

UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING
RETURN TO:

Gregg G. Rotter, Esq.
Rotter & Associates, Ltd.
2 North LaSalle Street
Suite 1200
Chicago, Illinois 60602



Doc#: 1501549028 Fee: \$76.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 01/15/2015 11:44 AM Pg: 1 of 20

Freedom Title Corporation
2260 Hicks Road
Suite 415
Rolling Meadows Il. 60008

1501549028
414

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, made as of Jan 6, 2015 by and between O'HARE SHELL PARTNERS, LLC, an Illinois Limited Liability Company, hereinafter called "Lessor", and Shree Schiller Park, Inc., an Illinois Corporation, hereinafter called "Lessee."

WITNESSETH, that Lessor has demised and leased to Lessee the premises situated in the City of Schiller Park, County of Cook, Illinois, to wit:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

To have and to hold the same, unto Lessee, from September 1, 2009 until August 31, 2019, with two (2) consecutive five (5) year option(s).

WITNESSETH, this MEMORANDUM OF LEASE is executed by and between Lessor and Lessee to memorialize the agreement between them and the rights, duties and obligations of each appertaining thereto.

The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

b) Secured Party or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Debtor or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Debtor, or defeat any claim of SBA with respect to the Loan.

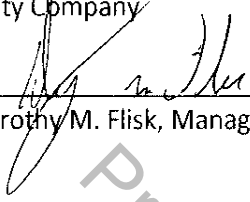
Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the date first above written.

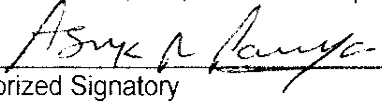
LESSOR:

O'HARE SHELL PARTNERS, LLC, an Illinois Limited Liability Company

BY: 
Dorothy M. Flisk, Manager

LESSEE:

Shree Schiller Park, Inc., an Illinois Corporation

BY: 
Authorized Signatory

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

COMMON ADDRESS: 4111-4141 N. Manheim Road, Schiller Park, IL 60176

PIN 12-16-307-035

LEGAL DESCRIPTION:

LOT 2 IN PLAT OF WEST GATE REDEVELOPMENT SUBDIVISION, PHASE ONE, BEING A SUBDIVISION OF PART OF LOT 5 IN THE SUBDIVISION OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 29, 2010 AS DOCUMENT NO. 1008803051, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF IL)
COUNTY OF Cook) SS

I, Dianne G. Philippe, a Notary Public in and for said County, in the State aforesaid, do hereby certify that on Jan 6, 2015, personally appeared before me, Dorothy M. Flisk, Manager of O'HARE SHELL PARTNERS, LLC, an Illinois Limited Liability Company, personally known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledged that she signed, sealed, and delivered the said instrument as her free and voluntary act and as the free and voluntary act of said entity for the uses and purposes therein set forth.

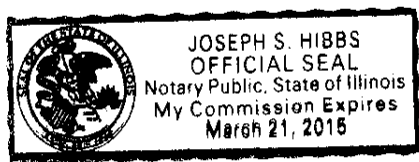


Dianne G. Philippe
Notary Public

(SEAL)

STATE OF IL)
COUNTY OF COOK) SS

I, JOSEPH S. HIBBS, a Notary Public in and for said County, in the State aforesaid, do hereby certify that on JANUARY 7, 2015, personally appeared before me, ASHOK PANDYA, President of Shree Schiller Park, Inc., an Illinois Corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument and acknowledged that he / she signed, sealed, and delivered the said instrument as his / her free and voluntary act and as the free and voluntary act of said entity for the uses and purposes therein set forth.



Joseph S. Hibbs
Notary Public

(SEAL)

UNOFFICIAL COPY

LEASE SUMMARY
4111-41 No. Mannheim Road
Schiller Park, Illinois

Rent Commencement Date (Section 1):	September 1,2009 or as soon as construction is finished
Base Monthly Rent (Section 1):	Year 1. 10% of all Gross Sales, only if the sale exceed of Sixty thousand dollars per month. If below that amount the percent shall be at 9% for each month below Year 2. 10% of all Gross Sales Year 3. 10% of all Gross Sales Year 4. 10% of all Gross Sales Year 5. 10% of all Gross Sales Year 6. 10% of all Gross Sales Year 7. 10% of all Gross Sales Year 8. 10% of all Gross Sales Year 9. 10% of all Gross Sales Year 10. 10% of all Gross Sales
Guarantor (Section 1):	Shree Schiller Park, Inc & Mr. Ashok Pandya
Lease Term (Section 3):	September 1,2009-August 31,2019
Security Deposit (Section 5):	\$ 8,000.00 Increase Annually as sales change
Proportionate Share (Section 6)	To be adjusted on space
Current Monthly RE Tax (Section 7)	To be adjusted on space
Monthly Electric (Section 7)	Tenant pay own
Monthly CAM (Section 7)	To be adjusted on space
Monthly Water (Section 7)	Tenant pay on meter reading
Monthly Insurance (Section 12)	To be adjusted on space

