i) through (b)(vi) above ("**Rogue Tenant**"), then so long as Landlord demands compliance from such Rogue Tenant, within ten (10) business days after notice of the violation from Tenant (the "**Rogue Violation Notice Date**"), and provided that Landlord then commences legal action against such Rogue Tenant within thirty (30) days after the Rogue Violation Notice Date (if in fact the tenant or occupant does not cease the violation), Landlord will have a period of one hundred thirty-five (135) days after the Rogue Violation Notice Date to cause the tenant or occupant to cease the violation before Tenant's right to reduce rent as set forth in this subsection (d) above will commence.

(e) Landlord covenants and agrees (i) that without first obtaining Tenant's prior written consent, Landlord will not grant, create, consent to, or modify the CC&Rs or any other restrictions, easements, agreements or other encumbrances benefitting or burdening the Land or in any manner affecting the Demised Premises or the use thereof (except in accordance with Section 18(b) of this Lease in connection with a Security Instrument), (ii) that Tenant is a third-party beneficiary of any recorded documents creating rights, easements and obligations benefitting (and burdening) the Land, and (iii) on written notice from Tenant, to enforce the obligations of third parties governed by such recorded documents on Tenant's behalf if deemed reasonably necessary by Tenant to permit Tenant's use and enjoyment of the Demised Premises as created in this Lease (including, without limitation, to prevent any material changes to the layout of the drive aisles, as further described in Section 3(f) below).

(f) Pursuant to the COMRE Supplement, Landlord has established the drive-aisles, stacking plan and traffic flow for the Demised Premises and the Adjoining Property as depicted on Exhibit B attached hereto (the "**Stacking Plan**"). Tenant shall cause all ingress and egress of all customer traffic to flow only in accordance with the Stacking Plan and shall use staff and cones to prevent blockage of any Common Area, in particular preventing customer traffic from backing up outside of the lanes shown on the Stacking Plan obstructing the parking areas and

parking aisles on the Adjoining Property. Notwithstanding the foregoing, Tenant shall be permitted to modify the flow of customer traffic from what is shown on the Stacking Plan in order to accommodate weather conditions, construction or any Force Majeure Event (as defined in Section 24 below) (e.g., without limitation, snow accumulation or resurfacing of the parking lot). In connection with such parking and access for the Demised Premises, Tenant shall be permitted to place directional signage upon the Adjoining Property as set forth in Section 3(a)(iv) above. Landlord will not make any material changes to the layout of the drive aisles as depicted on the Stacking Plan, without the prior written consent of Tenant, which consent may be withheld by Tenant in its sole and absolute discretion. In connection with the foregoing, Landlord hereby agrees to restrict and otherwise prevent any other owner, tenant or occupant of any portion of the Adjoining Property from making any such material changes to the layout of the drive aisles as depicted on the Stacking Plan (which restriction is also set forth in Section 2(e) of the COMRE Supplement) and to take all actions necessary to enforce such restriction including, without limitation, to conduct and prosecute legal proceedings against any other owner, tenant or occupant such as an action for injunctive relief. For the purposes of illustration only, the following changes will be considered material: relocation of any drive aisles, erection of any buildings or other structures, or elimination of any curb cuts that materially, adversely affect access to the Demised Premises.

Section 4. Term.

(a) The initial term of this Lease will commence on the Commencement Date and will terminate on the last day of the month fifteen (15) years after the Rent Commencement Date. Landlord will deliver to Tenant full and exclusive possession of the Demised Premises on the Commencement Date. Tenant will not be obligated to accept possession of the Demised Premises, or be responsible for any improvements on the Land, until the Commencement Date. The first year of this Lease will include the period from the Commencement Date through the last day of the month which is the twelfth (12th) month after the month in which the Rent Commencement Date occurs.

(b) Tenant will have the option to renew the term of this Lease for four (4) consecutive periods of five (5) years each (each an “**Option Period**” and collectively “**Option Periods**”), provided that Tenant is not in monetary default under this Lease beyond applicable notice and cure periods as of the expiration date of the then current term of this Lease (but subject to the terms and conditions of Section 4(e) below).

(c) Tenant may extend the term of this Lease by giving Landlord written notice of the extension on or prior to the date which is six (6) months before the expiration of the then current term of this Lease.

(d) If Landlord does not receive notice from Tenant of Tenant’s election to extend the term of this Lease for any of the respective Option Periods, then Landlord will have the option to send a follow-up notice to Tenant in writing (“**Landlord’s Option Notice**”) no later than six (6) months prior to the expiration of the then current term of this Lease. If Tenant receives Landlord’s Option Notice, Tenant’s right to extend for any of the Option Periods will not expire unless (i) Tenant thereafter fails to give Landlord notice of the extension within thirty (30) days after receipt of Landlord’s Option Notice, or (ii) Tenant advises Landlord in writing that Tenant

has elected not to extend the term of this Lease. If Tenant does not receive Landlord's Option Notice and does not otherwise provide notice to Landlord to elect not to extend the Term, the Term shall be deemed to be automatically extended for the subject Option Term. During any period following the expiration of the then-current Lease term, all terms of this Lease will remain in full force and effect, except that basic rent will be increased to the amount that would have applied if Tenant had timely exercised its option to extend the term of this Lease.

(e) In connection with the foregoing, if Tenant is in monetary default under this Lease beyond applicable notice and cure periods (i) as of the date when Tenant provides any such exercise notice to Landlord or (ii) during the last six (6) months before the expiration of the then current term of this Lease if Tenant does not provide any option exercise notice to Landlord, Landlord shall promptly send written notice to Tenant describing the applicable Option Period and such then existing monetary default, and including the following statement in all capital letters and at least 14 point font: **"FAILURE TO CURE SUCH MONETARY DEFAULT ON OR BEFORE THE EXPIRATION OF THE CURRENT TERM OF THIS LEASE WILL RESULT IN SUCH OPTION PERIOD BEING NULL AND VOID"**. If, after Tenant's receipt of such reminder notice from Landlord, Tenant cures such monetary default on or before the expiration date of the then current term of this Lease, or in good faith disputes the existence of such monetary default in written notice to Landlord, then the term shall be extended for the applicable Option Period. However, if Tenant fails to cure such monetary default on or before the expiration of the then current term of this Lease or to dispute the same in written notice to Landlord, then the term shall not be extended for the applicable Option Period.

Section 5. Rent.

(a) Beginning on the Rent Commencement Date, annual basic minimum rent will be payable in monthly installments as follows:

<u>Years</u>	<u>Annual Rent</u>	<u>Monthly Installment</u>
1-5	\$190,000.00	\$15,833.33
6-10	\$209,000.00	\$17,416.67
11-15	\$229,900.00	\$19,158.33
<u>Options</u>	<u>Annual Rent</u>	<u>Monthly Installment</u>
16-20	\$252,890.00	\$21,074.17
21-25	\$278,179.00	\$23,181.58
26-30	\$305,996.90	\$25,499.74
31-35	\$336,596.59	\$28,049.72

(b) As used in this Lease, the term “rent” includes the basic minimum rent and the additional rent payable by Tenant to Landlord under this Lease, including any amount due under the PIF (defined in Section 38 below).

(c) All items of rent for any partial calendar month will be prorated on a daily basis.

(d) All rent payable by Tenant to Landlord under this Lease will be paid at the office of Landlord set forth in Section 25, or at such other place as Landlord may designate by written notice to Tenant. Rent payments may be made, at Tenant’s election, by check or by ACH initiated by Tenant only (without withdrawals, drafts, fees or deductions implemented by Landlord in connection with ACH payments). On or prior to the Commencement Date, Landlord will provide Tenant with completed copies of the Electronic Payment (ACH) and Property Management Contact Information Forms attached to this Lease as Exhibit J. Subject to Section 34, monthly installments of rent will be due on the first (1st) day of each month, commencing on the first (1st) day of the month following the Rent Commencement Date. Any prorated rent due for the period between the Rent Commencement Date and the first (1st) day of the month following the Rent Commencement Date will be due on the Rent Commencement Date.

(e) Commencing on January 1 following the Rent Commencement Date, Tenant agrees to pay Landlord a contribution towards the maintenance, repair and replacement obligations of Landlord relating to the Common Areas. The amount payable through the fifth (5th) full calendar year after the Rent Commencement Date is \$3,000.00 per year. The contribution will increase by ten percent (10%) every five (5) full calendar years thereafter during the term of this Lease. The amount will be due to Landlord by Tenant on each January 1 during the term of this Lease (and will be prorated for any partial calendar year).

Except as provided in this Section 5(e), Tenant will have no further obligations to contribute toward any other shopping center expenses or common area maintenance charges, whether arising under any recorded document or otherwise, all such expenses and charges being the responsibility of Landlord.

Section 6. Taxes and Utility Expenses.

(a) In accordance with this Section 6, Tenant will pay all taxes that (i) become due and payable with respect to the buildings and the personal property owned by Tenant, and the Land (as determined for the Land by Landlord on a proportionate share basis with the Adjoining Property, including all Common Areas) (collectively, the “Taxes”) and (ii) are attributable to the period commencing on the Rent Commencement Date and continuing through the remaining term of this Lease. For purposes of illustration only, if the Rent Commencement Date is September 1, 2022, a portion of the 2022 Taxes would be payable by Tenant as follows: 122 days (September 1 to December 31) of the 365-day 2022 calendar year (122/365) multiplied by the amount of 2022 Taxes. In no event will Tenant be required to pay Taxes that become payable beyond the term of this Lease. As used herein, Tenant’s “proportionate share” share will be a fraction, the numerator of which will be the total square feet of the Land (61,984), and the denominator of which will be the total number of square feet of the Land and the Adjoining Property combined (258,580);

provided, however, in no event will the denominator be less than 258,580 square feet nor will any undeveloped property be included in the calculation of Tenant's proportionate share of the Taxes.

(b) Throughout the term of this Lease, Landlord will pay all Taxes directly to the taxing authority. Within thirty (30) days after Tenant's receipt of written notice from Landlord, including a copy of the relevant tax bill(s), Tenant will reimburse Landlord for Tenant's proportionate share of the Taxes, calculated in accordance with this Section 6 and prorated for any tax bill attributable in part to any period before the Rent Commencement Date. In the event that, to the extent permitted in accordance with this Section 6, either Landlord or Tenant causes the Land to become a separate tax parcel and provides the other party with written notice of same, then (i) initially, Landlord will continue to pay all tax bill(s) for the separate parcel that include Taxes attributable in whole or in part to the period before the Rent Commencement Date, if any, directly to the taxing authority, and Tenant will continue to reimburse Landlord for Tenant's prorated share of such Taxes as provided above, and (ii) thereafter and throughout the remaining term of this Lease, Tenant will pay all Taxes (for Taxes attributable solely to periods on or after the Rent Commencement Date) directly to the taxing authority.

(c) Taxes will be prorated for partial tax years included in the term of this Lease based on the most recently available tax rate and valuation of the Land. If any Taxes are payable in installments, then Tenant may pay the same in the maximum number of permitted installments. After Tenant remits payment to Landlord for Tenant's proportionate share of Taxes payable with respect to any given period (if applicable), Tenant will not be obligated to pay additional Taxes to Landlord for the same period based on any subsequent adjustments of any kind unless Landlord provides Tenant with written notice of the adjustment(s) prior to the date that is two (2) years following the date Tenant remitted its initial payment of Taxes to Landlord for such period.

(d) In the event Landlord (i) receives any official notices relating to the Taxes (including, without limitation, any notice of a potential increase to the assessed valuation of the Land or the Demised Premises or to the Taxes) or (ii) initiates or becomes aware of any change, appeal or other challenge relating to the Taxes (including, without limitation, any change, appeal or other challenge concerning the assessed valuation of the Land or the Demised Premises or any potential increase to the Taxes), Landlord will provide prompt written notice thereof to Tenant, together with a copy of all documentation transmitted or received by or on behalf of Landlord in connection therewith. Tenant, at its sole expense, has the sole and exclusive right to contest, appeal or seek review of Taxes or the assessed valuation of the Land or the Demised Premises by any lawful means (if necessary, in the name of and with the cooperation of Landlord).

(e) Any refund or rebate of Taxes paid by Tenant will belong to Tenant.

(f) Nothing contained in this Lease will require or be construed to require Tenant to pay (i) any inheritance, estate, succession, transfer, gift, franchise, income, excise, margin or profit taxes that are or may be imposed upon or assessed against Landlord, its heirs, successors or assigns, or (ii) any taxes, special taxes or assessments imposed to pay for or finance the construction of improvements on the Adjoining Property or improvements required to be constructed as a condition of approval of the improvements on the Adjoining Property. Tenant will pay any and all sales or rent taxes assessed against the rent payable to Landlord under this Lease as and when due to the taxing authority so long as such sales or rent taxes are in the true

nature of a sales or rent tax which is levied in lieu of, or as a part of, ad valorem taxes on the Land (and is not in the nature of an income tax).

(g) If the Taxes are increased by more than ten percent (10%) due to a revaluation of the Demised Premises or the Adjoining Property after the Effective Date because of any "change in ownership," Tenant will not be required to pay or be charged for more than ten percent (10%) of any such increase in the Taxes attributable to or arising from such change in ownership; provided, however, Tenant shall be obligated to pay for the entirety of any increases in Taxes attributable to or arising from any single transaction for the sale of the underlying fee interest in the entirety of the Shopping Center (including, without limitation, the Demised Premises) to a single purchaser.

(h) Tenant will pay all charges for sewer, water, gas, electricity, and other services furnished to the Demised Premises during the term of this Lease. On the commencement of Tenant's Work, Tenant will contract and pay for all utilities used or consumed in the Demised Premises, including any tap-in, connection and metering fees which may be charged by the applicable utility supplier. If any utility service is interrupted as a result of the act or omission of Landlord, its agents, employees, contractors, or another tenant of the Shopping Center, there will be an equitable abatement of rent and other charges payable under this Lease based upon the length of time and proportion of the Demised Premises which are reasonably deemed by Tenant to be nonfunctional. Should the utility company furnishing any of the utilities to the Shopping Center levy, assess, or impose upon Landlord, the Shopping Center or the Demised Premises any impact fees, then Landlord will pay the impact fees in full prior to the Commencement Date.

(i) Landlord will be responsible for the payment of all impact fees, traffic or trip fees, development fees, utility capacity, utility extension, sewer connection, tap or other similar type fees or assessments imposed by any governmental authority with respect to the development of the Land and the Adjoining Property.

(j) If the Land were to become a separate tax parcel, Landlord will cooperate with Tenant to either (i) have the tax bill for the Land placed in Tenant's name, if permitted by the taxing authority or (ii) make a mailing address change on the property tax records so that the tax bills and tax notices for the Land will be mailed to Tenant. If the Land is not a separate tax parcel, then Landlord agrees that Tenant may apply to have the Land taxed as a parcel separate from the Adjoining Property, and Landlord agrees to cooperate with Tenant in such process. Landlord will not apply to have the Land taxed as a parcel separate from the Adjoining Property without Tenant's prior written consent. If the Land is not taxed as a separate parcel, Tenant will pay an amount equal to Tenant's proportionate share of the Taxes (defined above).

(k) Tenant will pay its share of the Taxes within thirty (30) days after receipt of the bill from either Landlord or the taxing authority, as applicable. In the event the taxing authority is unable or unwilling to transmit bills directly to Tenant, then Landlord will be responsible for any late fees charged by the governmental authority if the bill is not received by Tenant from Landlord prior to thirty (30) days before the due date. Landlord will provide Tenant with copies of all correspondence received from any taxing authority relating to any Taxes, including but not limited to any reassessment notices, within ten (10) days after receipt.

Section 7. Use of Demised Premises. The Demised Premises may be used for any lawful retail purpose, including a restaurant. However, Tenant's use of the Demised Premises shall be subject to the exclusive uses of those certain other currently existing tenants in the Shopping Center set forth on Exhibit G attached hereto, but only for so long as the respective tenant or occupant is open and operating for its exclusive use and only to the extent (i) such other exclusive uses are then applicable to the Demised Premises and not prohibited or otherwise contrary to the covenants set forth in this Lease, and (ii) Tenant has received complete copies of the applicable exclusive and restricted use provisions (to the extent not disclosed in Exhibit G). In connection with the foregoing, Landlord shall provide Tenant with copies of all existing exclusive uses and use restrictions at the Shopping Center prior to the Effective Date of this Lease.

Section 8. Improvements, Repairs, Additions, Replacements; Liens; Landlord's Obligations Regarding Common Areas.

(a) Tenant may at any time construct, remove, replace and/or alter the buildings and other improvements on the Land as Tenant, in its commercially reasonable discretion, determines are desirable for conducting its business (the "**Modifications**"). Notwithstanding the foregoing, if any Modifications to the location of the building envelope would increase the gross square footage of the building by more than five hundred (500) square feet, Landlord's prior written approval shall be required for the exterior building elevations and the site plan depicting such Modifications; provided, however, no such approval of Landlord will be required for an alteration or replacement made to the building in order to cause the building to conform to the plans and specifications for Tenant's then existing prototype and further provided that if such change is required by the applicable governing authority, then Landlord's approval of such change will not be required. In furtherance of the foregoing, Landlord's approval rights for Modifications are limited to Tenant's exterior building elevations and site plan for future Modifications to the location of the building envelope which would increase the gross square footage of the building by more than five hundred (500) square feet, subject to the exceptions set forth above. In the event Landlord's approval of and/or consent to any of the Modifications (whether in Landlord's capacity as a "declarant", "owner", "controlling party" or otherwise) is required (i) under any instrument other than this Lease or (ii) in connection with the issuance of any permits and/or other governmental authorizations deemed necessary or appropriate by Tenant in connection with the Modifications, Landlord hereby agrees that such approval and/or consent will be deemed to have been given by Landlord so long as the Modifications do not violate any restrictions of record (provided that upon Tenant's written request, Landlord will promptly confirm such approval and/or consent in writing). All of Tenant's construction and improvements related to the Modifications will comply with all applicable building codes and ordinances. Landlord will cooperate with Tenant, at no material expense to Landlord, in obtaining any permits and/or other governmental authorizations associated with the Modifications. Without limiting the generality of the foregoing, upon Tenant's request, and if the Modifications are approved by Landlord to the extent applicable as set forth above, Landlord will promptly execute any permits, approvals and/or other documentation required by any governmental authorities in connection the issuance of any permits and/or other governmental authorizations relating to the Modifications. Tenant will also maintain and repair Tenant's drive-thru improvements and dumpster enclosure area on the Land.

(b) Tenant will, at all times and at its own cost and expense, maintain all buildings and improvements constructed by Tenant in good condition and repair. Tenant will

provide all snow removal upon the Land. Notwithstanding subparagraphs (a) and (b) of this Section 8 or any other provision of this Lease to the contrary, Landlord will be responsible, at its sole cost and expense, for maintaining all buildings and other improvements on the Land in good condition and repair prior to the Commencement Date, including, but not limited to, keeping any buildings on the Land in a safe, secure and water-tight condition.

(c) Until the expiration or termination of this Lease, title to the building and improvements constructed by Tenant will remain solely in Tenant; and Tenant alone will be entitled to deduct all depreciation on Tenant's income tax returns. All personal property, fixtures, equipment and inventory will at all times be owned solely by Tenant. Landlord hereby waives any statutory lien on Tenant's personal property, fixtures, equipment and inventory.

(d) On the expiration or termination of this Lease, Tenant will surrender the Demised Premises and the building and improvements and will remove all of Tenant's personal property; provided, however, Tenant will be permitted to remove Tenant's installed food service equipment, signs, trade fixtures and floor coverings, decorative wall panels (but not walls), stained glass windows, wall lanterns, menu soffits and any other items that make up Tenant's trade style. Tenant will have the right to alter the design and physical features of the building and improvements to protect the trade style or intellectual property rights claimed by Tenant in such building and improvements provided such alterations do not cause the building and improvements not to be in an architecturally whole and reasonably safe and secure condition. If Tenant fails to remove any personal property or any items that make up Tenant's trade style, Tenant will be deemed to have abandoned the same.

(e) During the term of this Lease, Tenant will, at its own cost and expense, promptly observe and comply with all applicable laws, ordinances, and regulations of the federal, state, and county governments and of all other governmental authorities affecting Tenant's use and occupation of the Demised Premises. The foregoing covenant of Tenant will not impose any liability for the presence of Hazardous Materials on the Demised Premises beyond the express liability of Tenant set forth in Section 12.

(f) Tenant will have the right, at its expense, to contest in the name of the Tenant or Landlord (as legally required) the validity or application of any law, ordinance or regulation. If compliance may be legally delayed pending the prosecution of the proceeding, Tenant may delay compliance until the final determination of the proceeding.

(g) If, because of any work or services performed for Tenant (or any judgment against Tenant), any lien is filed against the interest of Landlord in the Land or Adjoining Property, Tenant will cause the lien to be discharged of record or bonded within thirty (30) days after written notice from Landlord. Likewise, Landlord will cause any lien filed against the Land which arises by, through or under Landlord, whether arising before or after the Commencement Date, to be discharged of record or bonded within thirty (30) days after written notice from Tenant.

(h) Subject to reimbursement under Section 5(e), Landlord will, or will cause VASA or a party under the CC&Rs to, maintain, repair, replace, and insure the Common Areas outside of the Land during the term of this Lease in accordance with first-class industry standards. Landlord will notify Tenant in writing at least ten (10) days prior to the commencement of any

construction, repair or paving of the Common Area, and any restriction or closure of any access roads or entrances to the Land. If the construction, repair, paving, restriction, or closure impedes or interferes with Tenant's business operations in any material respect, then the annual rent and all other charges payable under this Lease will be equitably abated until such condition ceases, without waiver of Tenant's other rights or remedies under this Lease or at law or in equity.

(i) In the event that the Common Areas, including the common drive aisles and stacking area shown on the Stacking Plan, are not maintained, repaired or replaced as required by the CC&Rs and/or to permit Tenant's use of the Demised Premises pursuant to this Lease, Tenant shall have the self-help rights set forth in Article 7 of the CC&Rs. In addition, if Tenant is unable to cause such Common Areas to be maintained, repaired or replaced pursuant to such self-help remedies in the CC&Rs in a manner sufficient to satisfy the requirements of the CC&Rs and/or to permit Tenant's use of the Demised Premises pursuant to this Lease ("**Common Areas Violation**"), then Tenant will be entitled to reduced rent as set forth in Section 3(d) above.