LEASE

THIS LEASE (this "Lease") dated April 30, 2009 (the "Effective Date"), by and between O'Hare Shell Partners L.L.C. ("Lessor") ("Lessee").Shree Schiller Park,Inc

WITNESETH:

WHEREAS, Lessor and Lessee desire to lease the Premises defined herein.

THAT, in consideration of the mutual covenants and agreements herein contained, Lessor and Lessee hereby covenant and agree as follows:

1. **Certain Defined Terms.** The following terms shall have the following meanings for all purposes of this Lease:

"Base Annual Rental" means:

Year 1. 10% of all Gross Sales
Year 2. 10% of all Gross Sales
Year 3. 10% of all Gross Sales
Year 4. 10% of all Gross Sales
Year 5. 10% of all Gross Sales

UNOFFICIAL COPY

Year 6. 10% of all Gross Sales
 Year 7. 10% of all Gross Sales
 Year 8. 10% of all Gross Sales
 Year 9. 10% of all Gross Sales
 Year 10. 10% of all Gross Sales

"*Base Monthly Rental*" means:

Year 1. 10% of all Gross Sales
 Year 2. 10% of all Gross Sales
 Year 3. 10% of all Gross Sales
 Year 4. 10% of all Gross Sales
 Year 5. 10% of all Gross Sales
 Year 6. 10% of all Gross Sales
 Year 7. 10% of all Gross Sales
 Year 8. 10% of all Gross Sales
 Year 9. 10% of all Gross Sales
 Year 10. 10% of all Gross Sales

"*Code*" means the United States Bankruptcy Code, 11 U.S.C. Sec. 101 *et seq.*, as amended.

"*Default Rate*" means 18% per annum or the highest rate permitted by law, whichever is less.

"*Event of Default*" has the meaning set forth in Section 22.

"*Guarantors*" means Shree Schiller Park, Inc & Mr. Ashok Pandya

"*Lease Term*" shall have the meaning described in Section 3.

"*Lease Year*" means the 12-month period commencing on the first day of the calendar year or any other 12-month period as may be approved in writing by Lessor after the commencement of the Lease Term and each successive 12-month period thereafter.

"*Premises*" means the Store, space for Dunkin' Donuts as more particularly described in Exhibit A attached hereto, in the building located at 4205 No Mannheim Road Schiller Park, Illinois (the "Building"), all rights, privileges and appurtenances associated therewith, fixtures and other improvements now or hereafter located thereon (whether or not affixed to such real estate).

"*Rent Commencement Date*" means September 1, 2009 or as soon as construction is finished

2. ***Demise of Premises.*** In consideration of the rentals and other sums to be paid by Lessee and of the other terms, covenants and conditions on Lessee's part to be kept and performed, Lessor hereby leases to Lessee, and Lessee hereby takes and hires, the Premises.

3. ***Lease Term.*** The Lease Term shall commence as of the **September 1, 2009** and shall expire on **August 31, 2019** unless terminated sooner as provided in this Lease. The time period during which this Lease shall actually be in effect is referred to herein as the "Lease Term." Tenant shall have the right and option, but not the obligation, to renew this Lease for two (2) addition terms of five (5) years each (the "Renewal Term"); provided that this Lease is full force and effect immediately prior to the date of the commencement of the Renewal Term and the tenant is not in default under any of the provisions of this Lease at the time Tenant exercises its option to renew. If the tenant elects to exercise its option to renew, it must do so by delivery of written Notice of the exercise thereof (the "Renewal Term") to the Landlord no later than one hundred eighty (180) days prior to the expiration of the Initial Term. Time shall be of the essence with respect to Tenant Renewal Notice.