Section 9. Signs within the Demised Premises. Subject to governmental approvals, Tenant will have the right to install, maintain and replace such signs and advertising within the Demised Premises as Tenant may determine are desirable, including, without limitation, directional signs, pick-up delivery order signs, parking signs and at least one (1) pylon or monument sign. Tenant shall have the sole and exclusive right to all signage located on the Demised Premises (except the Pole Sign, which will be shared as provided below) and Landlord shall use its best efforts to assist Tenant in securing the maximum signage permitted by the City and/or other applicable governmental entities, including, without limitation, obtaining all necessary approvals and otherwise permitting Tenant to construct monument sign(s) and to place all of Tenant's standard building signage and prototypical directional, mobile order, third party pickup, catering and other signage on the Demised Premises related to Tenant's business. Landlord has constructed the Pole Sign and Monument Sign. Tenant shall reimburse Landlord for fifty percent (50%) of the out-of-pocket third party costs actually incurred by Landlord to previously install the Pole Sign and Monument Sign, following Tenant's receipt of written request therefor from Landlord after the Rent Commencement Date together with receipts, invoices and other supporting information reasonably requested by Tenant to demonstrate such costs. Tenant shall have the right to install and maintain the bottom fifty percent (50%) of the total display area on the Pole Sign. Tenant will comply with all applicable laws and will obtain any necessary permits for its signs. VASA (or the then current occupant or owner of the premises currently occupied by VASA) will pay for the cost of repair, maintenance and supplying electricity to light the Monument Sign. Tenant will pay for the cost to install sign panels and the cost of repair, maintenance and supplying electricity to the Pole Sign. Tenant and VASA (or the then current occupant of the premises currently occupied by VASA) shall each bear the cost of installation and replacement of each such party's respective sign panel on the sign located on the adjacent lot.

Section 10. Utility Agreements. Tenant will have the right to enter into reasonable agreements with utility suppliers creating easements, licenses, and other rights, in favor of the suppliers, including, without limitation, gas, electricity, telephone, cable, internet, water and sewer, as are required in order to service the building and improvements on the Land and to service Tenant's drive-thru improvements and related signage. Landlord covenants and agrees to execute commercially reasonable easement agreements and to take all other actions reasonably required in

order to effectuate the same, the reasonable costs and expenses of which will be Tenant's responsibility.

Section 11. Assignment and Subletting. Tenant may assign, mortgage or otherwise encumber this Lease or sublease all or any part of the Demised Premises without Landlord's consent. Tenant will give Landlord written notice of any assignment or subletting within thirty (30) days after the transaction, together with the name and address of the assignee or subtenant. Notwithstanding anything contained in this Lease to the contrary, Tenant may assign or sublet the Demised Premises to an operator, franchisee or licensee of Tenant without notice to Landlord. Following any assignment or subletting, Tenant will remain fully responsible for all obligations under this Lease except as otherwise set forth in Section 17(b)(vi). Notwithstanding the foregoing, if Tenant assigns this Lease to an entity with a net worth of \$50,000,000.00 or greater, then on the date of the assignment (and the assumption of this Lease by such entity) Tenant will be released from any and all liability arising under this Lease from and after the date of the assignment.

If Tenant subleases the entire Demised Premises and this Lease terminates before the expiration of the term of this Lease (including all option periods), and the holder of any Leasehold Mortgage has not exercised its right to enter into a new lease of the Demised Premises as provided in Section 17, the subtenant will have the right, on notice given to Landlord within thirty (30) days after the subtenant receives notice of the termination and subject to satisfaction of the conditions set forth in this paragraph, to enter into a new lease of the Demised Premises. The new lease will contain the same terms as this Lease, provided that (i) the term of the new lease will be equal to the remaining unexpired term of this Lease, (ii) the subtenant must reimburse Landlord for the reasonable expenses of termination of this Lease, including reasonable attorneys' fees incurred by Landlord and must remedy all events of default on the part of Tenant under this Lease which are capable of being remedied by the payment of money, and (iii) the new lease will require the tenant to remedy all other events of default on the part of Tenant that are of a continuing nature and are capable of being remedied. This paragraph will be self-operative, and no further instrument of non-disturbance will be required. However, Landlord will, within ten (10) days after written request, execute, acknowledge and deliver to any subtenant an instrument in recordable form evidencing Landlord's recognition of the sublease held by the subtenant and Landlord's agreement to the provisions of this paragraph.

Any act required to be performed by Tenant pursuant to the terms of this Lease may be performed by any sublessee of Tenant occupying all or any part of the Demised Premises and the performance of the act will be deemed to be performance by Tenant and will be accepted as Tenant's act by Landlord.

Section 12. General Indemnity; Reciprocal Indemnity Regarding Hazardous Materials.

(a) Tenant will indemnify and hold Landlord harmless from and against any and all liability, damages, penalties or judgments arising from injury to person or property sustained by anyone on the Land, unless caused by the gross negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors, and on the Adjoining Property if caused

by the gross negligence or willful misconduct of Tenant or Tenant's agents, employees or contractors.

(b) Landlord will indemnify and hold Tenant and any Leasehold Mortgagee harmless from and against any and all liability, damages, penalties or judgments arising from injury to person or property sustained by anyone on the Adjoining Property, unless caused by the gross negligence or willful misconduct of Tenant, any Leasehold Mortgagee or any of their respective agents, employees or contractors, and on the Demised Premises if caused by the gross negligence or willful misconduct of Landlord or Landlord's agents, employees or contractors.

(c) Tenant will indemnify and hold Landlord harmless from and against any loss, cost, damage or expense arising out of or relating to the presence of Hazardous Materials on the Demised Premises due to the act or omission of Tenant, its employees, agents, contractors or other third parties under Tenant's direct control and supervision. Landlord will indemnify and hold Tenant and any Leasehold Mortgagee harmless from and against any loss, cost, damage or expense arising out of or relating to the presence of Hazardous Materials on the Demised Premises unless due to the act or omission of Tenant, any Leasehold Mortgagee or their respective employees, agents or contractors. This subparagraph (c) will survive the termination or expiration of this Lease. Nothing contained in this subparagraph (c) or otherwise in this Lease will be construed to expand the liability of Tenant with respect to the presence of Hazardous Materials on the Demised Premises beyond the express liability of Tenant set forth in this subparagraph (c).

(d) If Tenant discovers the presence of Hazardous Materials on the Demised Premises during the Inspection Period, Landlord shall review the extent of the presence as well as the cost to remove. During the Inspection Period, Landlord may reject the remediation due to the cost in its sole discretion and either party shall have the right to terminate this Lease in connection therewith prior to the expiration of the Inspection Period. In the event this Lease is not so terminated during the Inspection Period, Landlord shall take all actions to remove and remediate such Hazardous Materials, at Landlord's sole cost and expense, as may be required by Tenant. In connection with the foregoing, to the extent that due to the presence of Hazardous Materials, soils to be removed from the Land in connection with the construction of Tenant's improvements require offsite disposal at an appropriate facility, Landlord will execute any manifests or bills of lading for, and pay for the cost of transportation, handling and disposal of, such soil.

(e) Landlord will reimburse Tenant for Tenant's costs for designing, constructing and installing a vapor mitigation barrier or system if such barrier or system is recommended by Tenant's environmental consultant or counsel relating to potential vapor intrusion conditions or the presence of Hazardous Materials on the Demised Premises or Adjoining Property.

(f) If, prior to the Rent Commencement Date, any Hazardous Materials are found in or on the Demised Premises or the Adjoining Property, and, as a result, Tenant is delayed in performing or completing its work in the Demised Premises or the Adjoining Property, obtaining a temporary or permanent certificate of occupancy for the Demised Premises, or opening for business (collectively, an "**Opening Delay**"), then notwithstanding anything in this Lease to the contrary, the Rent Commencement Date will be delayed for a number of days equal to the number of days in the Opening Delay, subject to other provisions of this Lease. If the Opening Delay

persists for at least six (6) months, then at any time until such delay ceases, Tenant may terminate this Lease upon fifteen (15) days' notice to Landlord.

(g) If, on or after the Rent Commencement Date, Tenant is unable to operate its business as a result of the existence of such Hazardous Materials not caused by Tenant, then Tenant's rent and all other charges due under this Lease will abate until Tenant is able to resume operating its business without interference from such Hazardous Materials, subject to the other provisions of this Lease. If Tenant's rent and other charges are so abated for six (6) months, then at any time thereafter until such abatement ceases, Tenant may terminate this Lease upon fifteen (15) days' notice to Landlord.

Section 13. Insurance.

(a) Tenant will obtain and keep in force commercial general liability insurance covering the Demised Premises with limits of at least Three Million Dollars (\$3,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate for bodily injury and property damage. The limits may be met through a combination of Tenant's primary coverage and umbrella or excess coverage or both. Tenant will be permitted to maintain a self-insured retention with respect to its commercial general liability coverage.

(b) Tenant will keep Tenant's buildings and improvements on the Land insured against loss or damage by fire and customary extended coverage on a replacement cost basis. All proceeds payable by any insurance company under such property insurance policies will be payable to the Leasehold Mortgagee, if any, or to Tenant, and Landlord will not be entitled to, and will have no interest in, the proceeds. For the avoidance of any doubt, Tenant has no obligation to name Landlord or its lender(s) as an additional insured or loss payee with respect to Tenant's property insurance.

(c) Tenant will carry its insurance with a good and solvent insurance company or companies licensed to do business in the state in which the Land is located. Tenant's policy will include Landlord as an additional insured with respect to Tenant's commercial general liability policy for bodily injury or property damage resulting from Tenant's negligence. Tenant agrees to deliver certificates of its insurance on a standard ACORD form to Landlord upon written request by Landlord. The insurance may not be cancelled without thirty (30) days prior written notice from Tenant to Landlord. Tenant's insurance may be carried under blanket insurance policies covering the Demised Premises and other locations of Tenant provided the blanket insurance complies with all of the other requirements of this Lease. Notwithstanding the foregoing, Tenant reserves the right to self-insure for the insurance required in subsections (a) and (b) above so long as Tenant maintains an adequate plan of self-insurance. If Tenant elects to so self-insure, Tenant will, on written request from Landlord, furnish Landlord with a certification from a principal officer of Tenant certifying that Tenant has an adequate plan of self-insurance in place.

(d) Landlord hereby acknowledges that all of the Common Areas within the Adjoining Property will at all times during the term of this Lease be insured by VASA (or the then current occupant or fee owner of the premises currently occupied by VASA), at its sole cost and expense, with a good and solvent insurance company or companies licensed to do business in the state in which the Adjoining Property is located with limits of at least Three Million Dollars

(\$3,000,000.00) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate for bodily injury and property damage. The policy or policies will include Landlord as an additional insured.

Section 14. Waiver of Subrogation. All insurance policies carried by either party covering the Demised Premises will expressly waive any right on the part of the insurer against the other party. As to any loss or damage which may occur and be covered (or required by the terms of this Lease to be covered) under any insurance policy(ies), the party obligated to carry the insurance hereby releases the other from any amount of liability for such loss or damage. The release includes a release of liability for the full amount of any deductible maintained by a party under its insurance policy.

Section 15. Destruction. If the building on the Land is destroyed or damaged by fire or other cause, (a) Tenant will nonetheless continue to pay full rent as it comes due under this Lease and the term of this Lease will not be reduced or affected in any way, (b) Tenant will not be required to repair or replace the building, and (c) if Tenant chooses not to repair or replace the building, then Tenant will promptly cause the building to be razed and the Land placed in a safe and sightly condition.

Section 16. Eminent Domain.

(a) As used in this Lease, the term “**Taking**” means the event of vesting of title in an authority with the power of eminent domain pursuant to any action exercising such power, including a voluntary sale to the authority. Landlord will notify Tenant in writing within ten (10) days after Landlord’s receipt of notice of any planned or threatened Taking of the Demised Premises or Adjoining Property. If there is a Taking of any portion of the Land or all or any material portion of the Common Areas such that the Demised Premises would, in Tenant’s reasonable business judgment, be impractical for use by Tenant, then Tenant may terminate this Lease. In that event, Tenant will be relieved of its obligations to pay rent and to perform its other covenants under this Lease from and after the date of the Taking. Tenant will surrender the Demised Premises to Landlord as of the date of the Taking; provided that the release and surrender does not prejudice or interfere with Tenant’s right to an award for its loss, damage, or any other award. The rent for the last month of Tenant’s possession of the Demised Premises will be prorated, and any rent paid in advance will be refunded to Tenant.

(b) If a Taking does not result in termination of this Lease pursuant to Section 16(a), then the term of this Lease will not be reduced or affected in any way and Tenant will have no obligation to restore the improvements, but the basic rent payable under this Lease will be reduced by an amount which bears the same ratio to the basic rent payable immediately prior to such Taking as the fair market value of the Demised Premises (excluding improvements but including all rights in and to the Common Areas) after Taking bears to the fair market value of the Demised Premises (excluding improvements but including all rights in and to the Common Areas) immediately prior to the Taking. The fair market value will be determined pursuant to subsection (e), below. The award for any partial Taking will be allocated between Landlord and Tenant as described in subsection (c) below; provided, however, if Tenant elects to restore, replace or reconstruct any improvements that are the subject of any Taking, then Landlord will deliver to Tenant Landlord’s share of the award attributable to such improvements to the extent Tenant’s

share of the award attributable to such improvements is not sufficient to pay for the cost of restoration, replacement, and reconstruction.

If any portion of the Common Areas are taken and this Lease is not terminated, Landlord will promptly and diligently restore the remaining Common Areas to its pre-existing condition. Landlord's failure to do so within a reasonable period of time following the Taking will be a default by Landlord under this Lease. If the portion of the Common Areas taken materially and adversely affects Tenant's ability to operate for business and Landlord does not restore the remaining Common Areas within sixty (60) days after the date of the Taking, Tenant may terminate this Lease without waiver of Tenant's other rights and remedies under this Lease and at law and in equity for Landlord's failure.

(c) In the event of any Taking of all or any portion of the Demised Premises, Landlord will be entitled to an award based on the Taking of the fee simple estate in the Land. Tenant will be entitled to an award based on any loss or reduction of its leasehold and easement estates, loss of any building or other improvements pertaining to the realty constructed or placed on the Land or Adjoining Property by Tenant, loss of any fixtures or equipment, loss or interruption of business and the cost of any alterations, restoration or relocation resulting from any such Taking. Any single award or settlement will be allocated between the parties in accordance with the foregoing.

(d) If a court fails or refuses to grant separate awards to Landlord and Tenant upon a Taking, Landlord and Tenant will have thirty (30) days to agree on the allocation of the award. If Landlord and Tenant cannot agree, then the determination of the allocation will be made in accordance with the following procedure. Landlord and Tenant will each promptly appoint one (1) appraiser. Those two (2) appraisers will promptly appoint a third (3rd) appraiser. Each appraiser appointed will be a member of the American Institute of Real Estate Appraisers (or successor organization) having at least five (5) years' experience in appraisal of real estate for commercial retail use in the metropolitan area in which the Land is located. The three (3) appraisers so appointed will jointly make the required appraisals of the values of Landlord's and Tenant's interests in the Demised Premises and will allocate the award based upon the appraisals. If they cannot agree, the appraisals of the third (3rd) appraiser will be accepted by Landlord and Tenant. If either Landlord or Tenant fails, within a period of ten (10) days after receiving notice, to appoint an appraiser, then the appraiser so appointed by the party giving the notice will have the power to proceed as the sole appraiser. Landlord will pay its appraiser, Tenant will pay its appraiser, and Landlord and Tenant will each pay one-half (1/2) of the fees and expenses of the third (3rd) appraiser.

(e) The determination of the fair market value of the Demised Premises as of the date of any Taking will be made by Landlord and Tenant no later than one (1) month after the Taking. If Landlord and Tenant are unable to agree on the fair market value of the Demised Premises (excluding improvements but including all rights in and to the Common Areas) prior to the deadline, the determination (for purposes of this Section 16 only) will be made by appraisal in the same manner as provided in (d), above, with these modifications: If three (3) appraisers are appointed and the determination of one (1) appraiser is disparate from the median of all three (3) determinations by more than twice the amount by which the other determination is disparate from the median, then the determination of that appraiser will be excluded, the remaining two (2)

determinations will be averaged and the average will be binding on Landlord and Tenant; otherwise the average of all three (3) determinations will be binding on Landlord and Tenant.

(f) In making the determination of the fair market value, the appraisers will assume a reasonable time under the then existing market conditions is allowed for exposure of the Demised Premises on the open market, and the appraisers will deduct the value of any improvements then existing on the Demised Premises. The appraisers will take into consideration the Common Areas remaining after the Taking in establishing the fair market value of the Demised Premises.

Section 17. Leasehold Mortgages.

(a) Tenant may encumber Tenant's leasehold estate by a mortgage, deed to secure debt or similar financing instrument (being a "**Leasehold Mortgage**" and the holder being a "**Leasehold Mortgagee**"). A Leasehold Mortgage will not constitute an assignment or transfer of this Lease, nor will the Leasehold Mortgagee be deemed an assignee of this Lease. Tenant will also have the right to obtain financing by a "sale and leaseback" transaction (i.e., an assignment of Tenant's leasehold estate under this Lease simultaneously with a sublease of all of the Demised Premises to Tenant).

(b) With respect to any Leasehold Mortgagee as to which Landlord has been given notice, the following will apply notwithstanding any other provision of this Lease to the contrary:

(i) No voluntary termination by Tenant of this Lease will be effective unless consented to in writing by the Leasehold Mortgagee. Any material amendment or material modification of this Lease or the exercise by Tenant of any option to terminate this Lease without the written consent of the Leasehold Mortgagee will be voidable as against the Leasehold Mortgagee at its option. If any Leasehold Mortgagee fails to respond within thirty (30) days after receipt of written request for consent, the Leasehold Mortgagee will be deemed to have granted its consent to such request provided that the notice clearly states, in all capital letters, "FAILURE TO RESPOND IN 30 DAYS WILL BE DEEMED CONSENT."

(ii) Landlord will deliver any and all notices given to Tenant simultaneously to any Leasehold Mortgagee at the address provided to Landlord, and no such notice will be effective as to such Leasehold Mortgagee unless and until a copy has been delivered to the Leasehold Mortgagee.

(iii) A Leasehold Mortgagee will have, in addition to Tenant's cure period, an additional ten (10) business days to cure monetary defaults and an additional thirty (30) days to cure non-monetary defaults. Landlord will accept performance of any and all of Tenant's obligations under this Lease from any Leasehold Mortgagee.

(iv) If it is necessary for a Leasehold Mortgagee to obtain possession of the Demised Premises to effect a cure, then Landlord will not commence any proceeding or action to terminate this Lease if (1) the Leasehold Mortgagee informs Landlord within the cure period that the Leasehold Mortgagee has taken steps to foreclose its Leasehold Mortgage or (as applicable) to cancel its sublease or other financing arrangement as necessary to obtain possession

of the Demised Premises, (2) the rent is paid and all other provisions and requirements of this Lease which are capable of being observed and performed without obtaining possession of the Demised Premises are observed and performed, and (3) the Leasehold Mortgagee is diligently prosecuting the foreclosure or cancellation. Nothing will require the Leasehold Mortgagee to continue with any foreclosure or other proceedings or to continue its possession.

(v) If Landlord terminates this Lease due to any default by Tenant or if this Lease terminates due to any rejection or disaffirmation of this Lease, Landlord will enter into a new lease with any Leasehold Mortgagee (or its nominee) for the remainder of the term of this Lease and on the then remaining terms and provisions of this Lease, provided the Leasehold Mortgagee must make written request for the new lease not later than sixty (60) days after the date of the termination of this Lease and the request must be accompanied by payment to Landlord of all sums then due to Landlord under this Lease.

(vi) No Leasehold Mortgagee will become liable under this Lease unless and until it becomes the owner of the leasehold estate. Any assignment of this Lease by a Leasehold Mortgagee, its nominee, or by any owner of the leasehold estate whose interest is acquired by, through or under any Leasehold Mortgage, will release the assignor from liability under this Lease arising from and after the date of such assignment (provided that its assignee assumes this Lease in writing). Notwithstanding anything in this Lease to the contrary, the assignment of this Lease to a Leasehold Mortgagee, its nominee or any purchaser of the leasehold interest as part of a foreclosure of the Leasehold Mortgage will not violate any provision in this Lease prohibiting or otherwise limiting the right to assign or transfer this Lease.

(vii) If there are two (2) or more Leasehold Mortgages, the holder of the Leasehold Mortgage recorded prior in time will be first vested with the rights under this Section 17. If a Leasehold Mortgagee fails to exercise the rights set forth in this Section 17, the holder of the Leasehold Mortgage next in time will have the rights in this Section 17. All of the provisions contained in this Lease with respect to Leasehold Mortgages and the rights of Leasehold Mortgagees will survive the termination of this Lease for the period of time as is necessary to effectuate the rights granted to all Leasehold Mortgagees by the provisions of this Lease.

(viii) Nothing contained in this Lease will require any Leasehold Mortgagee or its nominee to cure any default by Tenant.

Section 18. Quiet Enjoyment; Covenants of Landlord Regarding Non-Disturbance.

(a) Tenant will quietly have and enjoy the Demised Premises, including all rights in and to the Common Areas, during the term of this Lease, without hindrance or molestation by anyone.

(b) Landlord agrees to obtain from the holder ("**Holder**") of any prime lease, mortgage, deed to secure debt or other security instrument now or later placed against the Demised Premises (each, a "**Security Instrument**"), a Subordination, Non-Disturbance and Attornment Agreement substantially in the form attached as Exhibit D (an "**SNDA**"), which provides that in the event of any foreclosure, sale under power of sale, or transfer in lieu of any of the foregoing pursuant to any such Security Instrument, Tenant's use, possession and enjoyment of the Demised

Premises will not be disturbed and this Lease will continue in full force and effect so long as Tenant is not in default under this Lease beyond any applicable cure periods.

As of the Effective Date, Landlord's lender is Bank of Utah. In the event that on or after the Effective Date, and continuing throughout the remaining term of this Lease, the Demised Premises is or becomes encumbered by a Security Instrument, Landlord will obtain an SNDA from the Holder thereof and deliver an original copy thereof, properly executed by Landlord and such Holder, to Tenant (i) not later than ten (10) business days prior to the expiration of the Inspection Period with respect to any Security Instrument previously executed, (ii) on or prior to the Commencement Date with respect to any Security Instrument that will be executed on or prior to the Commencement Date (unless an SNDA was previously delivered with respect to such Security Instrument pursuant to clause (i)) or (iii) in all other cases, not later than ten (10) business days following the execution and delivery of the Security Instrument. In the event any Holder of a Security Instrument requires the payment of any review, processing, administration or other fee(s) in the connection with the review, negotiation, processing, execution and/or delivery of an SNDA, including without limitation, attorneys' fees and/or costs, Landlord will be solely responsible for the prompt payment thereof. **Notices and requests pertaining to an SNDA must be sent to Tenant at Tenant's email address set forth in Section 25.**

Section 19. Defaults.

(a) The following events will constitute events of default by Tenant under this Lease:

(i) Tenant's failure to pay any installment of rent when due and the continuance of the failure for a period of ten (10) days after receipt by Tenant of written notice from Landlord; or

(ii) Tenant's failure to perform, in any material respect, any of the other covenants, conditions and agreements in this Lease and the continuance of the failure for a period of thirty (30) days after receipt by Tenant of written notice from Landlord (or such longer period as may be required in order to effect such cure, provided Tenant commences the cure within such 30-day period and diligently prosecutes the cure to completion); or

(iii) if Tenant (1) files a petition commencing a voluntary case under any applicable federal or state bankruptcy, insolvency or other similar law; (2) makes a general assignment for the benefit of its creditors; (3) files an application for, or consents to, the appointment of any receiver or a permanent or interim trustee of Tenant or of all or a substantial portion of its property; (4) files a petition seeking a reorganization of its financial affairs or to take advantage of any bankruptcy, insolvency or similar law, or files an answer admitting the material allegations of a petition filed against it in any proceeding under any such law; (5) takes any action for the purpose of effecting any of the foregoing; or (6) is the subject of a decree or order for relief by a court having jurisdiction over Tenant in any involuntary case under any applicable federal or state bankruptcy, insolvency or similar law; or

(iv) if any proceedings brought against Tenant seeking any of the relief mentioned in Section 19(a)(iii) is not dismissed within ninety (90) days.

If Tenant fails to cure a default within the cure period specified in this Lease, Landlord may, at its option, (i) provide Tenant with written notice of election to terminate this Lease on a date that is not less than ten (10) business days after receipt of such written notice from Landlord, (ii) bring suit for the collection of rent as it becomes due without cancellation or termination of this Lease, or (iii) provide Tenant with written notice of election to terminate Tenant's possession of the Demised Premises (without termination of this Lease) on a date specified in the written notice. The date of termination of the Lease or of Tenant's possession of the Demised Premises, as applicable, will be not less than ten (10) business days after the date of receipt by Tenant of the written notice from Landlord. On terminating this Lease or terminating Tenant's possession of the Demised Premises, Landlord may pursue the remedies set forth in subsection (b) below.

Notwithstanding anything in this Section 19 above or elsewhere in this Lease to the contrary, if, within ten (10) business days following Tenant's receipt of a notice of default under Section 19(a) (a "**Default**"), Tenant gives Landlord written notice that Tenant disputes the existence of the Default, then Landlord may not exercise its right to terminate this Lease on account of the Default unless (i) Landlord has obtained a final judgment against Tenant (which is no longer subject to appeal) by a court having jurisdiction over the parties, which final judgment finds that the Default exists, and (ii) Tenant has failed to cure the Default within fifteen (15) business days following the final judgment, provided that if the nature of the Default is such that the same cannot reasonably be cured within fifteen (15) business days, Tenant will have the additional time necessary if Tenant commences the cure within the fifteen (15) business day period and then diligently proceeds to cure the Default as soon as possible.

(b) Following any termination of this Lease or Tenant's possession of the Demised Premises, Landlord may re-enter the Demised Premises and recover possession and dispossess all occupants in the manner prescribed by statute relating to summary proceedings or similar statutes. Landlord agrees to use reasonable efforts to re-let the Demised Premises in order to mitigate Landlord's damages in the event of a default by Tenant under this Lease.

(c) Landlord will be in default under this Lease if Landlord (i) fails to perform any obligation (including any payment obligation) or abide by any covenant or condition under this Lease within thirty (30) days after receipt of written notice from Tenant specifying the nature of the default, or such longer period as may be reasonably required based upon the nature of the default in order to effect the cure of any non-payment default, provided Landlord commences the cure within the thirty (30)-day period and diligently prosecutes the cure to completion, or (ii) breaches, in any material respect, any of the representations or warranties given in this Lease. On the occurrence of Landlord's default, Tenant will have all remedies available at law or in equity. With respect to any default under clause (i) above, Tenant will have the specific right, but not the obligation, to perform the obligations on Landlord's behalf, and at Landlord's expense, after the expiration of the required notice and cure period so long as Tenant has given Landlord an additional ten (10) days' prior written notice stating that Tenant intends to perform the obligations on Landlord's behalf and Landlord does not within such ten (10)-day period commence the cure of such default and notify Tenant in writing that Landlord has commenced the cure of such default and will diligently pursue the cure of such default to completion. Landlord will reimburse any costs incurred by Tenant (together with interest at the rate set forth in Section 20) within ten (10) days after Landlord's receipt of Tenant's request for reimbursement (which will be accompanied by receipts or other evidence of such expenses). With respect to any default under clause (i) above,

Tenant will also have the specific right, but not the obligation, to perform the obligations on Landlord's behalf, and at Landlord's expense, after the expiration of the required notice and cure period. Landlord will reimburse any costs incurred by Tenant (together with an administrative fee of ten percent (10%) of such costs incurred by Tenant, and also with interest (at the rate set forth in Section 20) on all such costs and fees from the date such costs are incurred by Tenant until reimbursed by Landlord) within ten (10) days after Landlord's receipt of Tenant's request for reimbursement.

Section 20. Interest and Late Charges. All rent will bear interest from the tenth (10th) day after the date due until paid at the lesser of (i) the "prime rate" (or if the "prime rate" is discontinued, the rate announced as that being charged to the most creditworthy commercial borrowers) announced by Bank of America, N.A., Atlanta, Georgia, or its successor, from time to time plus 2%, or (ii) the maximum lawful contract rate per annum. In addition, if any installment of rent is not paid on or before the fifteenth (15th) day after the due date, a "late charge" of \$150.00 may be charged by Landlord.

Section 21. No Waiver. The failure of Landlord or Tenant to complain of any act or omission on the part of the other party, no matter how long the same continues, will not be deemed to be a waiver by that party of any of its rights under this Lease. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease will be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach.

Section 22. Right of First Offer.

(a) If the Demised Premises constitutes a separate legal parcel and Landlord intends to offer the Demised Premises for sale to an unaffiliated third party or if Landlord receives an offer from an unaffiliated third party to purchase the Demised Premises on terms acceptable to Landlord, Landlord will first offer Tenant the right to purchase the Demised Premises by sending to Tenant a written notice of the specific terms of the offer to sell or purchase. The offer will include the price (the "**Offering Amount**"), payment terms, conditions of title, costs of escrow and other relevant terms, together with a current payoff letter from any mortgagee of the Demised Premises evidencing such Holder's agreement to release its mortgage upon payment of the release price. Tenant will have twenty (20) days after receipt of the notice to exercise its right to purchase by providing written notice to Landlord. If Tenant exercises the right to purchase, the closing will occur within twenty (20) days after the date of Tenant's notice. If Tenant does not elect to accept the offer or fails to provide notice within the twenty (20)-day period, Landlord may offer to sell the Demised Premises to a third party on substantially the terms and conditions provided in Landlord's notice to Tenant. If Landlord does not complete the sale on substantially the terms in the notice to Tenant (for not less than ninety-five percent (95%) of the Offering Amount) in three hundred sixty-five (365) days (the "**Third Party Sale Conditions**"), and if Landlord determines again that Landlord desires to offer the Demised Premises for sale, Landlord must again comply with the terms of this Section 22 and Tenant will again have the right of first offer in this Section 22. However, If Landlord completes the sale on the Third Party Sale Conditions, then Tenant's right of first offer under this Section 22 will terminate and no longer be of any force or effect. The right of first offer in this Section 22 will apply to any transfer by Landlord of any interest in Landlord or in any entity or entities owning a direct or indirect interest in Landlord or the Demised Premises for solely the purpose of circumventing Tenant's right of first offer.

(b) This Section 22 will not apply in the event of a sale of Landlord's interest in the Demised Premises as part of a sale of the Demised Premises and the Adjoining Property, or a sale, transfer or assignment of Landlord's interest in the Demised Premises in connection with the foreclosure of any deed to secure debt, mortgage or other similar security instrument, whether by judicial or non-judicial sale, or any deed or assignment in lieu of foreclosure, covering Landlord's fee interest. Further, this Section 22 will not apply to any transfer by descent or devise following the death of any party comprising Landlord or to transactions by and among Landlord or any family member of any party comprising Landlord, including without limitation, trusts, corporations or other entities having a majority interest owned by or inuring to the benefit of Landlord or any family member of any party comprising Landlord; provided, however, that the provisions of this Section 22 will be binding upon such purchaser and such purchaser's heirs, successors and assigns. Landlord agrees that the Declaration and Short Form Lease will reflect the right of first offer granted to Tenant. If Tenant elects not to record a Declaration and Short Form Lease, Landlord will enter into a Memorandum of Right of First Offer, which will be prepared and recorded by Tenant at its sole cost and expense.

Section 23. Reserved.

Section 24. Force Majeure; Tolling of Rent Commencement Date.

(a) If Landlord or Tenant is delayed, hindered or prevented from the performance of any act required under this Lease (including, without limitation, conducting inspections or other due diligence, obtaining or maintaining Permits or other approvals, commencing or completing the construction of improvements on the Demised Premises, or opening for business or operating business on the Demised Premises) by reason of a Force Majeure Event (as defined below), then performance of the act will be excused for the period of the delay, hindrance or prevention, and the period for the performance of any such act will be extended for a period equivalent to the period of such delay, hindrance or prevention. Lack of funds will not be a basis for avoidance or delay of any obligation under this Lease. For purposes hereof, "**Force Majeure Event**" means strikes; lock outs; labor or work force shortages or interruptions; inability or difficulty to procure materials or supplies; failure or insufficiency of electricity, water, sewer, gas or other utilities; restrictive governmental laws, regulations, directions, mandates or orders; governmental compulsory acquisitions, expropriations, seizures or requisitions; widespread material curtailment or unavailability of governmental services or functions; riots; terrorist acts or threats of terrorist acts; insurrection or civil commotion or disorder; Public Health Concerns (as defined below); acts of God or natural disaster, including without limitation, damaging storms, cyclones, typhoons, hurricanes, tornadoes, blizzards, earthquakes, volcanic activity, landslides, tidal waves, tsunamis, floods, or damage or destruction by lightning; explosions, fires or other destruction not caused by Tenant; the act, failure to act or default of the other party; armed conflict or war (whether declared or not); or any reason beyond a party's control. For purposes of this Lease, "**Public Health Concern**" means any one or more of the following: epidemics; pandemics; plagues; viral, bacterial or infectious disease outbreaks; public health crises; national health or medical emergencies; governmental restrictions on the provision of goods or services or on citizen liberties, including travel, movement, gathering or other activities, in each case arising in connection with any of the foregoing, and including, but not limited to, governmentally mandated closure, quarantine, "stay-at-home", "shelter-in-place" or similar orders or restrictions; or workforce shortages or disruptions of material and/or supply chains resulting from any of the

foregoing. Notwithstanding anything to the contrary provided hereunder, including, without limitation, the listing of exemplary events or circumstances constituting a Force Majeure Event, nor anything to the contrary provided under applicable law, whether common, statutory, regulatory or administrative, the excuse of any party's performance or the extension of the period for performance will in no event be conditioned upon nor affected by the "foreseeability" of an event or circumstance, it being agreed that certain events or circumstances though rare, remote or even far-fetched, may nevertheless be arguably foreseen as a possibility. Instead, the parties intend for this provision to apply to any event or circumstance not caused or controlled by the party seeking relief that would delay, hinder or prevent the required performance by a party similarly situated.

(b) If, as a result of a Force Majeure Event, Tenant is temporarily unable to perform any pre-opening activities deemed necessary or advisable, in Tenant's sole and absolute discretion, for the opening of Tenant's business to the public within the Demised Premises (including, without limitation, the inability to complete the construction of improvements on the Demised Premises or the Adjoining Property, obtain a temporary or permanent certificate of occupancy or similar governmental certificate or approval, procure or install personal property, fixtures, equipment, supplies and/or inventory, and/or hire and train employees), the Rent Commencement Date will be tolled one (1) day for each day Tenant is delayed from opening for business to the public as a result of such inability. For the avoidance of any doubt, and without limiting the generality of the foregoing, the parties expressly acknowledge and agree that the existence of a Public Health Concern on or prior to the intended date for Tenant's opening to the public will be an event triggering Tenant's right to delay the Rent Commencement Date for so long as such Public Health Concern persists.

Section 25. Notices. Every notice given under this Lease will be effective only if it is in writing and delivered (i) in person, (ii) by courier, (iii) by reputable overnight courier guaranteeing next business day delivery, (iv) if sent on a business day during the business hours of 9:00 a.m. until 7:00 p.m. Eastern Time, via email with a copy to follow by reputable overnight courier guaranteeing next business day delivery (*provided, however, if an email notice recipient acknowledges receipt of the notice via reply email, transmittal by overnight courier to such recipient will not be required*), or (v) sent postage prepaid by United States certified mail, return receipt requested, directed to the other party at its address provided below, or such other address as either party may designate by notice given from time to time in accordance with this Section. Notices will be effective (i) in the case of personal or courier delivery, on the date of delivery as evidenced by a written receipt signed on behalf of the receiving party, (ii) if by overnight courier, one (1) business day after the deposit of the notice with all delivery charges prepaid, (iii) if by email, on the date of delivery, provided that the email is sent on a business day during the hours stated above, and provided that to the extent required above, a copy of the notice is simultaneously transmitted by reputable overnight courier (with all charges prepaid) for receipt on the next business day, and (iv) in the case of certified mail, the earlier of the date receipt is acknowledged on the return receipt for such notice or five (5) business days after the date of posting by the United States Post Office. The rent payable by Tenant under this Lease will be paid to Landlord at the same place where a notice to Landlord is required to be directed. The notice addresses for Landlord and Tenant are as follows:

If to Landlord:

HD Powers LLC
c/o Hawkins Development

7076 S. Alton Way, Suite H-100
Centennial, CO 80112
Attn: Sarah Berg
Email: sarah@hawkinsdevco.com

With a copy to:

Hawkins Development
7076 S. Alton Way, Suite H100
Centennial, CO 80112
EMAIL: kevin@hawkinsdevco.com

With a copy to Landlord's Counsel: Ray Quinney & Nebeker, PC
36 South State Street, Suite 1400
PHONE: (801) 323-3306
EMAIL: abehjani@rqn.com
ATTN: Allison Behjani, Esq.

If to Tenant:

Chick-fil-A, Inc.
ATTN: Legal Department – Real Estate (Site #05934)
5200 Buffington Road
Atlanta, Georgia 30349
PHONE: (404) 765-8000
EMAIL: cfalegalnotice@chick-fil-a.com

With a copy to Tenant's Counsel: Allen Matkins
600 West Broadway, 27th Floor
San Diego, CA 92101
PHONE: (619) 235-1562
EMAIL: jllorenzen@allenmatkins.com
ATTN: Jonathan L. Lorenzen

Section 26. Estoppel Certificates. Either party will, without charge, within thirty (30) days after such party's receipt, **at the email address set forth in Section 25**, of the written request of the other, execute and deliver an estoppel certificate in the form attached as Exhibit I. Any such certificate may be relied upon by the party requesting it and any other person, firm or corporation to whom the same is certified, and the contents of the certificate will be binding on the party executing the certificate.

Section 27. Governing Law; Attorneys' Fees. This Lease will be governed by the laws of the state in which the Land is located. In the case of any action or proceeding brought to enforce the terms and provisions of this Lease, the unsuccessful party in any such action or proceeding will, on the entry of a final, non-appealable judgment, pay for all costs, expenses and reasonable attorneys' fees actually incurred by the prevailing party in enforcing the covenants and agreements of this Lease.

Section 28. Partial Invalidity. If any term of this Lease is, at any time or to any extent, invalid or unenforceable, the remainder of this Lease, or the application of such term or provision

to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term, covenant, condition and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

Section 29. Declaration and Short Form Lease. At the time of executing this Lease, Landlord and Tenant will execute and deliver a short form of lease in the form attached as Exhibit C (the “**Declaration and Short Form Lease**”). The Declaration and Short Form Lease will be returned to Tenant for recording, at Tenant’s option, at the time the counterparts of this Lease are delivered to Tenant. All recording costs will be paid by Tenant. If this Lease terminates, Tenant will deliver, in recordable form, a termination of the Declaration and Short Form Lease.

Section 30. Interpretation. Wherever the singular number is used, the same will include the plural, and the masculine gender will include the feminine and neuter genders, and vice versa, as the context requires. The section headings are for reference and convenience only, and will not enter into the interpretation of this Lease. The term “Landlord” means only the owner at the time of Landlord’s interest herein, and on any sale or assignment of the interest of Landlord and the assumption of this Lease, its successors in interest and assigns will, during the term of its ownership of its estate herein, be deemed to be Landlord. This Lease creates for all purposes an estate for years and not a usufruct.

Section 31. Entire Agreement; Modification of Lease. No oral statement or prior written matter between Landlord and Tenant with respect to the matters covered in this Lease will have any force or effect. Landlord and Tenant hereby agree that they are not relying on any representations or agreements by the other party other than the representations or agreements contained in this Lease. Except for Tenant’s right to terminate this Lease as expressly provided in this Lease, this Lease will not be modified or canceled except by a writing executed by Landlord and Tenant. All exhibits attached to this Lease are incorporated in this Lease and are made a part of this Lease by reference in this Lease.

Section 32. Parties. Except as otherwise expressly provided in this Lease, the covenants, conditions and agreements contained in this Lease will bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, successors in title, administrators and assigns.

Section 33. Counterpart Execution; Electronic Signatures; Form W-9. This Lease will be executed in multiple counterparts, each of which will be deemed an original, and all of which will constitute one and the same agreement. This Lease (and any amendments hereto and any other instruments relating to the transactions contemplated hereby, other than any instruments to be recorded, witnessed, and/or notarized) may be electronically signed by the parties, which will be treated as an original copy as though ink-signed by duly authorized officers or other representatives of each party. **Note:** Landlord will execute and deliver Form W-9 attached as Exhibit F with Landlord’s original counterparts to the Declaration and Short Form Lease.

Section 34. Day of Performance. Wherever there is a day or time period established for payment or performance and the day or the expiration of such time period is a Saturday, Sunday or holiday, then the applicable day or time period will for all purposes be automatically extended to the next business day.

Section 35. Landlord's Representations and Warranties. To induce Tenant to enter into this Lease, Landlord represents and warrants to Tenant as follows:

(a) Landlord owns fee simple title to the Demised Premises free and clear of all tenancies, liens, special assessments, easements, encroachments, reservations, restrictions and encumbrances, excepting only monetary encumbrances to be subject to the SNDA under Section 18(b), real property ad valorem taxes not yet due and payable and recorded general utility easements serving the Demised Premises. For the avoidance of doubt, there are no existing tenants, licensees or other occupants with possessory, use or other rights to or interests in the Demised Premises.

(b) There are no actions, suits or proceedings of any kind pending or threatened against Landlord, the Demised Premises, the Adjoining Property or relating to any adjoining rights-of-way in any court or before or by any federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality. This includes, without limitation, any condemnation or eminent domain proceedings, widening, construction of acceleration/deceleration lanes, changes in or additions to existing or approved curb cuts or medians, proposed or pending installation or removal of traffic lights, or any other changes or proposed changes in traffic patterns or management of traffic flow.

(c) All actions required to authorize the execution and performance of this Lease by Landlord have been taken, and this Lease constitutes a valid and binding agreement, enforceable against Landlord. No person or entity has any right or option to lease, occupy or acquire the Demised Premises.

(d) Landlord has not received any notice that the Demised Premises is or will be subject to any reassessment due to a change in use of the Demised Premises or subject to any special assessments, whether or not presently a lien. The Demised Premises has not been classified under any designation authorized by law to obtain a special low ad valorem tax rate or to receive a reduction, abatement or deferment of ad valorem taxes which, in such case, will result in additional, catch-up or roll-back ad valorem taxes in the future in order to recover the amounts previously reduced, abated or deferred.

(e) To the best of Landlord's knowledge, there is no existing violation of any ordinance, code, law, rule, requirement or regulation applicable to the Demised Premises.

(f) Landlord has not used, operated or permitted the use of the Demised Premises or the Adjoining Property in any manner for the storage, use, treatment, manufacture or disposal of any Hazardous Materials (as defined below). To Landlord's actual knowledge, neither the Demised Premises nor the Adjoining Property have ever been used or operated by any other party for the storage, use, treatment, manufacture or disposal of any Hazardous Materials. The term "**Hazardous Materials**" means and refers to any "hazardous waste" or "hazardous substance," as such terms are set forth in, under or pursuant to the Environmental Laws and Regulations, oil or petroleum products or their derivatives, polychlorinated biphenyls, asbestos, radioactive materials or waste, and any other toxic, ignitable, reactive, corrosive, explosive, contaminating or polluting materials which are now or in the future subject to governmental regulation. "**Environmental Laws and Regulations**" means any federal, state or local laws now

or hereafter in effect relating to pollution or protection of the environment or emissions, discharges, spills, releases or threatened releases of any Hazardous Materials into the environment (including without limitation indoor air, ambient air, surface water, ground water or land), including without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, as amended, the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”), 42 U.S.C. §§ 9601 *et seq.*, as amended, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*, as amended, the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*, as amended, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, as amended, the Toxic Substance Control Act, 15 U.S.C. §§ 2601 *et seq.*, as amended, and any rules and regulations now or hereafter promulgated under any of such acts.

(g) Landlord has provided Tenant with true and complete copies of all environmental site assessments, audits and similar reports covering the Demised Premises and Adjoining Property in Landlord’s possession or control.

(h) The Land has been, or prior to the Commencement Date, will be, properly subdivided in accordance with all applicable laws and will constitute a separate, legal parcel of land.

(i) The Land is currently subject to a zoning classification that will permit the development and use of a restaurant building, including a drive-thru window and a children’s play facility.

(j) All utilities are available within the right-of-way adjoining the frontage of the Land or are available to be extended to the boundary of the Land through existing easements or easements that will be granted on or before the Commencement Date.