4. ***Rental and Other Payments.*** A. Lessee shall begin paying Base Monthly Rent on the Rent Commencement Date. If the Rent Commencement Date is a date other than the first day of the month, Lessee shall pay Lessor on the Rent Commencement Date the Base Monthly Rental prorated on the basis of the ratio that the number of days from the Rent Commencement Date through the last day in the month containing the Rent Commencement Date bears to the number of days in such month. Thereafter, on or before the first day of each succeeding calendar month, Lessee shall pay Lessor in advance the Base Monthly Rental and Additional Rent (as defined herein).

UNOFFICIAL COPY

B. All sums of money required to be paid by Lessee under this Lease that are not specifically referred to as rent ("Additional Rent") shall be considered rent although not specifically designated as such. Lessor shall have the same remedies for nonpayment of Additional Rent as those provided herein for the nonpayment of Base Annual Rental.

5. **Repair Deposit and Security Deposit.** Upon the execution of this Lease, Lessee shall deposit the sum of \$ 8,000.00 as a refundable cleaning, repair and security deposit (the "Security Deposit"). Lessor shall have the right to retain, use or apply so much of this Security Deposit as shall reimburse Lessor for damages suffered by Lessee's failure to timely pay any amounts due under the Lease or to perform any of Lessee's obligations under this Lease including, but not limited to, properly cleaning the Premises prior to vacation. In the event Lessor uses any portion of the Security Deposit, or upon Lessor's demand, Lessee shall be required to immediately deposit additional funds to maintain the Security Deposit equal to two (2) months rent. Upon the termination of this Lease any excess in such Security Deposit shall be returned to Lessee without interest.

6. **Taxes and Assessments.** Beginning on the Rent Commencement Date, Lessee shall pay, as Additional Rent on the along with the Base Monthly Rent an amount equal To be adjusted on space % (the "Proportionate Share) of 1/12th of the most current tax bill which is currently estimated at a monthly amount of To be adjusted on space and all other estimated taxes and assessments of every type or nature assessed against or imposed upon the Premises during the Lease Term which affect in any manner the net return realized by Lessor under this Lease. In the event the taxes increase or decrease, Lessor will adjust the Additional Rent reflected above and will give notice to Lessee of the change. All taxing authorities shall be instructed to send all tax and assessment invoices to Lessor. In the event Lessor contests or cause to be contested the taxes, Lessee shall pay the cost of such contestation so long as Lessor is successful in cutting the taxes.

7. **Utilities.** In addition, Lessee shall contract, in its own name, for and pay when due all charges for the connection and use, gas, telephone, garbage collection, sewer use and other utility services supplied to the Premises during the Lease Term. Under no circumstances shall Lessor be responsible for any interruption of any utility service. With respect to Lessee's garbage collection, Lessee must engage National Waste or any other garbage collection service used by Lessor. In the event Lessee is not able to obtain separate metering for any utility service, Lessee shall pay Lessor, as Additional Rent along with the Base Monthly Rent, its Proportionate Share of such utility use.

8. **Rentals To Be Net to Lessor.** The Base Annual Rental and the Additional Rent payable hereunder shall be net to Lessor, so that this Lease shall yield to Lessor the rentals specified during the Lease Term and that all other costs, expenses and obligations of every kind and nature whatsoever relating to the Premises shall be performed and paid by Lessee.

9. **Representations and Warranties of Lessee.** The representations and warranties of Lessee contained in this Section are being made to induce Lessor to enter into this Lease and Lessor has relied, and will continue to rely, upon such representations and warranties. Lessee represents and warrants to Lessor as follows:

A. **Organization, Authority and Status of Lessee.** The persons who have executed this Lease on behalf of Lessee are duly authorized to do so.

B. **Enforceability.** This Lease constitutes the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms.

C. **Litigation.** There are no suits, actions, proceedings or investigations pending, or to the best of its knowledge, threatened against or involving Lessee, or the Premises before any arbitrator or governmental authority which might reasonably result in any material adverse change in the contemplated business, condition, worth or operations of Lessee or the Premises.

D. **Absence of Breaches or Defaults.** Lessee is not in default under any other document, instrument or agreement to which Lessee, the Premises or any of the property of Lessee is subject or bound. The authorization, execution, delivery and performance of this Lease and the documents, instruments and agreements provided for herein will not result in any breach of or default under any other document, instrument or agreement to which Lessee is a party or by which Lessee, the Premises or any of the property of Lessee is subject or bound.

E. **Licenses and Permits.** Lessee has or will obtain all required licenses and permits, both governmental and private, to use and operate the Premises in the intended manner.