(k) The Demised Premises is not located within an area designated as a redevelopment area or project area by a redevelopment agency. Landlord is not presently in and does not intend to enter into a disposition and development agreement or owner participation agreement with a redevelopment agency for development of the Demised Premises. If the Demised Premises becomes a part of a redevelopment project, Landlord will immediately disclose such information to Tenant. Any agreement that binds the Demised Premises to the covenants and conditions of the redevelopment area or project or both must first be reviewed and approved by Tenant, which approval may be withheld at Tenant’s sole discretion. If Landlord fails to disclose such agreements or binds Tenant or the Demised Premises or both to such agreements without Tenant’s prior written consent, then Landlord’s actions may be deemed by Tenant to be in material breach of this Lease, and in such an event, Tenant may terminate this Lease upon written notice to Landlord (in which case Landlord must reimburse Tenant for all reasonable and documented out-of-pocket costs and expenses, including pre-development, development and construction costs incurred by Tenant), as well as pursue any other rights or remedies under this Lease. Notwithstanding the foregoing, all costs, expenses and obligations associated with any such redevelopment project or related agreements or both, including without limitation, prevailing wage requirements, local employment requirement, minority and women owned business requirements and community outreach programs are assumed by Landlord, and Landlord hereby indemnifies, protects and holds the Demised Premises, Tenant and Tenant’s officers, directors, shareholders, participants, affiliates, employees, franchisees or operators, representatives, invitees, agents and

contractors (collectively, “**Tenant Parties**”) free and harmless from and against any and all claims, damages, liens, fines, penalties, stop notices, liabilities, losses, costs and expenses, including reasonable attorneys’ fees and court costs, resulting from or related to Landlord’s, Tenant’s or Tenant Parties’ breach or violation of same. Landlord’s indemnification obligations set forth in this subsection will survive the expiration or early termination of this Lease.

(l) Except as set forth on Exhibit G, there are no private restrictive covenants (such as a “no build” or “no change” area restriction) or so-called “exclusives” (recorded or unrecorded) that will prevent Tenant from constructing and operating a Chick-fil-A restaurant on the Demised Premises as such restaurants are currently being operated (which restaurants include, in addition to chicken as a principal menu item, a broad variety of other menu items such as signature coffees, blended beverages, baked goods, salads, breakfast burritos and wraps). Exhibit G sets forth, verbatim, the only private restrictive covenants or so-called “exclusives” that burden the Demised Premises.

(m) No consents or other approvals are required to be obtained from any private third party (including, but not limited to, other tenants of the Adjoining Property) to permit Tenant’s proposed construction and operation of a Chick-fil-A restaurant on the Demised Premises or for the granting of restrictive covenants, exclusives and easements burdening the Adjoining Property as set forth in this Lease.

(n) The terms and conditions of this Lease do not violate the terms and conditions of any existing lease for property or space located on the Adjoining Property.

Section 36. Brokerage Commissions. Landlord represents and warrants to Tenant that, other than DHLB (“**Landlord’s Broker**”), Landlord has not engaged or employed any real estate broker, agent or other intermediary in connection with this Lease. Tenant represents and warrants to Landlord that, other than DHLB (“**Tenant’s Broker**”), Tenant has not engaged or employed any real estate broker, agent or other intermediary in connection with this Lease. Landlord will be solely responsible for the payment of any commissions owed to Landlord’s Broker and Tenant’s Broker (pursuant to a separate written agreement among Landlord, Landlord’s Broker and Tenant’s Broker. Landlord will indemnify and hold Tenant harmless against all claims, demands, actions, and judgments of any and all brokers, agents, and other intermediaries alleging a commission, fee or other payment to be owing by reason of Landlord’s dealings, negotiations or communications in connection with this Lease, including any claims asserted by Landlord’s Broker or Tenant’s Broker. Tenant will indemnify and hold Landlord harmless against any claims, defenses, actions and judgments of any brokers, agents, and intermediaries alleging a commission, fee or other payment to be owing by reason of Tenant’s dealings, negotiations, or communications in connection with this Lease; provided, however, the foregoing indemnity will not extend to any claims asserted by Landlord’s Broker and Tenant’s Broker which will be the responsibility of Landlord. This Section 36 will survive the termination or expiration of this Lease.

Section 37. Disclosure; Press Release. Landlord must not disclose the terms, conditions, or existence of this Lease to any party other than Landlord’s legal counsel, accountant, or vendor(s) providing services in connection with this Lease (and then only after such third party has agreed in writing not to further disclose the terms, conditions or existence of this Lease). At or after the Commencement Date, Tenant will have the right, at its sole discretion, to publicize the transaction

(other than the specific economics thereof) in whatever manner it deems appropriate. Recognizing the importance of Tenant's ability to manage and coordinate its overall restaurant portfolio, Landlord agrees that Landlord will not, at any time, prepare, circulate, or contribute to any press release concerning the transaction contemplated by this Lease without Tenant's prior written consent (to be granted or withheld in Tenant's discretion). The provisions of this paragraph will survive so long as this Lease is in place.

Section 38. Public Improvement Fee. Landlord has incurred and will incur costs of acquiring, designing, constructing, installing, operating and maintaining the Common Areas of the Project, together with the interest, reserve, administrative, issuance and other costs of obtaining and repaying such financing (collectively, the "**Developer Costs**"). The Developer Costs will be paid for, in whole or in part, through the imposition, through the recording of a certain real property covenant (the "**PIF Covenant**") of a project improvements fee (the "**PIF**") in the amount of one percent (1%) of all PIF Sales (as defined below) on the Premises. The PIF is required to be collected by all sellers or providers of goods or services who engage in any PIF Sales transactions from the purchaser or recipient of such goods or services and then paid over to Landlord.

(a) Tenant agrees that, throughout the term of this Lease, it will assess, collect and remit as herein directed a PIF equal to one percent (1%) of all PIF Sales initiated, consummated, conducted, transacted or otherwise occurring from or within the Premises. The PIF will be imposed upon and collected from Tenant's customers and become due and payable from the Premises in regard to all PIF Sales. As used herein, the term "**PIF Sales**" means any exchange of goods or services for money or other media of exchange, and will include all sales or rentals by Tenant or its tenants, licensees or concessionaires of tangible personal property initiated, consummated, conducted, transacted or otherwise occurring from or within the Premises, and all sales of services made, performed or rendered by Tenant or its subtenants, licensees or concessionaires from or within the Premises. In all events, the Premises will be subject to all sales and use taxes that may be imposed by the State of Colorado, the City and County and any other applicable taxing authority.

(b) Whether or not collected from customers, Tenant will pay the PIF monthly in arrears, in an amount equal to one percent (1%) of all PIF Sales initiated, consummated, conducted, transacted or otherwise occurring from or within the Premises during such month. The PIF will be due and payable without notice within twenty (20) days after the close of each calendar month, and unless Landlord in its sole discretion otherwise directs, Tenant will pay the same directly to Landlord. The procedures for assessment, collection, and segregation of the PIF (but not for calculation) will be identical in all material respects to those set forth in City Sales Tax Ordinances and Tenant will report PIF Sales and remit the PIF to the Landlord on a monthly basis when Tenant reports and remits sales taxes to the City, employing reporting forms and following procedures intended to be substantially similar to those used and required by the City for the remittance of sales tax. The PIF will be calculated and imposed on transactions at the rate stated above prior to the calculation and assessment of any City or State of Colorado sales tax, and before any sales taxes of any other taxing entity required to be imposed by Laws. The PIF will be added to the sales price for transactions subject to sales tax prior to the calculation of sales taxes. All City sales tax and sales taxes of other taxing entities will be calculated and assessed on the sum of the PIF Sales price plus the amount of the PIF. Specific instructions regarding reporting forms and payment procedures will be provided to Tenant by Landlord, and Tenant will be entitled to

rely thereon for purposes of compliance with this Section 38. TENANT HEREBY ACKNOWLEDGES THAT THE PIF IS NOT A TAX IN ANY FORM.

(c) Tenant will deliver to Landlord (also referred to herein as the “**Report Recipient**”), true and complete copies of all written reports, returns, statements and records, including any supplements or amendments thereto (collectively the “**Reports**”) made or provided to the City or the State of Colorado by Tenant in connection with all sales tax for the corresponding sales tax period at the same time such Reports are delivered to the City or the State of Colorado. If any subsequent adjustments, additions or modifications are made to any sales taxes or the PIF reported, remitted or paid, or Report made, by Tenant to the City or the State of Colorado with respect to sales taxes or the PIF, Tenant will provide the Report Recipient with true and complete copies of all revised Reports or other written material issued or received by Tenant in regard thereto. If any such adjustment increases the amount of the PIF which Tenant is required to remit or pay, or results in a refund of such PIF, Tenant will immediately pay such additional PIF in the amount due, or will receive an appropriate credit against the next PIF due from Tenant in the amount of such excess PIF. Tenant will claim such credits or pay such additional PIF in the next monthly reporting period by use of the standard reporting and remittance forms. All Reports made or provided by Tenant will be maintained by Tenant for at least three (3) years from the date of submission thereof to the City and/or State of Colorado, and upon written request, will be made available to the Report Recipient for inspection and audit. Reports received by Landlord will remain confidential and be used only for purposes of collecting the PIF due, enforcing Tenant’s obligations hereunder, and otherwise monitoring compliance with the provisions of this Section. In addition, Tenant will comply with all policies and requirements of the Landlord regarding notification to customers of the assessment and collection of the PIF as such policies and requirements are communicated to Tenant in writing from time to time.

(d) Any payment of the PIF not paid when due hereunder will bear interest at the prime interest rate (as published from time to time by The Wall Street Journal, and with any changes in such rate to be effective on the date such change is published) plus four percent (4%) per annum (but if such rate exceeds the maximum interest rate permitted by Laws, such rate will be reduced to the highest rate allowed by Laws under the circumstances), and Tenant will bear all costs of enforcement and collection thereof, including reasonable attorneys’ fees. In addition to the rights and remedies Landlord has hereunder, Tenant further expressly authorizes Landlord to audit the books and records of Tenant in determining Tenant’s compliance under this Section 38. Any right, title, or interest of Landlord in the PIF and the obligations of Tenant as set forth in this Section 38 may be assigned to any successor.

(e) Tenant agrees to cause any assignee, subtenant, licensee, concessionaire or other party who conducts any PIF Sales, prior to conducting any business from the Premises, to acknowledge and agree to (in a manner that causes such party to be bound by) all provisions of this Section 38.

Section 39. Plat of Demised Premises. At any time during the Term of this Lease following written notice to Tenant, Landlord shall have the option (“**Landlord’s Pad Site Option**”) to legally subdivide the Land into a separate legal lot, provided that in no event shall such subdivision reduce or otherwise impact Tenant’s rights under this Lease, increase Tenant’s obligations under this Lease (including, without limitation, the payment of Taxes or any other rent

amount), or modify the size, location or boundaries of the Land from the depiction of the same shown on Exhibit A attached hereto. Tenant shall, at no cost to Tenant, cooperate with Landlord in effectuating the Landlord's Pad Site Option. In the event Landlord elects Landlord's Pad Site Option, Landlord will, if necessary, amend the CC&Rs as needed to create and establish certain easements and rights benefiting and burdening the Land and the Adjoining Property, including, without limitation, those certain rights, easements and restrictions set forth in Section 3, above. Any such amendment to the CC&Rs shall in all respects be subject to Tenant's prior review and approval in its sole but good faith discretion.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

Landlord has executed this Lease under seal as of _____.

“LANDLORD”

HD POWERS LLC,
a Colorado limited liability company

By: _____

Name: _____

Title: _____

(CORPORATE SEAL)

Federal Tax Identification Number of Landlord:
84-4670257

Tenant has executed this Lease under seal as of _____.

“TENANT”

CHICK-FIL-A, INC., a Georgia corporation

By: _____

Name: _____

Title: _____

(CORPORATE SEAL)

Federal Tax Identification Number of Tenant:
58-0941582

EXHIBIT A

DESCRIPTION OF LAND

A PARCEL OF LAND BEING A PORTION OF LOT 1, BLOCK 1, WALDORF SUBDIVISION AS FILED IN PLAT BOOK P-3 AT PAGE 83 AND AMENDED IN BOOK 3621 AT PAGE 590 OF THE RECORDS OF EL PASO COUNTY, COLORADO AND LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, SECTION 6, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO

BASIS OF BEARING: THE NORTH LINE OF LOT 1, BLOCK 1, WALDORF SUBDIVISION, BEING MONUMENTED AT EACH END BY A FOUND REBAR WITH YELLOW PLASTIC SURVEYORS CAP, PLS 37929, RECORDED AS BEARING S89°59'47"E WITH A DISTANCE OF 609.99 FEET, IN PLAT BOOK P-3 AT PAGE 83 OF THE RECORDS OF EL PASO COUNTY, COLORADO.

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 1, OF SAID WALDORF SUBDIVISION;

THENCE N00°23'56"E, A DISTANCE OF 357.74 FEET AS MEASURED ALONG THE WEST LINE OF SAID LOT 1;

THENCE S89°29'16"E, A DISTANCE OF 150.37 FEET AS MEASURED ALONG THE BOUNDARY OF SAID LOT 1;

THENCE CONTINUE S89°29'16"E, A DISTANCE OF 23.14 FEET;

THENCE S00°28'24"W, A DISTANCE OF 358.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1;

THENCE N89°27'46"W, A DISTANCE OF 173.14 FEET AS MEASURED ALONG THE SOUTH LINE OF SAID LOT 1, TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 61,984 SQUARE FEET (1.42 ACRES) MORE OR LESS.

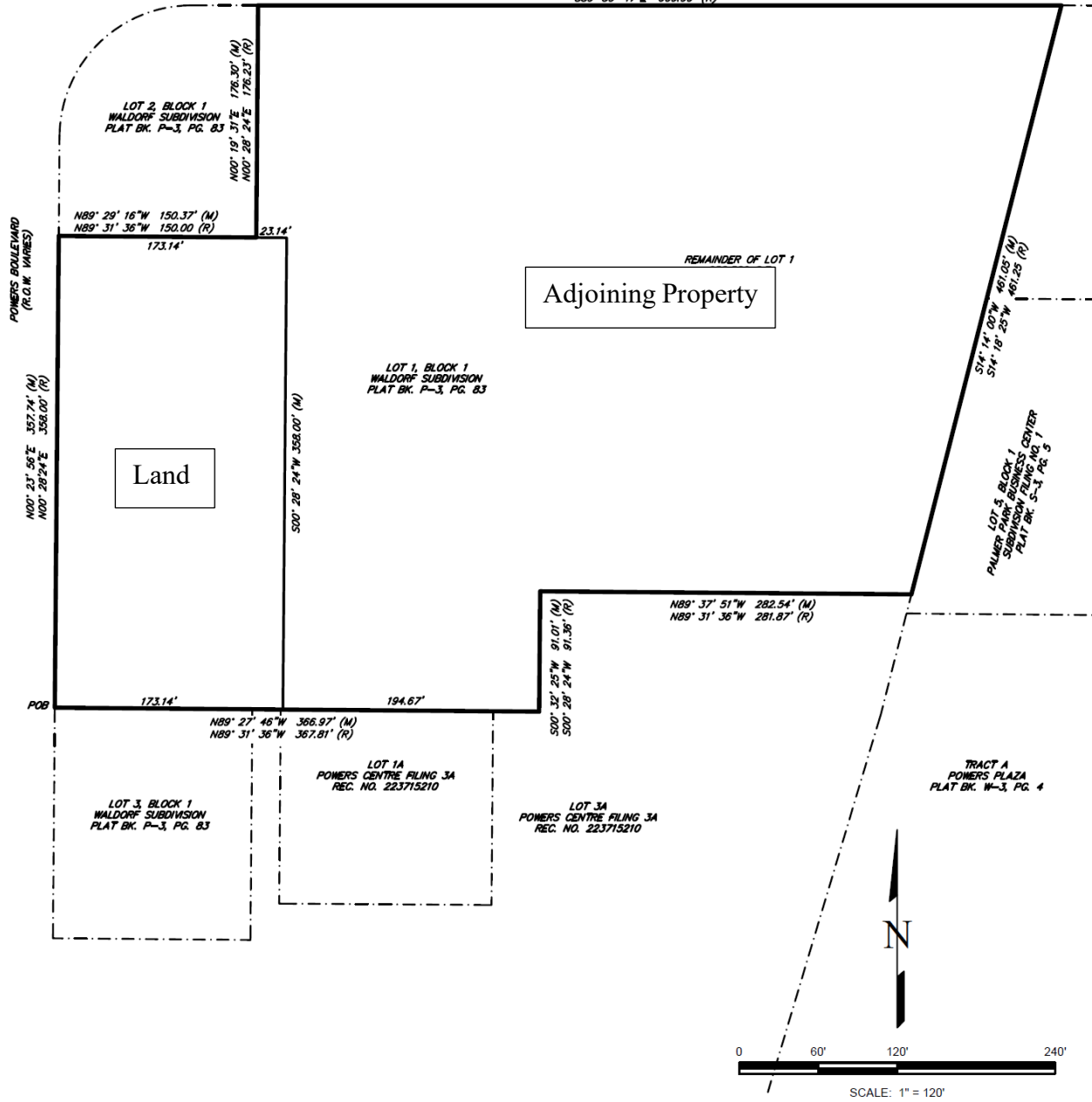
EXHIBIT B

DESCRIPTION AND DEPICTION OF ADJOINING PROPERTY
AND STACKING PLAN

A PARCEL OF LAND BEING A PORTION OF LOT 1, BLOCK 1, WALDORF SUBDIVISION AS FILED IN PLAT BOOK P-3 AT PAGE 83 AND AMENDED IN BOOK 3621 AT PAGE 590 OF THE RECORDS OF EL PASO COUNTY, COLORADO AND LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, SECTION 6, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO BASIS OF BEARING: THE NORTH LINE OF LOT 1, BLOCK 1, WALDORF SUBDIVISION, BEING MONUMENTED AT EACH END BY A FOUND REBAR WITH YELLOW PLASTIC SURVEYORS CAP, PLS 37929, RECORDED AS BEARING S89°59'47"E WITH A DISTANCE OF 609.99 FEET, IN PLAT BOOK P-3 AT PAGE 83 OF THE RECORDS OF EL PASO COUNTY, COLORADO. BEGINNING AT THE NORTHWEST CORNER OF LOT 1, BLOCK 1, OF SAID WALDORF SUBDIVISION; THENCE ALONG THE BOUNDARY OF SAID LOT 1 THE FOLLOWING FIVE (5) AS MEASURED COURSES: 1. S89°59'47"E, A DISTANCE OF 609.85 FEET; 2. S14°14'00"W, A DISTANCE OF 461.05 FEET; 3. N89°37'51"W, A DISTANCE OF 282.54 FEET; 4. S00°32'25"W, A DISTANCE OF 91.01 FEET; 5. N89°27'46"W, A DISTANCE OF 194.67 FEET; THENCE N00°28'24"E, A DISTANCE OF 358.00 FEET; THENCE N89°29'16"W, A DISTANCE OF 23.14 FEET; THENCE N00°19'31"E ALONG THE BOUNDARY OF SAID LOT 1, A DISTANCE OF 176.30 FEET TO THE POINT OF BEGINNING; CONTAINING A CALCULATED AREA OF 258,580 SQUARE FEET (5.94 ACRES) MORE OR LESS.

PALMER PARK BOULEVARD (100' R.O.W.)
REC. NO. 200153125

BASIS OF BEARING
S89° 59' 47"E 608.85' (N)
S89° 59' 47"E 608.99' (R)



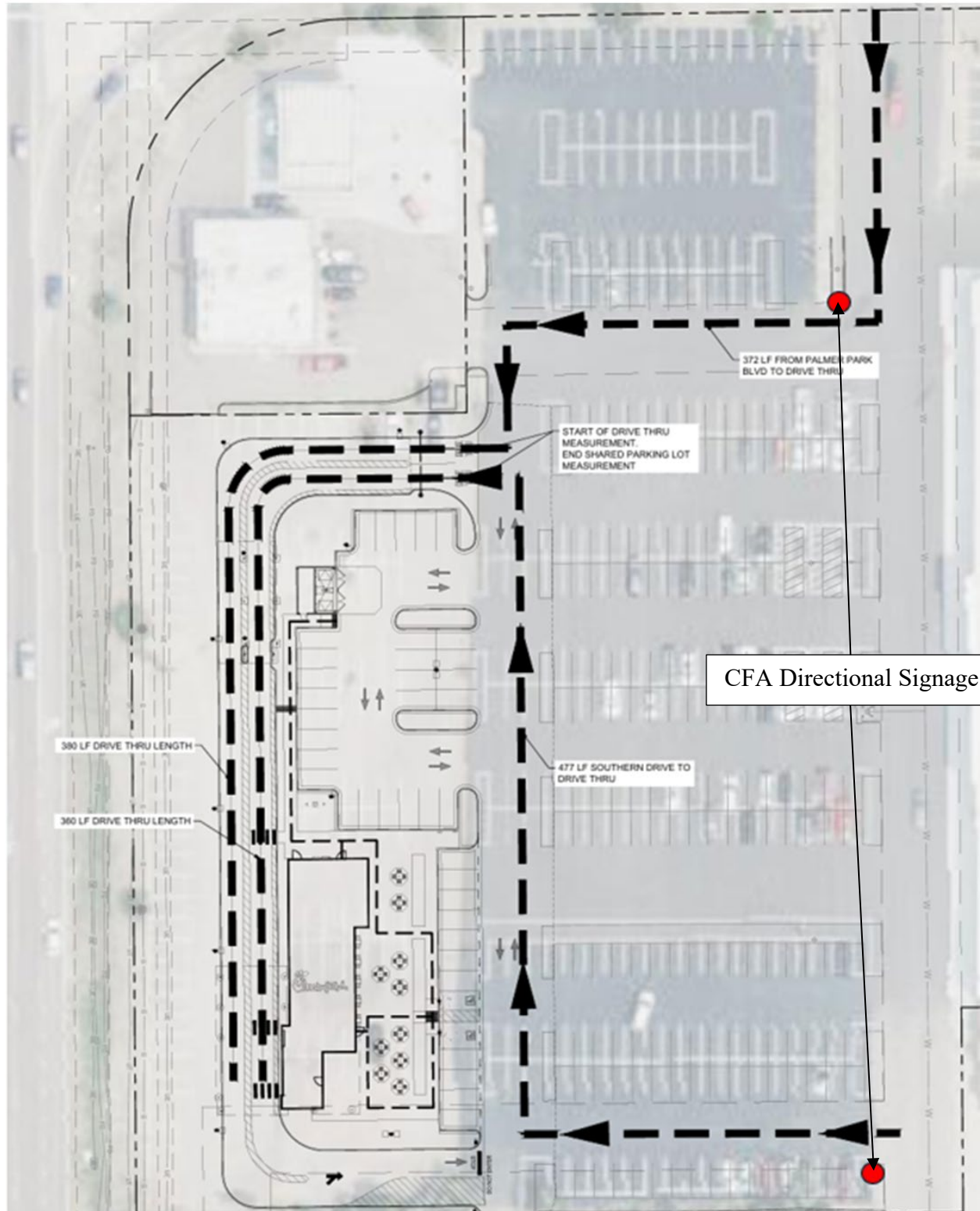


EXHIBIT C

SHORT FORM LEASE

THIS SHORT FORM LEASE (this “**Short Form Lease**”) is entered into as of this _____ day of _____, 20__, by and between HD POWERS LLC, a Colorado limited liability company (“**Landlord**”), and CHICK-FIL-A, INC., a Georgia corporation (“**Tenant**”).

RECITALS:

A. Landlord and Tenant have entered into a Ground Lease dated _____, 20__ (as subsequently amended, the “**Lease**”).

B. Tenant is granted certain rights and privileges which are intended to run with title to the Land and the Adjoining Property (as such terms are defined in the Lease) during the term of the Lease, including any extensions thereof.

C. Tenant is also granted certain rights and privileges which are intended to survive Tenant’s exercise of its right of first offer.

D. Landlord and Tenant desire to file this Short Form Lease to provide record notice of the Lease and its terms and conditions both during Tenant’s tenancy under the Lease (including any extensions thereof), as well as during any subsequent period of fee simple ownership of the Demised Premises by Tenant.

NOW, THEREFORE, for and in consideration of the mutual covenants contained in this Short Form Lease and in the Lease, Landlord and Tenant hereby agree as follows:

1. **Demised Premises.** The parcel of land (the “**Land**”) and all improvements on the Land, consisting of approximately 1.42 acres of land located in the City of Colorado Springs, El Paso County, State of Colorado, described on Exhibit A, together with any and all improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining to the Land, expressly including the easements and rights established in Section 3 of this Lease (collectively, the “**Demised Premises**”).

2. **Term.** The term of the Lease will commence on the Commencement Date (as that term is defined in the Lease) and will terminate on the last day of the month which is fifteen (15) years after the Rent Commencement Date (as that term is defined in the Lease) unless sooner terminated or extended as provided in the Lease. Tenant has the right to extend the term of the Lease for four (4) consecutive periods of five (5) years each pursuant to the terms of the Lease. Upon request, each of Landlord and Tenant agrees to promptly execute and deliver an amendment to this Short Form Lease in recordable form acknowledging the actual date of the Commencement Date and the Rent Commencement Date and providing notice of extension periods added to the Lease.

3. **Incorporation of Lease.** The provisions of the Lease are incorporated into this Declaration and Short Form Lease as if set out in full. In the event of any conflict or inconsistency between the terms of this Short Form Lease and the terms of the Lease, the terms of the Lease will govern and control for all purposes.

4. **Defined Terms.** All capitalized terms and words of art which are used but not defined in this Short Form Lease will have the same respective meaning designated for such terms and words of art in the Lease.

5. **Adjoining Property.** The Land is a pad site located in the retail development owned by Landlord known as Powers & Palmer Park Shopping Center (the “**Shopping Center**”), which Shopping Center includes the Adjoining Property. The Adjoining Property, as defined in the Lease and used in this Short Form Lease, is described on Exhibit B.

6. **Tenant’s Exclusive Use and Restrictions on Adjoining Property.** Landlord agrees that the Adjoining Property shall be subject to the following restrictive covenants for the term of the Lease, which shall be a condition precedent to the Lease, for Tenant’s benefit:

(a) Landlord will not lease, rent, sell or occupy, or permit to be leased, rented, sold or occupied, any portion of the Adjoining Property for any use that is not a retail use consistent with the uses of comparable shopping centers located in Colorado Springs, Colorado.

(b) Landlord will not lease, rent, sell or occupy, or permit to be leased, rented, sold or occupied, any portion of the Adjoining Property for any of the following: a theater of any kind; bowling alley, skating rink, amusement park, carnival or circus; meeting hall, place of instruction, sporting event or other sports facility, auditorium or any other like place of public assembly; a gym or fitness center, including Pilates, yoga, indoor cycling, boxing, personal training, weight training, basketball, volleyball, racquetball, swimming, cardiovascular and resistance machines, spa services, and related ancillary services including weight loss advising, chiropractic services, tanning, therapeutic massage, sports and rehabilitation therapy, child care, operation of a juice bar and/or sale of beverages typically sold in a juice bar, sale of hot and cold beverages, smoothies, juice, sports beverages, yogurt, vitamins, supplements, nutrition bars, sports and workout apparel, spa related produces and limited food service incidental the gym and/or fitness use (provided that such restriction shall not apply to the portion of the Adjoining Property leased to VASA Fitness, and any other gym or fitness center then existing in such VASA Fitness space in the future); mortuary or funeral parlor; establishment selling cars or other motor vehicles, motor vehicle maintenance or repair shop or gas station, or any establishment selling trailers; billiard parlor; tavern, pub, bar or liquor store; pawn shop; flea market; massage parlor; “disco” or other dance hall; tattoo or body piercing parlor (provided that beauty salons will be allowed to provide permanent makeup tattoos and cosmetic ink on an incidental basis only, as part of the cosmetic services offered by such salons); casino, gaming room, or “off track betting” operation; for the sale of paraphernalia for use with illicit drugs or for the sale of marijuana; vape shop; or for the sale, rental or display of pornographic material.

(c) No portion of the Adjoining Property will be leased, used or occupied as a restaurant selling or serving chicken as a principal menu item. For the purposes of this Lease, “a restaurant selling or serving chicken as a principal menu item” means a restaurant deriving twenty-

five percent (25%) or more of its gross sales from the sale of chicken. A “restaurant” includes any business establishment, including, without limitation, a kiosk, stand, booth, food truck or area located inside another business facility. Notwithstanding the foregoing, such restriction on the sale or serving of chicken as described in this Section 3(b)(vi) shall not apply to VASA under the VASA Lease so long as VASA is open and operating in its premises at the Adjoining Property under such existing lease as a full -service fitness center. Notwithstanding the foregoing, if under the provisions of the VASA Lease or any other existing leases at the Shopping Center, any such tenant must obtain Landlord’s consent to change its existing use of its space in the Premises at the Shopping Center, Landlord shall, if permitted to do so, refuse to consent to such change in use if it would violate the foregoing chicken restriction under such existing Leas.

(d) No portion of the Adjoining Property will be leased, used, or occupied by or for any of the following uses: McDonald’s, CosMc’s, Boston Market, Kentucky Fried Chicken, Popeye’s, Raising Cane’s, Super Chix, Slim Chickens, Church’s, Bojangle’s, Mrs. Winner’s, Chicken Out, Zaxby’s, Ranch One, El Pollo Loco, Pollo Campero, Pollo Tropical, Raise the Roost Chicken & Biscuits, Dave’s Hot Chicken, Bird Call, Chester’s, Bush’s Chicken, Biscuitville, Chicken Now, PDQ, ChikWich, Ezell’s Famous Chicken, Roy Rogers, Chicken Shack, Buffalo Wild Wings, Angry Chickz and Wing Stop.

(e) In the event that, in order to permit the sale of chicken in violation of Section 7(e) above or any of the named competitors described in Section 7(f) above, Landlord’s consent is required or requested from any other property owner owning any other portion of the Shopping Center or other property in the immediate vicinity of the Land, Landlord shall immediately notify Tenant of such request and Landlord shall withhold its consent thereto unless approved in advance by Tenant in its sole discretion.

(f) The area provided by Landlord for parking will at all times include no less than the number of parking spaces existing at the Shopping Center as of the Effective Date of the Lease, which parking spaces shall remain available for use by Tenant in common with the other tenants and occupants of the Shopping Center (e.g., such parking spaces shall not be converted to reserved spaces).

8. **Utility Easements.** Tenant will have the right to enter into reasonable agreements with utility suppliers creating easements in favor of the suppliers, including, without limitation, gas, electricity, telephone, cable, internet, water and sewer, as are required in order to service the building and improvements on the Land and to service Tenant’s drive-thru improvements and related signage. Landlord covenants and agrees to execute commercially reasonable easement agreements and to take all other actions reasonably required in order to effectuate the same, the reasonable costs and expenses of which will be Tenant’s responsibility.

9. **Reserved.**

10. **Tenant’s Right of First Offer.**

(a) If the Demised Premises constitutes a separate legal parcel and Landlord intends to offer the Demised Premises for sale to an unaffiliated third party or if Landlord receives an offer from an unaffiliated third party to purchase the Demised Premises on terms acceptable to

Landlord, Landlord will first offer Tenant the right to purchase the Demised Premises by sending to Tenant a written notice of the specific terms of the offer to sell or purchase. The offer will include the price (the “**Offering Amount**”), payment terms, conditions of title, costs of escrow and other relevant terms, together with a current payoff letter from any mortgagee of the Demised Premises evidencing such Holder’s agreement to release its mortgage upon payment of the release price. Tenant will have twenty (20) days after receipt of the notice to exercise its right to purchase by providing written notice to Landlord. If Tenant exercises the right to purchase, the closing will occur within twenty (20) days after the date of Tenant’s notice. If Tenant does not elect to accept the offer or fails to provide notice within the twenty (20)-day period, Landlord may offer to sell the Demised Premises to a third party on substantially the terms and conditions provided in Landlord’s notice to Tenant. If Landlord does not complete the sale on substantially the terms in the notice to Tenant (for not less than ninety-five percent (95%) of the Offering Amount) in three hundred sixty-five (365) days (the “**Third Party Sale Conditions**”), and if Landlord determines again that Landlord desires to offer the Demised Premises for sale, Landlord must again comply with the terms of this Section 10 and Tenant will again have the right of first offer in this Section 10. However, If Landlord completes the sale on the Third Party Sale Conditions, then Tenant’s right of first offer under this Section 10 will terminate and no longer be of any force or effect. The right of first offer in this Section 10 will apply to any transfer by Landlord of any interest in Landlord or in any entity or entities owning a direct or indirect interest in Landlord or the Demised Premises for solely the purpose of circumventing Tenant’s right of first offer.

(b) This Section 10 will not apply in the event of a sale of Landlord’s interest in the Demised Premises as part of a sale of the Demised Premises and the Adjoining Property, or a sale, transfer or assignment of Landlord’s interest in the Demised Premises in connection with the foreclosure of any deed to secure debt, mortgage or other similar security instrument, whether by judicial or non-judicial sale, or any deed or assignment in lieu of foreclosure, covering Landlord’s fee interest. Further, this Section 10 will not apply to any transfer by descent or devise following the death of any party comprising Landlord or to transactions by and among Landlord or any family member of any party comprising Landlord, including without limitation, trusts, corporations or other entities having a majority interest owned by or inuring to the benefit of Landlord or any family member of any party comprising Landlord; provided, however, that the provisions of this Section 10 will be binding upon such purchaser and such purchaser’s heirs, successors and assigns. Landlord agrees that the Short Form Lease will reflect the right of first offer granted to Tenant. If Tenant elects not to record a Short Form Lease, Landlord will enter into a Memorandum of Right of First Offer, which will be prepared and recorded by Tenant at its sole cost and expense.

11. **Duration / Cancellation of Short Form Lease.** Landlord agrees that the easements, covenants and restrictions set forth in this Short Form Lease will run with the title to the Land and the Adjoining Property so long as Tenant or a firm, person, corporation, partnership or other entity that is controlled by, in control of, or under common control with Tenant, or in which one or more members of the Cathy Family has an individual or collective ownership interest equal to or greater than fifty percent (50%) (a “**Related Party**”) has any interest in the underlying real property (either leasehold or fee simple), and the owner and ground lessee of the real property constituting the Demised Premises will have the right to enforce the terms and conditions of this Short Form Lease at law or in equity. On the request of Landlord following the expiration or termination of the Lease, and provided that the Lease is not terminating because Tenant has

purchased and is taking fee simple ownership of the Demised Premises, Tenant will promptly execute and deliver to Landlord an appropriate release and cancellation instrument acknowledging the expiration or termination of the Lease and releasing any and all right, title and interest of Tenant in and to the Demised Premises under the Lease. The release and cancellation instrument will be executed in proper form for recordation in the official real estate records of the jurisdiction in which the Demised Premises is located. Notwithstanding the foregoing, if Tenant or a Related Party retains a leasehold or ownership interest in the Demised Premises following the termination or expiration of the Lease, then the terms and conditions of this Short Form Lease will not terminate but will continue in full force and effect so long as Tenant or a Related Party has a leasehold or ownership interest in the real property constituting the Demised Premises. The lineal descendants of S. Truett Cathy and Jeanette McNeil Cathy, and the spouses of such lineal descendants constitute members of the Cathy Family.

12. **Covenant Against Liens.**

(a) If, because of any act or omission of Tenant or any agent of Tenant, any mechanic's lien or other lien, charge or order for the payment of money is filed against Landlord or any portion of the Demised Premises or Adjoining Property, then Tenant will, at its own cost and expense, cause the same to be discharged of record or bonded within twenty-five (25) days after Tenant's receipt of actual notice of such lien; and Tenant will indemnify and save Landlord harmless from and against all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting therefrom. Notice is hereby given that all such liens will relate and attach only to the interest of Tenant in the Demised Premises.

(b) If, because of any act or omission of Landlord or any agent of Landlord, any mechanic's lien or other lien, charge or order for the payment of money is filed against Tenant or any portion of the Demised Premises or Adjoining Property and such lien impacts or interferes with Tenant's rights contained in the Lease, then Landlord will, at its own cost and expense, cause the same to be discharged of record or bonded within twenty-five (25) days after Landlord's receipt of actual notice of such lien; and Landlord will indemnify and save Tenant, its agents, successors and assigns, harmless from and against all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting therefrom. Notice is hereby given that all such liens will relate and attach only to the interest of Landlord in the Demised Premises.

13. **Counterparts.** This Short Form Lease may be executed in one or more counterparts, each of which will constitute an original, and all of which together will constitute one and the same instrument.

14. **Vesting of Buildings and Improvements.** Upon the expiration or sooner termination of the Lease, and so long as Tenant has no further leasehold or ownership interest in the real property constituting the Demised Premises, title to any buildings or improvements located on the Land (as such term is defined in the Lease), including those constituting the Demised Premises, will vest in and become the full and absolute property of Landlord.

15. **Notice.** Notices under this Short Form Lease must be in writing and delivered (i) in person, (ii) by courier, or (iii) by reputable overnight courier guaranteeing next business day delivery, to the following addresses:

If to Landlord:

Hawkins Development
7076 S. Alton Way, Suite H100
Centennial, CO 80112
EMAIL: kevin@hawkinsdevco.com

If to Tenant:

Chick-fil-A, Inc.
ATTN: Legal Department – Real Estate (Site
#05934)
5200 Buffington Road
Atlanta, Georgia 30349
PHONE: (404) 765-8000

With copy to Tenant's Counsel:

Allen Matkins
600 West Broadway, 27th Floor
San Diego, CA 92101
PHONE: (619) 235-1562
PHONE: jlornzen@allenmatkins.com
ATTN: Jonathan L. Lorenzen

[SIGNATURES COMMENCE ON NEXT PAGE]

Landlord and Tenant have caused this Short Form Lease to be executed on the day, month and year set out above.

“LANDLORD”

HD POWERS LLC,
a Colorado limited liability company

By: _____
Name: _____
Title: _____

(CORPORATE SEAL)

STATE OF _____)
) ss:
COUNTY OF _____)

On this ____ day of _____, 20____, before me, a Notary Public, in and for said county, personally came _____, in her/his capacity as _____ of _____, a _____, who acknowledged the due execution of the foregoing instrument.

Notary Public

[signatures continued on next page]

“TENANT”

CHICK-FIL-A, INC., a Georgia corporation

By: _____

Name: _____

Title: _____

(CORPORATE SEAL)

STATE OF _____)

) ss:

COUNTY OF _____)

On this ____ day of _____, 20____, before me, a Notary Public, in and for said county, personally came _____, in her/his capacity as _____ of Chick-fil-A, Inc., a Georgia corporation, who acknowledged the due execution of the foregoing instrument.

Notary Public

EXHIBIT A
DESCRIPTION OF LAND

EXHIBIT D

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

THIS AGREEMENT (the "**Agreement**") is made and entered into this ____ day of _____, 20__, by and among _____, a _____ (in such capacity, "**Lender**"), CHICK-FIL-A, INC., a Georgia corporation ("**Tenant**"), and _____, a _____ ("**Landlord**").

RECITALS:

A. Landlord has executed and delivered to Lender the following security instruments (hereinafter sometimes collectively referred to as the "**Security Documents**"):

- (i) [Deed to Secure Debt/Deed of Trust/Mortgage], Assignment of Rents and Leases, Security Agreement and Fixture Filing between Landlord and Lender dated _____, recorded in Deed Book _____, Page _____, in the records (the "**Records**") of _____ County, _____, and conveying or encumbering the property located in _____, _____ known as _____ (the "**Property**"); and
- (ii) Financing Statement naming Landlord as debtor and Lender as secured party, filed _____, as file no. _____, in the foregoing Records.

B. Landlord and Tenant entered into a lease dated _____, 20__ (as amended, restated and/or supplemented from time to time, the "**Ground Lease**"), with respect to certain property described therein including the land described on Exhibit A attached hereto (the "**Demised Premises**").

C. The Demised Premises are a part of the Property conveyed or mortgaged to Lender pursuant to the Security Documents; and the parties desire to enter into this Agreement with respect to the Security Documents and the Ground Lease.

In consideration of the premises and the mutual covenants set forth in this Agreement, Lender, Tenant and Landlord covenant and agree, intending to be legally bound, as follows:

1. **Subordination**. The Ground Lease is now and will remain subject and subordinate to the lien of the Security Documents and any renewals, modifications, and replacements of the Security Documents, subject to the terms of this Agreement.

2. **Non-Disturbance**. Lender hereby covenants and agrees that so long as no default exists, and no event has occurred and has continued to exist for such period of time (after notice and expiration of all cure periods, if any, required by the Ground Lease) as would entitle the

Landlord or any other party, including Lender, succeeding to Landlord's interest under the Ground Lease (each, a "**Successor Landlord**") to terminate the Ground Lease, (i) Lender will not terminate the Ground Lease, (ii) Lender will not interfere with Tenant's use, possession or enjoyment of the Demised Premises, and (iii) in the event Lender or any other person or entity becomes the owner of the Demised Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, the Demised Premises will be subject to the Ground Lease, and Successor Landlord will recognize Tenant as the tenant of the Demised Premises for the remainder of the term, including all renewal terms, in accordance with the provisions of the Ground Lease. Lender agrees that it will not join Tenant as a party defendant in any action or proceeding for the purpose of terminating the Ground Lease because of any default of Landlord under the Security Documents.

3. **Attornment.** If the interests of the Landlord are transferred by any foreclosure or other proceeding for enforcement of the Security Documents, Tenant will be bound to the Successor Landlord with the same force and effect as if the Successor Landlord were the original Landlord under the Ground Lease. Tenant will attorn to any such Successor Landlord as its Landlord under the Ground Lease. The attornment will be effective and self-operative without the execution of any further instruments upon the succession by any such Successor Landlord to the interest of the Landlord under the Ground Lease.

4. **Notice of Default by Landlord.** Tenant covenants and agrees to give Lender written notice simultaneously with the giving of any notice of default to the Landlord under the provisions of the Ground Lease. Tenant agrees that Lender will have the right, but not the obligation, within thirty (30) days after receipt by Lender of such notice to correct or remedy, or cause to be corrected or remedied, each such default before Tenant may take any action under the Ground Lease by reason of such default. The notices to Lender will be delivered to:

or to such other address as the Lender designates to Tenant by giving written notice to Tenant at Chick-fil-A, Inc., Attn: Legal Department – Real Estate, Site #05934, 5200 Buffington Road, Atlanta, Georgia 30349, Email: cfalegalnotice@chick-fil-a.com, or to such other address as may be designated by written notice from Tenant to Lender. Notices will be given and will be effective in accordance with Section 25 of the Ground Lease.

5. **As to Landlord and Tenant.** As between Landlord and Tenant, Landlord and Tenant covenant and agree that nothing contained in this Agreement nor anything done pursuant to the provisions of this Agreement will be deemed or construed to modify the Ground Lease.

6. **As to Landlord and Lender.** As between Landlord and Lender, Landlord and Lender covenant and agree that nothing contained in this Agreement nor anything done pursuant to the provisions of this Agreement will be deemed or construed to modify the Security Documents.

7. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state in which the Demised Premises is located.

8. **Provisions Binding.** The terms and provisions of this Agreement will be binding upon and will inure to the benefit of the heirs, executors, administrators, successors and permitted assigns, respectively, of Lender, Tenant and Landlord.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

-4-

“TENANT”

CHICK-FIL-A, INC., a Georgia corporation

By: _____

Name: _____

Title: _____

(CORPORATE SEAL)

STATE OF _____)

) ss:

COUNTY OF _____)

On this ____ day of _____, 20____, before me, a Notary Public, in and for said county, personally came _____, in her/his capacity as _____ of Chick-fil-A, Inc., a Georgia corporation, who acknowledged the due execution of the foregoing instrument.

Notary Public

[SIGNATURES CONTINUED ON NEXT PAGE]

_____ ,
a _____

-6-

EXHIBIT A
LEGAL DESCRIPTION

PLOT MAP



S1.) POLE SIGN INTERNALLY LIT D/S POLE SIGN ALLIED TO MANUFACTURE & INSTALL QTY (1) INTERNALLY LIT D/S POLE SIGN

- 1 MAIN SIGN BODY & "POWERS CENTER" CABINET**
- FACES:** .090 Aluminum Painted F1
Rounded & Backed w/ 3/16" Trans White Plex
 - RETURN:** .063 Aluminum Painted F1
 - REVEALS:** .063 Aluminum Painted F2
 - ILLUMINATION:** White LED's
 - POWER SUPPLY:** Housed in Cabinet
 - POLE:** Dia. 120, Aluminum Pole Cover Painted F2
- 2 VASA FITNESS CABINET:**
- FACES:** 3/16" Trans White Plex w/ Applied Vinyl
 - VINYL:** Vinyl to Match V1 - V2
 - RETURN:** 2" .063 Aluminum Painted F1
 - REVEALS:** .063 Aluminum Painted F1
 - ILLUMINATION:** White LED's
 - POWER SUPPLY:** Housed in Sign Cabinet
- 3 TENANT CABINET:**
- FACES:** 3/16" Trans White Plex
 - RETURN:** 2" .063 Aluminum Painted F1
 - REVEALS:** .063 Aluminum Painted F1
 - ILLUMINATION:** White LED's
 - POWER SUPPLY:** Housed in Sign Cabinet
- * Support: 12" Dia. Schedule 40 Pipe, Direct Bury
 - * Footing: 2'-0" x 10'-0" Concrete
 - * Visible Disconnect Switch at Sign
 - * 120V Service Supplied by Others
 - * ELECTRICAL GROUNDED TO RPE SUPPORT

POWER REQUIREMENTS:
REQUIRE BY OTHER
(1) 20 AMP Circuit / 120 Volts

PAINT SCHEDULE

F1: Valpar 1825047, Gloss
Paint to Match SW 7089 Iron Ore

F2: Valpar Black, Gloss

VINYL SCHEDULE

V1: 2M Cardinal Red 2620-52

V2: Decal Crimson D16 8800 Trans.