F. **Financial Condition; Information Provided to Lessor.** The financial statements, all financial data and all other documents and information heretofore delivered to Lessor, if any, by or with respect to Lessee, or the Premises in connection with this Lease and/or relating to Lessee, and/or the Premises are true, correct and complete in all material respects, and there have been no amendments to such financial statements, financial data and other documents and

UNOFFICIAL COPY

information since the date such financial statements, financial data, documents and other information were prepared or delivered to Lessor, and no material adverse change has occurred to any such financial statements, financial data, documents and other information not disclosed in writing to Lessor.

10. **Guaranty.** On or before the execution of this Lease, lessee shall cause Guarantor to execute and deliver to Lessor the Guaranty.

11. **Insurance.** Throughout the Lease Term Lessee shall maintain with respect to the Premises, at its sole expense, the following types and amounts of insurance (which may be included under a blanket insurance policy if all the other terms hereof are satisfied):

Comprehensive general liability and property damage insurance, including a products liability clause, covering Lessor and Lessee against bodily injury liability, property damage liability and automobile bodily injury and property damage liability, including without limitation any liability arising out of the operation of the Premises. Such insurance policy or policies shall contain a broad form contractual liability endorsement under which the insurer agrees to insure Lessee's obligations under Section 18 hereof to the extent insurable, and a "severability of interest" clause or endorsement which precludes the insurer from denying the claim of Lessee or Lessor because of the negligence or other acts of the other, shall be in amounts of not less than \$2,000,000.00 per injury and occurrence with respect to any insured liability, whether for personal injury or property damage, or such higher limits as Lessor may reasonably require from time to time, and shall be of form and substance satisfactory to Lessor.

All insurance policies shall:

- (i) Provide for a waiver of subrogation by the insurer as to claims against Lessor, its employees and agents and provide that such insurance cannot be unreasonably cancelled, invalidated or suspended on account of the conduct of Lessee, its officers, directors, employees or agents (in the event Lessee is unable to obtain a waiver of subrogation for Lessor after using its reasonable efforts, Lessee will notify Lessor of the same and shall not be in default under this Lease);
- (ii) Provide that any "no other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by Lessor and that the insurance policy shall not be brought into contribution with insurance maintained by Lessor;
- (iii) Contain a standard without contribution mortgage clause endorsement in favor of any lender designated by Lessor;
- (iv) Provide that the policy of insurance shall not be terminated, cancelled or substantially modified without at least thirty (30) days prior written notice to Lessor and to any lender covered by any standard mortgage clause endorsement;
- (v) Provide that the insurer shall not have the option to restore the Premises if Lessor elects to terminate this Lease in accordance with the terms hereof;
- (vi) Be issued by insurance companies licensed to do business in the state in which the Premises is located and which are rated A:VI or better by Best's Insurance Guide or are otherwise approved by Lessor; and
- (vii) Provide that the insurer shall not deny a claim because of the negligence of Lessee, anyone acting for Lessee or any tenant or other occupant of the Premises.

It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Lessee for its acts or omissions as provided in this Lease. All insurance policies (with the exception of worker's compensation insurance to the extent not available under statutory law) shall designate Lessor, O'Hare Shell Partners, LLC, and any mortgagee of Lessor as additional insureds and Lessor as loss payee as their interests may appear and shall be payable as set forth in Section 20 hereof. All such policies shall be written as primary policies, with deductibles not to exceed 10% of the amount of coverage. Any other policies, including any policy now or hereafter carried by Lessor, if any, shall serve as excess coverage. Lessee shall procure policies for all insurance for periods of not less than one year and shall provide to Lessor and any lender of Lessor certificates of insurance or, upon Lessor's request, duplicate originals of insurance policies evidencing that insurance satisfying the requirements of this Lease is in effect at all times. In the event Lessee fails to procure insurance, Lessor shall be permitted, but not obligated, to obtain insurance for Lessee at Lessee's sole cost and expense, which will be paid within five (5) days of presentation of an invoice to Lessee of such insurance.

UNOFFICIAL COPY

Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against, the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

In addition to the above-referenced insurance, Lessee shall pay, as Additional Rent on the along with the Base Monthly Rent its Proportionate Share of 1/12th of the current Building insurance which is currently estimated at a monthly amount of \$ To be adjusted on space. In the event the Building insurance increases or decreases, Lessor will adjust the Additional Rent reflected above and will give notice to Lessee of the change.