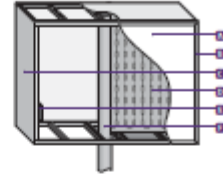
V3: 2M Black 7725-12

PRODUCTION PRODUCTION SIGNATURE

ACCOUNT EXECUTIVE

PRODUCTION MANAGER INSTALL MANAGER

ENGINEERING MANAGER PROJECT MANAGER

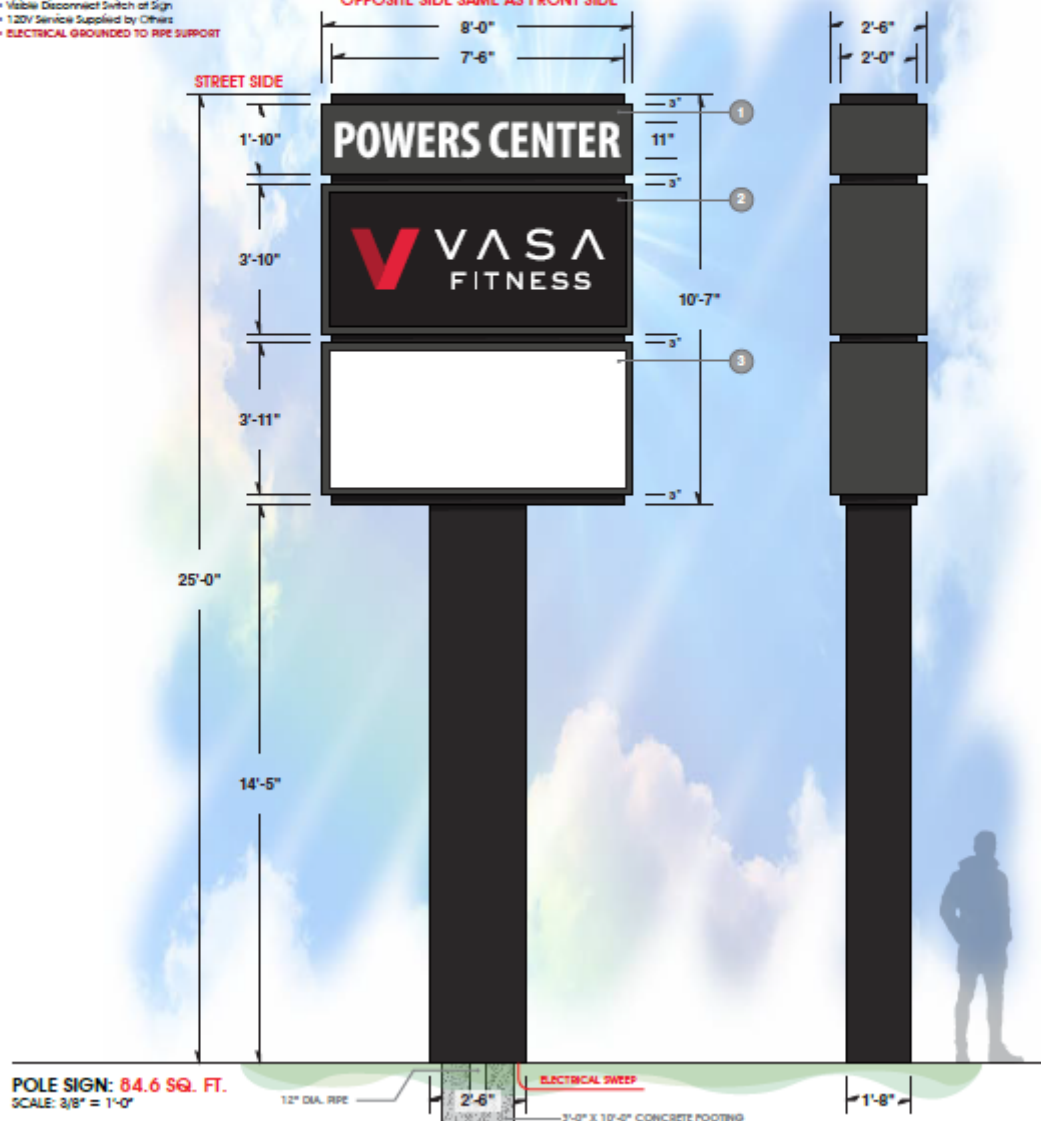


SIDE DETAIL - INTERNALLY LIT D/S POLE SIGN
Not to Scale



TOP VIEW:
SCALE: 3/8" = 1'-0"

*OPPOSITE SIDE SAME AS FRONT SIDE




 <div>ALLIED ELECTRIC SIGN & LIGHTING</div>		<div>CLIENT: Toulon Development</div> <div>ADDRESS: 10000 Raven Peak Blvd.</div> <div>Colorado Springs, Colorado</div> <div>DESIGNED: John J. Jordan</div> <div>ACCOUNT: RBC-Cindy Kline</div> <div>FILE NAME: Toulon Development Colorado Springs Pole Sign 01-01-00000000</div>		<div>PROJECT LOCATION: Boulder Creek (30') Street View / ALL JOBS / 2024-02-10-00000000 Development / Toulon / 01-01-00000000</div> <div>DATE: 02/10/24</div>		<div>REVISIONS</div> <table><thead><tr><th>NO.</th><th>DATE</th><th>DESCRIPTION</th><th>BY</th></tr></thead><tbody><tr><td>1</td><td>02/10/24</td><td>1. 02/10/24 1. 02/10/24 1. 02/10/24 1. 02/10/24</td><td>1</td></tr><tr><td>2</td><td>02/10/24</td><td>2. 02/10/24 2. 02/10/24 2. 02/10/24 2. 02/10/24</td><td>2</td></tr><tr><td>3</td><td>02/10/24</td><td>3. 02/10/24 3. 02/10/24 3. 02/10/24 3. 02/10/24</td><td>3</td></tr><tr><td>4</td><td>02/10/24</td><td>4. 02/10/24 4. 02/10/24 4. 02/10/24 4. 02/10/24</td><td>4</td></tr><tr><td>5</td><td>02/10/24</td><td>5. 02/10/24 5. 02/10/24 5. 02/10/24 5. 02/10/24</td><td>5</td></tr><tr><td>6</td><td>02/10/24</td><td>6. 02/10/24 6. 02/10/24 6. 02/10/24 6. 02/10/24</td><td>6</td></tr><tr><td>7</td><td>02/10/24</td><td>7. 02/10/24 7. 02/10/24 7. 02/10/24 7. 02/10/24</td><td>7</td></tr><tr><td>8</td><td>02/10/24</td><td>8. 02/10/24 8. 02/10/24 8. 02/10/24 8. 02/10/24</td><td>8</td></tr><tr><td>9</td><td>02/10/24</td><td>9. 02/10/24 9. 02/10/24 9. 02/10/24 9. 02/10/24</td><td>9</td></tr><tr><td>10</td><td>02/10/24</td><td>10. 02/10/24 10. 02/10/24 10. 02/10/24 10. 02/10/24</td><td>10</td></tr></tbody></table>		NO.	DATE	DESCRIPTION	BY	1	02/10/24	1. 02/10/24 1. 02/10/24 1. 02/10/24 1. 02/10/24	1	2	02/10/24	2. 02/10/24 2. 02/10/24 2. 02/10/24 2. 02/10/24	2	3	02/10/24	3. 02/10/24 3. 02/10/24 3. 02/10/24 3. 02/10/24	3	4	02/10/24	4. 02/10/24 4. 02/10/24 4. 02/10/24 4. 02/10/24	4	5	02/10/24	5. 02/10/24 5. 02/10/24 5. 02/10/24 5. 02/10/24	5	6	02/10/24	6. 02/10/24 6. 02/10/24 6. 02/10/24 6. 02/10/24	6	7	02/10/24	7. 02/10/24 7. 02/10/24 7. 02/10/24 7. 02/10/24	7	8	02/10/24	8. 02/10/24 8. 02/10/24 8. 02/10/24 8. 02/10/24	8	9	02/10/24	9. 02/10/24 9. 02/10/24 9. 02/10/24 9. 02/10/24	9	10	02/10/24	10. 02/10/24 10. 02/10/24 10. 02/10/24 10. 02/10/24	10	<div>DATE: 02/10/24</div> <div>TIME: 10:00 AM</div> <div>BY: John J. Jordan</div> <div>CHECKED BY: Cindy Kline</div> <div>APPROVED BY: [Signature]</div> <div>PROJECT MANAGER: [Signature]</div> <div>ACCOUNT MANAGER: [Signature]</div> <div>DESIGNED BY: [Signature]</div>	
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EXHIBIT F

Form W-9 (Rev. October 2018) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification ► Go to www.irs.gov/FormW9 for instructions and the latest information.	Give Form to the requester. Do not send to the IRS.																																																																						
Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.																																																																							
	2 Business name/disregarded entity name, if different from above																																																																							
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div> <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ► </div> <div> <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate </div> </div>																																																																							
	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>																																																																							
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)																																																																						
6 City, state, and ZIP code																																																																								
7 List account number(s) here (optional)																																																																								
Part I Taxpayer Identification Number (TIN) Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> , later. Note: If the account is in more than one name, see the instructions for line 1. Also see <i>What Name and Number To Give the Requester</i> for guidelines on whose number to enter.																																																																								
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Part II Certification Under penalties of perjury, I certify that: <ol style="list-style-type: none"> The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and I am a U.S. citizen or other U.S. person (defined below); and The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct. Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.																																																																								
Sign Here	Signature of U.S. person ►	Date ►																																																																						
General Instructions Section references are to the Internal Revenue Code unless otherwise noted. Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9 . Purpose of Form An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following. <ul style="list-style-type: none"> Form 1099-INT (interest earned or paid) Form 1099-DIV (dividends, including those from stocks or mutual funds) Form 1099-MISC (various types of income, prizes, awards, or gross proceeds) Form 1099-B (stock or mutual fund sales and certain other transactions by brokers) Form 1099-S (proceeds from real estate transactions) Form 1099-K (merchant card and third party network transactions) Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition) Form 1099-C (canceled debt) Form 1099-A (acquisition or abandonment of secured property) Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN. <i>If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.</i>																																																																								

EXHIBIT G

RESTRICTIVE COVENANTS/EXISTING EXCLUSIVES

VASA EXCLUSIVE

10.6 Exclusive Use. So long as this Lease is in full force and effect, during the Term of this Lease, Landlord shall not, and shall not permit any of its affiliates to use, lease, sell or otherwise permit any space in the Shopping Center or within a one (1) mile radius of the Shopping Center, to be used, leased or sold, in whole or in part, for a health/physical fitness club and: aerobic classes, yoga, pilates, indoor cycling, boxing, personal training, weight training, volleyball, swimming, sports and rehabilitation therapy, cardiovascular and resistance machine operation, and tanning (the “**Exclusive Use**”). In the event of a violation of Tenant’s Exclusive Use that is not cured within thirty (30) days after written notice from Tenant, then in addition to all other legal and equitable remedies Tenant may have, Tenant may pay, in lieu of the Annual Base Rent, a monthly amount equal to fifty percent (50%) of the Annual Base Rent then payable under this Lease (the “**Reduced Rent**”) so long as the violation continues. Landlord and Tenant agree that

EXHIBIT H

AGREEMENT REGARDING DATES

THIS AGREEMENT REGARDING DATES (the “**Agreement**”) is entered into this ____ day of _____, 20__, by and between HD POWERS LLC, a Colorado limited liability company (“**Landlord**”), and CHICK-FIL-A, INC., a Georgia corporation (“**Tenant**”).

Background:

A. Landlord and Tenant entered into a Lease Agreement dated _____, 20__, as amended, for certain real property (the “**Demised Premises**”) located in the City of _____, County of _____, State of _____ (together with any amendments, the “**Lease**”); and

B. It is the desire and intent of Landlord and Tenant to clearly define the terms of the Lease.

Landlord and Tenant acknowledge and agree that:

1. The Commencement Date of the Lease is _____, 20__.
2. The Rent Commencement Date of the Lease is _____, 20__.
3. The initial term of the Lease commenced on _____, 20__, and terminates at 11:59 p.m., local time of the state in which the Demised Premises are located, on _____, 20__.
4. The Lease provides for _____ () Option Periods of _____ () years each.
5. Tenant has the right to exercise each option by providing Landlord with written notice of its election to renew no later than _____ prior to the expiration of the initial term or prior Option Period, as applicable. If Tenant exercises the first option, written notice will be due to Landlord from Tenant on or before _____ (except as otherwise provided in the Lease).
6. The Lease is now in full force and effect and all terms and conditions of the Lease are ratified and confirmed by this Agreement.
7. Landlord’s notice address and Tenant’s notice address are referenced in Section 25 of the Lease.

Landlord and Tenant agree that this document will not be recorded in any public records including the real estate records of the county where the Demised Premises are located.

Landlord and Tenant have executed this Agreement as of the day and year written above.

LANDLORD:

HD POWERS LLC,
a Colorado limited liability company

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

CHICK-FIL-A, INC.,
a Georgia corporation

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT I

FORM OF ESTOPPEL CERTIFICATE

Re: Ground Lease dated _____, 20__ by and between _____, a _____ (corporation) (limited liability company) (limited partnership) (hereinafter referred to as "**Landlord**"), and Chick-fil-A, Inc., a Georgia corporation (hereinafter referred to as "**Tenant**"), as amended by [List all lease amendments], for premises comprised of approximately _____ acres located at [INSERT LOCATION ADDRESS, CITY, STATE] (the "**Premises**"), described on Exhibit A of the Declaration and Short Form Lease dated _____ and recorded [as Document No. _____] [in Book _____, Pages _____] in _____, _____ (the "**Lease**").

REPRESENTATIONS BY TENANT AND LANDLORD

TO: [Landlord name and notice address]

Chick-fil-A, Inc., Tenant
5200 Buffington Road
Atlanta, Georgia 30349-2998

Ladies and Gentlemen:

Tenant and Landlord certify to the best of their knowledge and belief, as of _____, 20__, the following:

1. The Lease is in full force and effect and has not been modified, amended, supplemented, or assigned, except as described above.
2. Annual basic minimum rent and other charges due Landlord under the Lease have been paid through [INSERT DATE THROUGH END OF MONTH] as set forth in the Lease, excepting only year-end reconciliations of amounts paid on account for the current accounting period. Tenant is currently paying monthly basic minimum rent in the amount of [INSERT MONTHLY AMOUNT] due and payable as set forth in the Lease. No rent has been paid more than one month in advance, except payments made on account of Tenant pursuant to the specific terms of the Lease.
3. Tenant knows of no condition under the Lease which on the giving of notice or the passage of time or both would constitute a default under the Lease by Landlord and there are no claims, defenses or offsets which Tenant has against enforcement of the Lease by Landlord, except any credits or refunds due to Tenant resulting from the review or audit of any year end reconciliations.

Landlord knows of no condition under the Lease which on the giving of notice or the passage of time or both would constitute a default under the Lease by Tenant and there are no claims, defenses or offsets which Landlord has against enforcement of the Lease by Tenant.

4. The initial term of the Lease commenced on [INSERT DATE]; rent commenced on [INSERT DATE]; and the initial term will expire on [INSERT DATE]. Tenant has the right to extend the term of the Lease for ____ () consecutive periods of ____ () years each pursuant to the terms of the Lease.
5. Tenant is in possession of the Premises. Tenant has not filed or had filed against it a petition for bankruptcy under the bankruptcy laws of the United States and is not subject to any reorganization, insolvency, or other like proceedings.

All statements contained in this Estoppel Certificate are based on the knowledge of the signing representatives below, without investigation. Nothing contained in this Estoppel Certificate will constitute or be deemed to constitute an amendment, modification or waiver of any term or condition of the Lease or any right or remedy of Tenant under the Lease, or arising in connection with the Lease, including all appurtenant covenants, restrictions or easements of record. In the event of any conflict between the Lease and this Estoppel Certificate, the Lease will control. Further, except with respect to any exclusive use and restrictive covenant violations listed below that Tenant hereby waives, this Estoppel Certificate will not be used to evidence Tenant's waiver of, or estop Tenant from making claims for, exclusive use or other restrictive covenant violations under the Lease or arising in connection with the Lease, including all appurtenant covenants, restrictions or easements of record: NONE

All capitalized terms will have the meanings set forth in the Lease, except as otherwise specifically defined in this Estoppel Certificate.

This Estoppel Certificate will be of no force or effect until Tenant receives a fully executed original counterpart of this Estoppel Certificate.

Tenant acknowledges that Landlord will have the right to provide a copy of this Estoppel Certificate to Landlord's prospective lender or prospective purchaser of the Premises and such lender or purchaser will have the right to rely on Tenant's and Landlord's representations in this Estoppel Certificate in connection with a lending transaction or sale of the Premises. Tenant also has the right to rely on Landlord's representations in this Estoppel Certificate.

Notwithstanding anything to the contrary herein, Landlord and Tenant acknowledge and agree that Tenant is executing this Estoppel Certificate in the midst of an international pandemic (COVID-19); for that reason, nothing in this Estoppel Certificate will constitute a waiver of any claims relating to, arising out of, or caused by, COVID-19.

This Certificate may be electronically signed by the parties (including, without limitation, by the use of DocuSign), which will be treated as an original copy as though ink-signed by officers or other duly authorized representatives of such party.

The undersigned have executed this Estoppel Certificate on this ____ day of _____, 20____.

TENANT:

Chick-fil-A, Inc., a Georgia corporation

By: _____

Name: _____

Title: _____

[Signature Page Follows]

[Signature Page to Estoppel Certificate]

LANDLORD:

a _____

By: _____
Name: _____
Title: _____

EXHIBIT J

ELECTRONIC PAYMENT (ACH) AND PROPERTY
MANAGEMENT CONTACT INFORMATION FORMS

(attached)

Chick-fil-A, Inc. Electronic Payment Form

...



Please complete all fields. The Authorized Approver signature is required. Upon completion, send the form, along with any other essential or required documentation to the Chick-fil-A dept contact.

Supplier Maintenance Email: ap_supplier_maintenance@chick-fil-a.com
Accounts Payable Fax Number: 404.305.3449
Accounts Payable Help Line: 404.530.1027

Supplier Information

Legal Company Name _____
Tax ID Number _____
Email Address for Remittance Advice _____
Chick-fil-A Restaurant Number/ Name _____
(if applicable)

Bank Information

Bank Name _____
SWIFT Code _____
Bank Country _____
Bank Routing Number _____
Account Number Account Name _____
Account Holder Statement Address _____

Authorized Approver Information

Supplier hereby authorizes Chick-fil-A, Inc. (Company) to initiate a deposit entry or entries to the Supplier account indicated above held at the financial institution named above (Bank). This form authorizes the Bank to post all such entries. If at any time the amount deposited exceeds the amount actually due and payable to Supplier, Supplier hereby authorizes Company to recover such overpayment from the above designated account. This authorization will remain in full force and effect until the Company has received written notification from Supplier of its termination, in such time and manner as to afford the Company and the Bank a reasonable opportunity to act upon such notification. In furtherance of the foregoing, Payee hereby agrees to comply with all applicable "National Automated Clearinghouse Association Rules."

Name	_____	Title	_____
Phone Number	_____	Email Address	_____
Authorized Signature	_____	Date	_____

FINANCIAL SERVICES: CHICK-FIL-A, INC. ELECTRONIC PAYMENT FORM

PROPERTY MANAGEMENT CONTACT INFORMATION FORM

Restaurant Name: Powers & Palmer Park FSU

Restaurant Number: 05934

Landlord Name: HD Powers LLC

Property Management Contact Information:

Company Name: _____

Contact Name: _____

Address: _____

Telephone: _____

Email: _____

EXHIBIT K

COMRE SUPPLEMENT

-----Reserved for Recording Data-----

This instrument was prepared by
and after recording return to:
HD Powers LLC
7076 S. Alton Way, Suite H100
Centennial, CO 80112

**LOT 1, BLOCK 1, WALDORF SUBDIVISION
SUPPLEMENT NO. 1 TO
COVENANTS FOR OPERATIONS, MAINTENANCE AND RECIPROCAL EASEMENTS**

THIS LOT 1, BLOCK 1, WALDORF SUBDIVISION SUPPLEMENT NO. 1 TO COVENANTS FOR OPERATIONS, MAINTENANCE AND RECIPROCAL EASEMENTS (“**Supplement No. 1**”) is made as of July ____ 2025, by HD POWERS LLC, a Colorado limited liability company (“**Declarant**”).

RECITALS

A. Declarant owns a parcel of real property legally described on Exhibit A (“**Lot 1**”) known as Parcel A in that certain Covenants for Operation, Maintenance and Reciprocal Easements dated February 15, 1982, recorded with the Clerk and Recorder of El Paso County at Book 3621, Page 592, on October 13, 1982, as now or hereafter amended and supplemented, including the Amendment to Covenants for Operation, Maintenance and Reciprocal Easements recorded December 3, 1985 at Book 5095 and Page 0982 and that certain Second Amendment to Covenants for Operation, Maintenance, and Reciprocal Easements recorded August 30, 2023 at Reception No. 223073908 (collectively, the “**COMRE Agreement**”). The COMRE Agreement encumbers four (4) tracts of land referred to as Parcels A, B, C and D of the Waldorf Subdivision, (as legally described in the COMRE Agreement and known in the COMRE Agreement as the “Shopping Center”).

B. Declarant may legally subdivide the Lot 1 into two parcels, shown as “**Parcel A**” and “**Parcel B**”, as depicted on Exhibit B (a proposed “**Plat**”). Regardless of whether Lot 1 is ultimately replatted, this Supplement No. 1 shall govern Lot 1, including both Parcel A and Parcel B. Declarant or any future owner of Parcel A or Parcel B shall sometimes be referred to herein as an “**Owner**” or “**Owners**”. Parcel A and Parcel B are legally described on Exhibits C-1 and C-2 attached hereto. An Owner may allocate any and all responsibilities and costs set forth herein to the tenants of the respective Parcels in their leases.