12. *. Intentionally Omitted :*

13. **Payment of Rental and Other Sums.** All rental and other sums which Lessee is required to pay hereunder shall be the unconditional obligation of Lessee and shall be payable in full when due without any setoff, abatement, deferment, deduction or counterclaim whatsoever. Any delinquent payment (that is, any payment not made within ten calendar days after the date when due) shall, in addition to any other remedy of Lessor, incur a late charge of the greater of 5% or \$100.00 per day (which late charge is intended to compensate Lessor for the cost of handling and processing such delinquent payment and should not be considered interest) and bear interest at the Default Rate, such interest to be computed from and including the date such payment was due through and including the date of the payment; provided, however, in no event shall Lessee be obligated to pay a sum of late charge and interest higher than the maximum legal rate then in effect.

14. **Use.** The Premises shall be used solely for the operation of the retail sales facility for Dunkin' Donuts. Except as set forth below, and except during periods when the Premises is untenable by reason of fire or other casualty or condemnation (provided, however, during all such periods while the Premises is untenable, Lessee shall strictly comply with the terms and conditions of this Lease), Lessee shall at all times during the Lease Term occupy the Premises and shall diligently operate its business on the Premises. Lessee may cease diligent operation of business at the Premises for a period not to exceed 30 days and may do so only once within any five-year period during the Lease Term.

15. **Compliance With Laws, Restrictions, Covenants and Encumbrances.** A. Lessee's use and occupation of the Premises, and the condition thereof, shall, at Lessee's sole cost and expense, comply fully with (i) all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders and approvals of each governmental authority having jurisdiction over the Premises, including, without limitation, all health, building, fire, safety and other codes, ordinances and requirements and all applicable standards of the National Board of Fire Underwriters and all policies or rules of common law, in each case, as amended, and any judicial or administrative interpretation thereof, including any judicial order, consent, decree or judgment applicable to Lessee, and (ii) all restrictions, covenants and encumbrances of record with respect to the Premises.

B. Lessee will not permit any act or condition to exist on or about the Premises which will increase any insurance rate thereon, except when such acts are required in the normal course of its business and Lessee shall pay for such increase.

C. Lessee covenants to Lessor during the Lease Term that all uses and operations on or of the Premises, whether by Lessee or any other person or entity, shall be in compliance with all environmental laws and permits issued pursuant thereto and that there shall be no hazardous materials, or regulated substances in, on, or under the Premises, except in de minimis amounts and that Lessee shall keep the Premises free and clear of all liens and other encumbrances imposed pursuant to any environmental law.

D. Lessor and any other person or entity designated by Lessor shall have the right, but not the obligation, to enter upon the Premises with 24 hour notice, except in cases of emergency where no notice shall be required, at all reasonable times (including, without limitation, in connection with the exercise of any remedies set forth in this Lease).

E. Lessee shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless Lessor for, from and against any and all Losses and costs of with respect to any environmental conditions caused by Lessee.

F. The obligations of Lessee and the rights and remedies of Lessor under the foregoing subsections shall survive the termination, expiration and/or release of this Lease.

G. In addition to the other requirements of this Section, Lessee shall, at all times throughout the Lease Term, comply with all federal, state or local statutes, laws, rules, regulations, ordinances, codes, policies or rules of common law now or hereafter in effect and in each case, as amended, and any judicial or administrative interpretation thereof, including any judicial order, consent, decree or judgment, applicable to Lessee.

UNOFFICIAL COPY

16. **Condition of Premises; Maintenance.** Lessee has inspected, or had the opportunity to inspect, the Premises and hereby accepts the Premises "AS IS" and "WHERE IS" with no representation or warranty of Lessor as to the condition thereof. The Premises shall be kept in good, clean, sanitary and working condition; and Lessee shall at all times at its own expense maintain, repair and replace, as necessary, the Premises, whether or not the Premises were in such condition on the Effective Date.