C. Parcel A is sometimes hereinafter referred to as the “**Pad Lot**,” and Parcel B is sometimes hereinafter referred to as the “**Anchor Lot**.” The Pad Lot and the Anchor Lot are sometimes hereinafter collectively referred to as the “**Project**.” The COMRE governs the larger Shopping Center of which the Project is a part for the purpose of governing only Lot 1; this Supplement No. 1 does not affect the remainder of the Shopping Center or amend the COMRE in any way.

D. Declarant has, prior to the date hereof, entered into a Retail Lease Agreement dated April 21, 2023, as now or hereafter amended (the “**VASA Lease**”) with Fitness Group of Colorado Springs – North Powers, LLC, a Utah limited liability company d/b/a “VASA Fitness” (“**VASA Tenant**”) for the entire Anchor Lot.

E. Declarant intends to enter into a Ground Lease dated _____, as now or hereafter amended (the “**Chick-fil-A Lease**”) with Chick-fil-A, Inc., a Georgia corporation (together with its successors, assigns, sublessees or other transferees, collectively, as “**Chick-fil-A**”) for the entire Pad Lot.

NOW, THEREFORE, in connection with the development of the Project, and intending that this Supplement No. 1 be construed by the Owner(s) of Lot 1 in conjunction with and as a part of the COMRE Agreement (as relates to Lot 1 and not otherwise), Declarant does hereby declare that each of the following grants, easements, covenants, conditions and restrictions shall exist at all times hereafter and be binding upon, and inure to the benefit of, each Lot in the Project.

1. **COMRE AGREEMENT.** Declarant hereby acknowledges and confirms that all of Lot 1, which includes Parcel A and Parcel B are each individually subject to the covenants, conditions and restrictions of the COMRE Agreement and entitled to the rights, grants, benefits and easements thereof in order that the owners thereof, their tenants and Entitled Users may freely use the Common Areas of the entire Shopping Center, and specifically the Anchor Lot and the Pad Lot for ingress, egress, the parking of passenger vehicles and the pedestrian and vehicular traffic, all subject to the terms contained in this Supplement No. 1, which shall govern and control as between the Anchor Lot and the Pad Lot. If any provisions of this Supplement No. 1 conflict with any of those of the COMRE Agreement, then as between the Owner(s) of the Pad Lot and the Anchor Lot, but not the other Lots subject to the COMRE Agreement, the provisions of this Supplement No. 1 shall govern. Any obligation or cost in the COMRE and this Supplement No. 1 that applies to a Lot Owner may be assigned by a Lot Owner to its tenant, including the VASA Tenant and Chick-fil-A.

(a) **EASEMENTS.** The COMRE Agreement contains construction and maintenance (in 2.1) and utility easements (2.3). The Pad Lot and the Anchor Lot have the same easements across the Project as set forth in the COMRE.

2. **COMMON AREA.**

(a) **Repairs and Maintenance.** Except as otherwise expressly provided herein, each Owner (or tenant, as applicable pursuant to the leases defined above) shall, at such Owner’s sole cost and expense, comply with the maintenance standards of Article 3 of the COMRE. All maintenance and repairs shall be done as quickly as possible and at such times and in such a manner as shall minimize any inconvenience to the business conducted in the Project and to delivery vehicles servicing such business.

(b) **Compliance with Laws; Taxes.** Each Lot Owner shall comply with all laws, rules, regulations and requirements of public authorities relating in any manner whatsoever to such owner’s Lot, and shall pay one hundred percent (100%) of the real estate taxes which are due and payable for each such owner’s Lot and insurance premiums payable with respect to each such Owner’s Lot required by Section 9 hereof.

(c) **Directional Signage.** Each Lot Owner shall have an easement to place, maintain, repair and replace directional signage upon the Common Areas as reasonably necessary to direct the flow of traffic to and from such Lot Owner’s respective property, subject to obtaining the approval of the other Lot Owner if located upon such other Lot Owner’s property. Chick-fil-A has approval from VASA and shall install signage at the entryways and drive aisles shown on the Stacking Plan attached hereto and made a part hereof

as Exhibit D (the “**CFA Directional Signage**”) in order to direct traffic to the drive-thru in accordance with the Stacking Plan, provided that the size and appearance and location of such signage is subject to prior written approval of the VASA Tenant, not to be unreasonably withheld or delayed.

(d) Construction Staging. All staging for the construction and maintenance activities, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to the Common Area on the Lot upon which construction is being performed.

(e) Pad Lot Stacking Plan. Declarant establishes the drive-aisles, stacking plan and traffic flow for the Pad Lot and the Anchor Lot as depicted on Exhibit D attached hereto (the “**Stacking Plan**”). The Owner and/or occupant of the Pad Lot shall use commercially reasonable efforts to cause ingress and egress of customer traffic for the Pad Lot to flow substantially in accordance with the Stacking Plan and shall use staff and cones (to the extent, and in such manner, as deemed necessary by the occupant of the Pad Lot in its commercially reasonable discretion) to prevent unreasonable blockage of any Common Area (defined in the COMRE), in particular preventing customer traffic from backing up outside of the lanes shown on the Stacking Plan and obstructing the parking areas and parking aisles on the Anchor Lot. In addition, no material changes shall be made to the layout of the drive aisles located upon the Anchor Lot as depicted on the Stacking Plan unless approved in advance by Chick-fil-A in its sole and absolute discretion. Declarant agrees to take all actions necessary to enforce such restriction on the layout of the drive aisles located upon the Anchor Lot, including, without limitation, to conduct and prosecute legal proceedings against any other owner, tenant or occupant such as an action for injunctive relief.

3. USE RESTRICTIONS.

(a) Prohibited Uses. The Project shall not be used for any activity proscribed on Exhibit E attached hereto and made a part hereof. All uses shall comply with the applicable zoning ordinances of the County. Said zoning ordinances shall govern if inconsistent herewith to the extent actually inconsistent. If not inconsistent herewith, the standards herein contained shall be considered as requirements in addition to said zoning ordinances.

(b) Use Restrictions.

(i) For so long as the VASA Lease or any successor lease or replacement thereof by VASA or its intended successor -in-interest as tenant under the VASA Lease is in effect, the following restrictions (“**VASA Lease Restrictions**”) shall apply to the Project and the Owner and the tenant of the Anchor Lot (“**Benefited Owner**”), shall have the right to enforce the same as provided herein: (A) the Pad Lot may not operate in whole or in part as a health/physical fitness club, or offer aerobic classes, yoga, Pilates, indoor cycling, boxing, personal training, weight training, volleyball, swimming, sports and rehabilitation therapy, cardiovascular and resistance machine operation, or tanning, and (B) no building or series of buildings to be constructed, re-constructed, or renovated from time to time on the Pad Lot shall be larger than ten thousand (10,000) square feet in the aggregate and shall be no greater than twenty-eight (28) feet in exterior roof height without the prior written consent of the then-current tenant under the VASA Lease.

(ii) The VASA Lease Restrictions shall run with the land and bind the Project and shall bind Declarant, any owner of any right, title or interest in the Project, and shall run for the benefit of the Anchor Lot, and permit the Benefited Owner, its successors and assigns and any owner of any right, title or interest in the Anchor Lot to enforce the Fitness Use Restriction, as contemplated herein.

(iii) For so long as a Lease with Chick-fil-A, or any successor lease or replacement thereof by Chick-fil-A or its intended successor-in-interest as "Tenant" under such original Chick-fil-A Lease, is in effect and a Chick-fil-A is open and operating (other than during periods of remodeling, casualty and force majeure, or in connection with an assignment, subletting or other transfer), the following use restrictions ("**Chick Use Restriction**") shall apply to the Anchor Lot and the owner and the tenant of the Pad Lot ("**PAD Benefited Owner**"), shall have the right to enforce the same as provided herein: the Anchor Lot may not operate in whole or in part as a restaurant selling or serving chicken as a principal menu item. For the purposes of this Lease, "a restaurant selling or serving chicken as a principal menu item" means a restaurant deriving twenty-five percent (25%) or more of its gross sales from the sale of chicken. A "restaurant" includes any business establishment, including, without limitation, a kiosk, stand, booth, food truck or area located inside another business facility. In addition, no portion of the Project will be leased, used or occupied by any of the following uses: McDonald's, CosMc's, Boston Market, Kentucky Fried Chicken, Popeye's, Raising Cane's, Super Chix, Slim Chickens, Church's, Bojangles, Mrs. Winner's, Chicken Out, Zaxby's, Ranch One, El Pollo Loco, Pollo Campero, Pollo Tropical, Raise the Roost Chicken & Biscuits, Dave's Hot Chicken, Bird Call, Chester's, Bush's Chicken, Biscuitville, Chicken Now, PDQ, ChikWich, Ezell's Famous Chicken, Roy Rogers, Chicken Shack, Buffalo Wild Wings, Angry Chickz and Wing Stop.

(iv) The Chick Use Restriction shall run with the land and bind the Anchor Lot and shall bind Declarant, any owner of any right, title or interest in the Project, and shall run for the benefit of the Pad Lot throughout the entirety of the Chick-fil-A Lease (or any successor lease or replacement thereof by Chick-fil-A or its intended successor-in-interest as "Tenant" under such original Chick-fil-A Lease), and permit the PAD Benefited Owner, its successors and assigns and any owner of any right, title or interest in the Pad Lot to enforce the Chick Use Restriction, as contemplated herein. Declarant agrees that the Chick Use Restriction set forth in Section 4(b)(iii) above is not intended to bind Chick-fil-A, its successors or assigns on the Pad Lot. In the event any owner, tenant or other occupant in the Anchor Lot, or any party subject to restrictions hereunder or under any other declaration, reciprocal easement agreement or other recorded instrument affecting the Project and/or the Anchor Lot, approaches Declarant for its consent or approval for, or its execution of an amendment or other documentation allowing, any proposed use, design, layout, plan, alteration, modification or other action, Declarant will not grant said consent or approval, or execute such amendment or other documentation, if it contravenes or would result in the violation of any of the restrictions set forth in Section 4(b)(iii) above.

4. **PAD LOT PROJECT IMPROVEMENT FEE.**

(a) **Project Improvement Fee.** Declarant has incurred and will incur costs of acquiring, designing, constructing, installing, operating and maintaining the Common Areas, together with the interest, reserve, administrative, issuance and other costs of obtaining and repaying such financing (collectively, the "**Developer Costs**"). The Developer Costs will be paid for, in whole or in part, through the imposition, through the recording of this real property covenant (the "**PIF Covenant**"), of a project improvements fee (the "**PIF**") in the amount of one percent (1%) of all "**PIF Sales**" on the Pad Lot; the Anchor Lot is not subject to the PIF. The PIF is required to be collected by all sellers or providers of goods or services who engage in any PIF Sales transactions from the purchaser or recipient of such goods or services and then paid over to Declarant.

(i) The Pad Lot acknowledges that the Pad Lot and its customers will be benefited by the Common Areas and hereby agrees that, throughout the Term of this Lease, it will assess, collect and remit as herein directed a PIF equal to one percent (1%) of all PIF Sales initiated, consummated, conducted, transacted or otherwise occurring from or within the Pad Lot. The PIF will be imposed upon and collected from the Pad Lot's customers and become due and payable from the Pad Lot in

regard to all PIF Sales. As used herein, the term “**PIF Sales**” means any exchange of goods or services for money or other media of exchange, and will include all sales or rentals by the Pad Lot or its tenants, licensees or concessionaires of tangible personal property initiated, consummated, conducted, transacted or otherwise occurring from or within the Pad Lot, and all sales of services made, performed or rendered by the Pad Lot or its tenants, licensees or concessionaires from or within the Pad Lot. In all events, the Pad Lot will be subject to all sales and use taxes that may be imposed by the State of Colorado, the City and County and any other applicable taxing authority.

(ii) Whether or not collected from customers, the Pad Lot will pay the PIF monthly in arrears, in an amount equal to one percent (1%) of all PIF Sales initiated, consummated, conducted, transacted or otherwise occurring from or within the Pad Lot during such month. The PIF will be due and payable without notice within twenty (20) days after the close of each calendar month, and unless the Declarant in its sole discretion otherwise directs, the Pad Lot will pay the same directly to Declarant. The procedures for assessment, collection, and segregation of the PIF (but not for calculation) will be identical in all material respects to those set forth in City Sales Tax Ordinances and the Pad Lot will report PIF Sales and remit the PIF to the Declarant on a monthly basis when the Pad Lot reports and remits sales taxes to the City, employing reporting forms and following procedures intended to be substantially similar to those used and required by the City for the remittance of sales tax. The PIF will be calculated and imposed on transactions at the rate stated above prior to the calculation and assessment of any City or State of Colorado sales tax, and before any sales taxes of any other taxing entity required to be imposed by Laws. The PIF will be added to the sales price for transactions subject to sales tax prior to the calculation of sales taxes. All City sales tax and sales taxes of other taxing entities will be calculated and assessed on the sum of the PIF Sales price plus the amount of the PIF. Specific instructions regarding reporting forms and payment procedures will be provided to the Pad Lot by the Declarant, and the Pad Lot will be entitled to rely thereon for purposes of compliance with this Section. THE PAD LOT HEREBY ACKNOWLEDGES THAT THE PIF IS NOT A TAX IN ANY FORM.

(iii) The Pad Lot will deliver to the Declarant, or any successor designated by Declarant (“**Report Recipient**”), true and complete copies of all written reports, returns, statements and records, including any supplements or amendments thereto (collectively the “**Reports**”) made or provided to the City or the State of Colorado by the Pad Lot in connection with all sales tax for the corresponding sales tax period at the same time such Reports are delivered to the City or the State of Colorado. If any subsequent adjustments, additions or modifications are made to any sales taxes or the PIF reported, remitted or paid, or Report made, by the Pad Lot to the City or the State of Colorado with respect to sales taxes or the PIF, the Pad Lot will provide the Report Recipient with true and complete copies of all revised Reports or other written material issued or received by the Pad Lot in regard thereto. If any such adjustment increases the amount of the PIF which the Pad Lot is required to remit or pay, or results in a refund of such PIF, the Pad Lot will immediately pay such additional PIF in the amount due, or will receive an appropriate credit against the next PIF due from the Pad Lot in the amount of such excess PIF. The Pad Lot will claim such credits or pay such additional PIF in the next monthly reporting period by use of the standard reporting and remittance forms. All Reports made or provided by the Pad Lot will be maintained by the Pad Lot for at least three (3) years from the date of submission thereof to the City and/or State of Colorado, and upon written request, will be made available to the Report Recipient for inspection and audit. Reports received by the Declarant will remain confidential and be used only for purposes of collecting the PIF due, enforcing the Pad Lot’s obligations hereunder, and otherwise monitoring compliance with the provisions of this Section. In addition, the Pad Lot will comply with all policies and requirements of the Declarant regarding notification to customers of the assessment and collection of the PIF as such policies and requirements are communicated by the Declarant to the Pad Lot in writing from time to time.

(iv) Any payment of the PIF not paid when due hereunder will bear interest at the prime interest rate (as published from time to time by The Wall Street Journal, and with any changes in such rate to be effective on the date such change is published) plus four percent (4%) per annum (but if such rate exceeds the maximum interest rate permitted by Laws, such rate will be reduced to the highest rate allowed by Laws under the circumstances), and the Pad Lot will bear all costs of enforcement and collection thereof, including reasonable attorneys' fees. In addition to the rights and remedies the Declarant has hereunder, the Pad Lot further expressly authorizes the Declarant to audit the books and records of the Pad Lot in determining the Pad Lot's compliance under this Section. Any right, title, or interest of Declarant in the PIF and the obligations of the Pad Lot as set forth in this Section may be assigned to any successor.

(v) The Pad Lot agrees to cause any assignee, subtenant, licensee, concessionaire or other party who conducts any PIF Sales from the Pad Lot, prior to conducting any business from the Pad Lot, to acknowledge and agree to (in a manner that causes such party to be bound by) all provisions of this Section.

5. **PROJECT SIGNS.**

(a) **Pole and Monument Signs.** No freestanding signs shall be permitted within the Project except for the pole sign located on the Pad Lot along the North Powers Boulevard ("**Pole Sign**") and the monument sign located on the Anchor Lot along Palmer Park Boulevard ("**Monument Sign**"), each of which will be used to identify the Project name "Powers Center" and the occupants of Lots 1 and 2. Both the Pole Sign and the Monument Sign have been designed and constructed by the VASA Tenant pursuant to an agreement to share costs as set forth in the VASA Lease, and each Lot Owner shall thereafter be responsible for the illumination, operation, maintenance and repair of the Pole Sign or Monument Sign, as applicable, located on their respective Lot at their sole cost and expense (which responsibilities have been delegated to tenants of the respective Lots in their leases).

(b) **Easement for Sign Panels.**

(i) The Pad Lot hereby grants to the Anchor Lot for its use and for the use of its tenant or occupant, a perpetual easement to install, replace, repair, use and operate the top display panels representing 50% of the total display area on each side of the Pole Sign as depicted on Exhibit F. The Anchor Lot shall be solely responsible for the cost of designing, fabricating, installing, and replacing the Anchor Lot panels.

(ii) The Anchor Lot hereby grants to the Pad Lot for its use and for the use of its tenant or occupant, a perpetual easement to install, replace, repair, use and operate the bottom display panels representing 50% of the total display area on each side of the Monument Sign located on the Anchor Lot as depicted on Exhibit F. The Pad Lot shall be solely responsible for the cost of designing, fabricating, installing, and replacing the Pad Lot panels.

(iii) Any damaged panels not promptly repaired or replaced after written notice from the Lot Owner responsible for the applicable sign may be removed and replaced by such Lot Owner at the expense of the occupant allowing any panel to fall into disrepair.

(iv) Each Lot grants and conveys to the other Lot, and their respective employees, agents and contractors, a perpetual, non-exclusive easement over and across the Common Area on their respective Lots to carry out the rights and obligations granted to and imposed under this Section 6.

6. **IMPROVEMENTS CONDITIONS AND RESTRICTIONS.**

(a) **Pad Site Restriction.** See Section 4(b)(i) above regarding height and square footage restriction.

(b) **Declarant Approval.** So long as the Declarant continues to hold any ownership interest in the Project, no improvements shall be constructed, erected, expanded or altered on any of the Lots until the plans for the same (including landscaping plan, site grading plan, utility plan, site lighting plan, signage plan and architectural plans and elevations (including materials and colors), have been approved by Declarant (collectively, the “**Lot Plans**”) so long as such Lot Plans shall be approved by any governmental authorities having jurisdiction over the Project. Notwithstanding the foregoing, throughout the entirety of the term of the Chick-fil-A Lease (or any successor lease or replacement thereof by Chick-fil-A or its intended successor-in-interest as “Tenant” under such original Chick-fil-A Lease) and the VASA Lease, such approval rights of Declarant hereunder and the terms of this Section 7(b) shall not apply to Chick-fil-A or the VASA Tenant, such that the terms and conditions of the Chick-fil-A Lease and the VASA Lease (as applicable) shall control with regard to any construction or modification of improvements located on the Pad Lot (*i.e.*, Chick-fil-A and VASA Tenant shall only be required to obtain the approvals specifically agreed upon in the Chick-fil-A Lease and the VASA Lease (as applicable), which shall be in lieu of the approvals required in this Section 7(b)). All construction work shall, upon approval of the Lot Plans by Declarant, be prosecuted with all due diligence, and subject to the conditions and limitations herein contained. Notwithstanding anything herein to the contrary, Declarant’s approval of any Lot Plans submitted by a Lot Owner shall not constitute a representation or warranty as to the adequacy or sufficiency of the such Lot Plans or that such Lot Plans comply with any laws, regulations, building, signage or other applicable codes, including, without limitation those referenced in any Plat recorded subsequent to the date hereof (collectively, the “**Requirements**”), it being acknowledged and agreed that each Lot Owner shall be solely responsible for ensuring that its Lot Plans comply with the Requirements.

(c) **Parking Ratio.** In developing and using the Lots, the Owner(s) of such Lots shall maintain, or cause to be maintained thereon, the number of parking spaces required by the COMRE Agreement and applicable laws and regulations. Anything herein to the contrary notwithstanding, Declarant may count the number of parking spaces now or hereafter existing on all of the Lots described in the COMRE Agreement and use the Lots as may be necessary for purposes of satisfying parking ratios or requirements contained in any leases of space in the Project.

(d) **Construction Operations.** The Owner of each Lot (each, a “**Constructing Owner**”), shall pay all reasonable costs and expenses incurred by any other Lot Owner due to damage to the Project arising from or related to such Constructing Owner’s construction operations at such Constructing Owner’s Lot. No Constructing Owner shall materially obstruct the free flow of pedestrian or vehicular traffic upon and across the Project during any period of construction at such Lot or at any time thereafter. During such period of construction, such Constructing Owner may use the access and perimeter driveways of the Project for construction vehicle access to, from and between such Constructing Owner’s Lot and the public rights of way. During such period of construction, such Constructing Owner shall cause the interior driveways of the Project to be maintained free of all materials and supplies arising out of or resulting from such Constructing Owner’s construction and otherwise in a neat and orderly condition undisturbed from such Constructing Owner’s construction operations. Any vehicle or equipment used in such construction or any materials used in such construction shall be parked or stored only in an area approved in writing by Declarant. Each Constructing Owner agrees to defend, indemnify and hold harmless Declarant and each other Lot Owner, and their respective tenants and occupants, from and against any and all loss, cost, damage, liability, claim or expense (including, without limitation, reasonable attorneys’ fees and costs) arising from or relating to such Constructing Owner’s construction operations, except to the extent of the negligence and willful misconduct of Declarant and/or each such other Lot Owner, and their respective

tenants and occupants, and subject to any waiver of subrogation applicable to any insurance maintained by Declarant and/or any such other Lot Owner, and their respective tenants and occupants. All construction operations at such Constructing Owner's Lot shall be performed in a lien-free and good and workmanlike manner, in accordance with all laws, rules, regulations and requirements.

7. **DAMAGE AND DESTRUCTION.** In the event of any damage or destruction to any buildings to be constructed on any of the Lots, the Owner of said Lot promptly shall remove all rubble and debris resulting from such damage or destruction and shall commence restoration within twelve (12) months of such damage or destruction and shall complete restoration of such damage or destruction within twenty-four (24) months after the date thereof, or shall forthwith remove all rubble and debris resulting from such damage or destruction and restore the site to a safe, orderly and clean condition as soon as possible and maintain landscaping as required by the County, provided that the time periods described herein shall be deferred for a period, not to exceed an aggregate of three hundred sixty-five (365) days, equal to any delay caused by reason of strikes, lockouts, labor disputes, inability to obtain labor, materials or reasonable substitutes therefor, acts of God, extreme weather in excess of normal and customary inclement weather conditions for the local area during the season in which such performance is to occur that actually result in a delay, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, insurrection, revolution, sabotage, fire or other casualty, acts or inactions or delays of governmental agencies, or other causes (other than lack of funds) beyond the reasonable control of any such Lot Owner. Notwithstanding the foregoing, throughout the entirety of the term of the Chick-fil-A Lease (or any successor lease or replacement thereof by Chick-fil-A or its intended successor-in-interest as "Tenant" under such original Chick-fil-A Lease) or the VASA Lease, the damage and destruction provisions of such Chick-fil-A Lease or VASA Lease (as applicable) shall control, such that Chick-fil-A or VASA shall only be required to take the actions specifically agreed upon in the Chick-fil-A Lease or VASA Lease (as applicable) which shall be in lieu of the actions required in this Section 8 and each tenant must strictly comply with the restrictions on maintenance in Section 3.2 of the COMRE Agreement).

8. **INSURANCE.**

(a) **Commercial General Liability Insurance.** Each Lot Owner shall cause (directly or by its tenant under any lease) to be procured and maintained commercial general liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and not less than Five Million Dollars (\$5,000,000.00) in the aggregate (which may be via umbrella) for bodily injury, personal injury and property damage, arising out of any one occurrence, which policy or policies shall:

- (i) name as an additional insured the Declarant and Declarant's management agent;
- (ii) be written by solvent insurance companies licensed in the State of Colorado;
- (iii) provide that such policy or policies may not be canceled by the insurer without first giving each named insured and Declarant at least thirty (30) days' prior written notice; and
- (iv) protect and insure the parties designated in clause (i) above on account of any loss or damage arising from injury or death to persons or damage or destruction to property caused by or related to or occurring on (A) any such Lot; (B) any construction or reconstruction that any such Lot Owner may perform in connection with such owner's Lot; and (C) any act or omission of any such Lot Owner, and its respective agents, employees, licensees, invitees or contractors on any portion of such Lot.

Notwithstanding the above, Chick-fil-A shall have the right to self-insure as to some or all of the risks covered herein as set forth in the Chick-fil-A Lease. Any such coverage shall be deemed primary to any liability coverage secured by any other Lot Owner covering such Owner's Lot.

(b) Property Insurance. Each Lot Owner shall also (directly or by its tenant under any lease) keep any building improvements located on its Lot insured in an amount equivalent to the full replacement value thereof (excluding foundation, grading and excavation costs) against loss or damage by fire and such other risks of a similar or dissimilar nature customarily covered with respect to buildings and improvements similar in construction, general location, use, occupancy and design to such building improvements.

9. RIGHTS AND OBLIGATIONS OF LENDERS. If by virtue of any right or obligation set forth herein a lien shall be placed upon any one of the Lots, such lien shall be expressly subordinate and inferior to the lien of any first mortgage lienholder now or hereafter placed on such Lot except those liens recorded prior to recordation of any such first mortgage. Except as set forth in the preceding sentence, however, any holder of a first mortgage lien on any one of the Lots, and any assignee or successors in interest of such first mortgage lienholder, shall be subject to the terms and conditions of this Supplement No. 1.

10. ENFORCEMENT. The covenants, conditions and restrictions set forth in this Supplement No. 1 shall be enforceable by Declarant and any of the Owners within the Project, and shall be enforceable by all means available at law in equity, including the right to lien and foreclose.

11. ESTOPPEL CERTIFICATE. The Declarant and any Owner of any Lot shall, upon the written request (which shall not be more frequent than one time during any calendar year) of any Owner of any other Lot, issue to such other Owner or its prospective mortgagee or purchaser, an estoppel certificate stating, to the issuer's knowledge: (i) whether it knows of any default under this Supplement No. 1 by the requesting Lot Owner, and if there are known defaults, specifying the nature thereof (ii) whether this Supplement No. 1 has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; (iii) whether this Supplement No. 1 is in full force and effect; (iv) whether there are any sums due and owing by any Owner of any Lot under this Supplement No. 1; and (v) any other factual information reasonably requested by the requestor of the estoppel. The issuance of an estoppel certificate will in no event subject the Owner furnishing it to any liability for the negligent or inadvertent failure to such Owner to disclose correct and/or relevant information, but it shall estop such Owner from making assertions contrary to those set forth in the certificate for the period covered by the certificate.

12. NOTICE. All notices and demands herein required or permitted shall be in writing and shall be sent by United States Certified Mail return receipt requested, personal delivery, recognized overnight courier (guaranteeing next day delivery) or email with proof of transmission. All notices shall be deemed given three (3) business days following deposit in the United States mail with respect to a certified mail, two (2) business days following deposit if delivered to an overnight courier guaranteeing next day delivery (with receipt) or on same day if sent by personal delivery or email (with proof of transmission), or on the first date of any rejection, in each case to the addresses provided by the Declarant or other Owners given in accordance with the notice provisions of this Section 13. Attorneys for the Owner of a Lot shall be authorized to give notices for such Owner. Declarant or any Owner change its address for the service of notice by giving written notice of such change to the Declarant and other Owners of the other Lots in the manner above specified.

13. DURATION. The easements, covenants, conditions and restrictions contained in this Supplement No. 1 shall run with the land and will remain in effect perpetually to the extent permitted by applicable laws, and shall be binding upon any owner, tenant, or occupant of the Project and their respective heirs, personal representatives, successors and assigns, regardless of any termination of the COMRE Agreement.

14. **PARTIAL INVALIDITY.** Invalidation of any of the provisions of the covenants, conditions and restrictions herein contained, whether by order of court of competent jurisdiction, or otherwise, shall in no way affect any of the provisions which shall remain in full force and effect.

15. **MISCELLANEOUS.**

(a) Declarant, any Lot Owner or occupant ("Consenting Party") shall respond to a request for any approval or consent required of such Consenting Party hereunder within thirty (30) days of such request accompanied by all supporting documents and materials required to be furnished. In the event that a Consenting Party fails to respond within said 30-day period, the request shall be deemed approved if Consenting Party fails to respond within ten (10) days after receipt of a written request to cure.

(b) Subject to the requirements set forth in the next succeeding sentence, all rights and responsibilities reserved to Declarant hereunder may be exercised by Declarant or any assignee or designee of Declarant. Wherever a transfer occurs in the ownership of any Lot, the transferor shall have no further liability for breach of covenant occurring thereafter.

(c) Each Lot Owner agrees to look solely to the interest of any other Lot Owner in its respective Lot for the recovery of any judgment from such Owner, it being agreed that the Owner of any such Lot and its partners, directors, officers, members, managers or shareholders shall never be personally liable for such judgment.

(d) Declarant shall have the unilateral right to subdivide the Anchor Lot and Pad Lot at any time. In the event any Lot is subdivided after the date hereof, including, without limitation, the Pad Lot, the benefits and burdens created hereby shall benefit and be binding upon any Lot(s) created by such subdivision, and all references herein to any such Lot shall mean and refer to the Lot(s) created by such subdivision, and all rights and obligations of the Lot Owner shall be deemed to be the rights and obligations of the owner(s) of any Lot created by such subdivision.

(e) Declarant may at any time transfer the rights and responsibilities reserved to it hereunder only to a successor owner of the Pad Lot, by written instrument recorded in the Office of the Clerk and Recorder of El Paso County, Colorado, which instrument shall specifically give the transferee the right to enforce the provisions of this Supplement No. 1. However, so long as Declarant retains ownership of any portion of the Project, mere purchase of the Pad Lot shall not confer to any transferee of the Pad Lot the right to enforce the Declarant's rights under this Supplement No. 1. Notwithstanding the foregoing, in the event that Declarant no longer owns any portion of the Project and fails to record a written instrument upon the recordation of the deed to the Pad Lot indicating otherwise, the Pad Lot Owner shall immediately succeed to the rights of Declarant under this Supplement No. 1, without necessity of any instrument and shall have the right to record an affidavit in the Office of the Clerk and Recorder of El Paso County, Colorado evidencing the same.

(f) Declarant shall have the unilateral right to amend this Supplement No. 1 by recording an executed amendment in the Office of the Clerk and Recorder of El Paso County, Colorado unless such amendment would materially and adversely affect any Lot not owned by Declarant, in which case any such amendment shall require the consent of the Lot Owner so materially and adversely affected thereby, and such amendment shall be of full force and effect, valid and binding upon the execution thereof, notwithstanding that not every owner of each Lot at the time of such amendment consented to, joined in, or executed the same. In addition, and notwithstanding anything to the contrary herein contained, any amendment to the Supplement No. 1 that has a material and adverse effect on any Common Areas, service areas, utility systems, parking and access drive or the Pad Lot shall require the consent of the owner of each Lot that is adjacent to the affected area or the Pad Lot.

16. **SEVERABILITY**. Each provision of this Supplement No. 1 shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Supplement No. 1 shall be deemed to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Supplement No. 1.

[Signature Page Follows]

IN WITNESS WHEREOF, Declarant has caused this Supplement No. 1 to be executed as of the day and year first above written.

HD POWERS LLC, a Colorado limited liability company

By: _____

Name: _____

Its: _____

Address of Declarant:

7076 S. Alton Way, Suite H100

Centennial, CO 80112

STATE OF COLORADO)

) ss.

CITY AND COUNTY OF _____)

I, _____, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT _____, the _____ of Colorado limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

Given under my hand and notarial seal this ____ day of _____, 2025.

Notary Public

My Commission Expires: _____

EXHIBIT A

Legal Description

Lot 1:

LOT 1, BLOCK 1, WALDORF SUBDIVISION AS FILED IN PLAT BOOK P-3 AT PAGE 83 AND AMENDED IN BOOK 3621 AT PAGE 590 OF THE RECORDS OF EL PASO COLUNTY, COLORADO

Draft of Plat

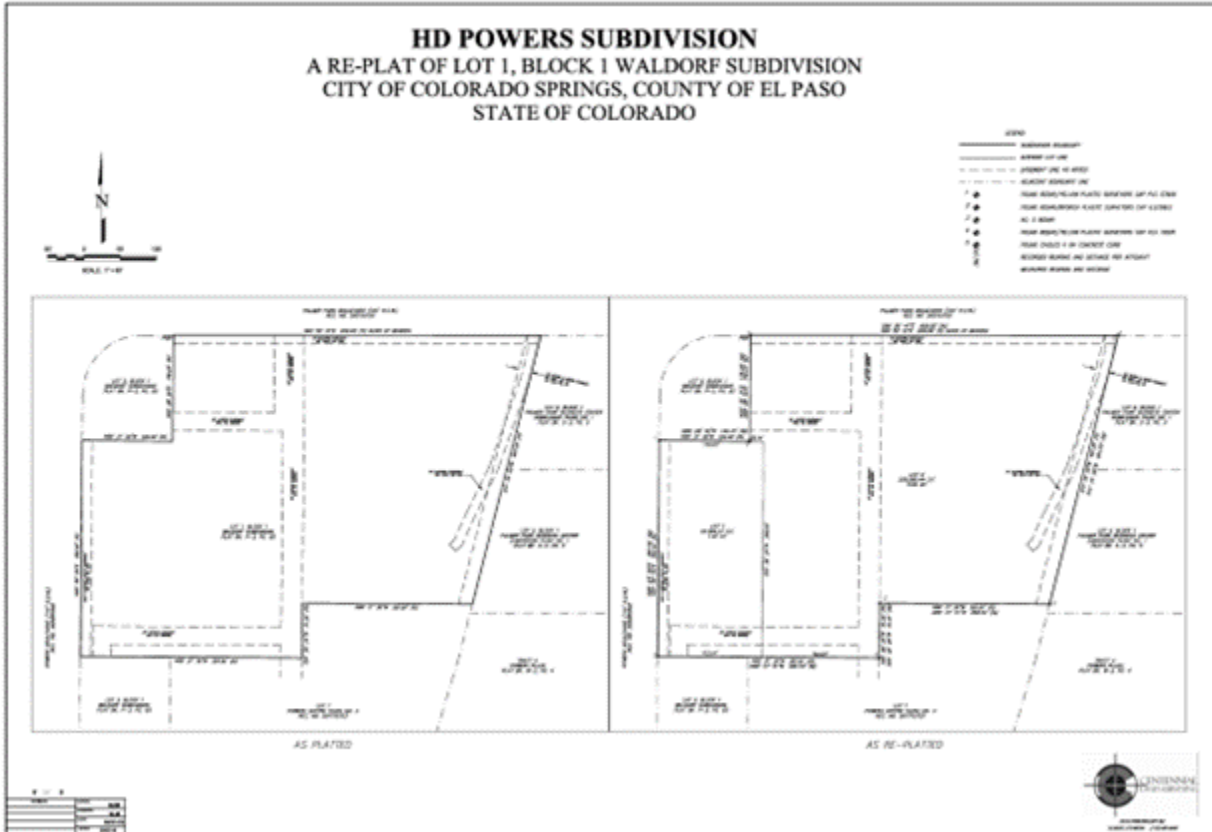


EXHIBIT C-1

Legal Description of the Pad Lot

A PARCEL OF LAND BEING A PORTION OF LOT 1, BLOCK 1, WALDORF SUBDIVISION AS FILED IN PLAT BOOK P-3 AT PAGE 83 AND AMENDED IN BOOK 3621 AT PAGE 590 OF THE RECORDS OF EL PASO COUNTY, COLORADO AND LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, SECTION 6, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO BASIS OF BEARING: THE NORTH LINE OF LOT 1, BLOCK 1, WALDORF SUBDIVISION, BEING MONUMENTED AT EACH END BY A FOUND REBAR WITH YELLOW PLASTIC SURVEYORS CAP, PLS 37929, RECORDED AS BEARING S89°59'47"E WITH A DISTANCE OF 609.99 FEET, IN PLAT BOOK P-3 AT PAGE 83 OF THE RECORDS OF EL PASO COUNTY, COLORADO. BEGINNING AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 1, OF SAID WALDORF SUBDIVISION; THENCE N00°23'56"E, A DISTANCE OF 357.74 FEET AS MEASURED ALONG THE WEST LINE OF SAID LOT 1; THENCE S89°29'16"E, A DISTANCE OF 150.37 FEET AS MEASURED ALONG THE BOUNDARY OF SAID LOT 1; THENCE CONTINUE S89°29'16"E, A DISTANCE OF 23.14 FEET; THENCE S00°28'24"W, A DISTANCE OF 358.00 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1; THENCE N89°27'46"W, A DISTANCE OF 173.14 FEET AS MEASURED ALONG THE SOUTH LINE OF SAID LOT 1, TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 61,984 SQUARE FEET (1.42 ACRES) MORE OR LESS. MICHAEL J. MUIRHEID, PLS COLORADO NO. 37909 FOR AND ON BEHALF OF CENTENNIAL LAND SURVEYING N 0 PROJECT: 60' 120' SCALE: 1" = 120' 240' 16115 NORTHCLIFF SQ. ELBERT, CO 80106 DATE: (719) 492-6540 BY: CHKD: JOB NO. SHEET NO.

EXHIBIT C-2

Legal Description of Anchor Lot

A PARCEL OF LAND BEING A PORTION OF LOT 1, BLOCK 1, WALDORF SUBDIVISION AS FILED IN PLAT BOOK P-3 AT PAGE 83 AND AMENDED IN BOOK 3621 AT PAGE 590 OF THE RECORDS OF EL PASO COUNTY, COLORADO AND LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, SECTION 6, TOWNSHIP 14 SOUTH, RANGE 65 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO BASIS OF BEARING: THE NORTH LINE OF LOT 1, BLOCK 1, WALDORF SUBDIVISION, BEING MONUMENTED AT EACH END BY A FOUND REBAR WITH YELLOW PLASTIC SURVEYORS CAP, PLS 37929, RECORDED AS BEARING S89°59'47"E WITH A DISTANCE OF 609.99 FEET, IN PLAT BOOK P-3 AT PAGE 83 OF THE RECORDS OF EL PASO COUNTY, COLORADO. BEGINNING AT THE NORTHWEST CORNER OF LOT 1, BLOCK 1, OF SAID WALDORF SUBDIVISION; THENCE ALONG THE BOUNDARY OF SAID LOT 1 THE FOLLOWING FIVE (5) AS MEASURED COURSES: 1. S89°59'47"E, A DISTANCE OF 609.85 FEET; 2. S14°14'00"W, A DISTANCE OF 461.05 FEET; 3. N89°37'51"W, A DISTANCE OF 282.54 FEET; 4. S00°32'25"W, A DISTANCE OF 91.01 FEET; 5. N89°27'46"W, A DISTANCE OF 194.67 FEET; THENCE N00°28'24"E, A DISTANCE OF 358.00 FEET; THENCE N89°29'16"W, A DISTANCE OF 23.14 FEET; THENCE N00°19'31"E ALONG THE BOUNDARY OF SAID LOT 1, A DISTANCE OF 176.30 FEET TO THE POINT OF BEGINNING; CONTAINING A CALCULATED AREA OF 258,580 SQUARE FEET (5.94 ACRES) MORE OR LESS.

EXHIBIT D

Stacking Plan

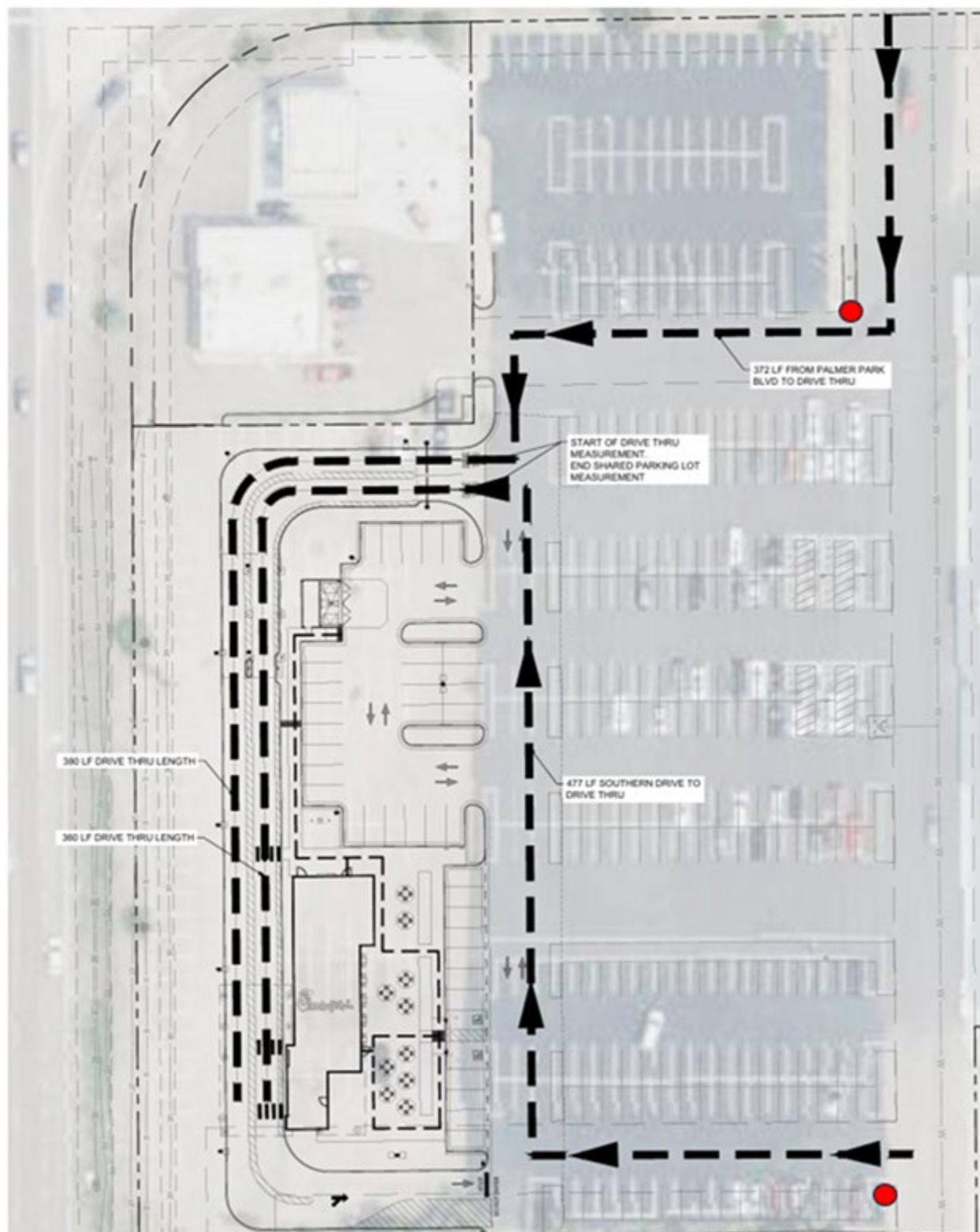


EXHIBIT K

EXHIBIT E

Use Restrictions

No portion of the Project shall be used in whole or in part for any of the following purposes:

- a. For any assembling, manufacturing (other than cooking, baking and other preparation of food products for sale), distilling, refining, smelting, agricultural (other than the sale of agricultural products and the preparation thereof for sale) or mining operations;
- b. Mobile home park, trailer court, labor camp, junk yard, or stock yard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance);
- c. Dumping, disposing, incinerating, or reducing of garbage (exclusive of dumpsters for the temporary storage of garbage and any garbage compactors, in each case which are regularly emptied so as to minimize offensive odors);
- d. Fire, going out of business, relocation, bankruptcy or similar sales (unless pursuant to court order);
- e. Central laundry, dry cleaning plant, or laundromat; provided, however, this restriction shall not apply to any dry cleaning facility providing on-site services oriented to pickup and delivery by the ultimate customer, including nominal supporting facilities, or to laundry facilities for any tenant or occupant of the Project for such tenant's or occupant's own towels, linens, and uniforms used in its premises;
- f. Selling or leasing automobiles, trucks, trailers, or recreational vehicles;
- g. "Adult only" store for the sale or rental of pornographic material or other sexually explicit material (provided that this restriction shall not preclude the sale or rental of X rated or "NR" rated or similar materials as an incidental part of the operation of bookstores or other multi-media stores);
- h. Flea market;
- i. Operation whose principal use is a massage parlor, provided this shall not prohibit massages in connection with a beauty salon, athletic facility or permitted health club;
- j. Tattoo parlor;
- k. Mortuary or funeral parlor; motor vehicle maintenance or repair shop or gas station; billiard parlor; tavern, pub, bar or liquor store; pawn shop; "disco" or other dance hall; casino, gaming room, or "off track betting" operation; for the sale of paraphernalia for use with illicit drugs or for the sale of marijuana; vape shop.

EXHIBIT F
Detail Regarding Pole and Monument Sign