17. **Waste; Alterations and Improvements.** Lessee shall not commit actual or constructive waste upon the Premises. During the Lease Term, Lessee shall not alter the exterior, structural, plumbing or electrical elements of the Premises in any manner without the consent of Lessor, which consent shall not be unreasonably withheld or conditioned; provided, however, Lessee may undertake nonstructural alterations to the Premises costing less than \$5,000.00 without Lessor's consent. If Lessor's consent is required hereunder and Lessor consents to the making of any such alterations, the same shall be made by Lessee at Lessee's sole expense by a licensed contractor and according to plans and specifications approved by Lessor and subject to such other conditions as Lessor shall require. Any work at any time commenced by Lessee on the Premises shall be prosecuted diligently to completion, shall be of good workmanship and materials and shall comply fully with all the terms of this Lease. Upon completion of any alterations, Lessee shall promptly provide Lessor with (i) evidence of full payment to all laborers and materialmen contributing to the alterations, (ii) an architect's certificate certifying the alterations to have been completed in conformity with the plans and specifications, (iii) a certificate of occupancy (if the alterations are of such a nature as would require the issuance of a certificate of occupancy), and (iv) any other documents or information reasonably requested by Lessor. Lessee shall execute and file or record, as appropriate, a "Notice of Non-Responsibility," or any equivalent notice permitted under applicable law in the state where the Premises is located. Any addition to or alteration of the Premises shall be deemed a part of the Premises and belong to Lessor, and Lessee shall execute and deliver to Lessor such instruments as Lessor may require to evidence the ownership by Lessor of such addition or alteration.

18. **Indemnification.** Lessee shall indemnify, protect, defend and hold harmless Lessor and its agents for, from and against any and all Losses caused by, incurred or resulting from Lessee's operations of or relating in any manner to the Premises, whether relating to their original design or construction, latent defects, alteration, maintenance, use by Lessee or any person thereon, supervision or otherwise, or from any breach of, default under or failure to perform any term or provision of this agreement by Lessee, its officers, employees, agents or other persons. It is expressly understood and agreed that Lessee's obligations under this Section shall survive the expiration or earlier termination of this Lease for any reason.

19. **Quiet Enjoyment.** So long as Lessee shall pay the rental and other sums herein provided and shall keep and perform all of the terms, covenants and conditions on its part herein contained, Lessee shall have, subject and subordinate to Lessor's rights herein, the right to the peaceful and quiet occupancy of the Premises.

20. **Condemnation or Destruction.** A. In case of a taking of all or any part of the Premises or the commencement of any proceedings or negotiations which might result in a taking for any public or quasi-public purpose by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement between Lessor, Lessee and those authorized to exercise such right ("Taking"), Lessee will promptly give written notice thereof to Lessor, generally describing the nature and extent of such Taking and including copies of any documents or notices received in connection therewith.

B. In case of a Taking of the whole of the Premises, other than for temporary use ("Total Taking"), this Lease shall terminate as of the date of such Total Taking and all rentals, sums of money and other charges provided to be paid by Lessee shall be apportioned and paid to the date of such Total Taking. Total Taking shall include a taking of substantially all the Premises if, in the sole determination of Lessor, the remainder of the Premises is not useable and cannot be made useable for the purposes provided herein. Lessor shall be entitled to receive the entire award or payment in connection with any taking of the Premises without deduction for any estate vested in Lessee by this Lease. Lessee hereby expressly assigns to Lessor all of its right, title and interest in and to every such award or payment and agrees that Lessee shall not be entitled to any award or payment for the value of Lessee's leasehold interest in the Lease. Lessee shall be entitled to claim and receive any award or payment from the condemning authority expressly granted for the taking of Lessee's personal property, the interruption of its business and moving expenses, but only if such claim or award does not adversely affect or interfere with the prosecution of Lessor's claim for the Taking. Lessee shall promptly send Lessor copies of all correspondence and pleadings relating to any such claim.

C. In case of a temporary use of all or any part of the Premises by a Taking ("Temporary Taking"), this Lease shall remain in full force and effect without any reduction of Base Annual Rental, Additional Rent or any other sum payable hereunder. Except as provided below, Lessee shall be entitled to the entire award for a Temporary Taking, whether paid by damages, rent or otherwise, unless the period of occupation and use by the condemning authorities shall extend beyond the date of expiration of this Lease, in which case the award made for such Taking shall be apportioned between Lessor and Lessee as of the date of such expiration. At the termination of any such Temporary Taking, Lessee will, at its own cost and expense and pursuant to the terms of Section 17 above, promptly commence and complete the restoration of the Premises; provided, however, Lessee shall not be required to restore the Premises if the Lease Term shall expire prior to, or within one year after, the date of termination of the

UNOFFICIAL COPY

Temporary Taking, and in such event Lessor shall be entitled to recover all damages and awards arising out of the failure of the condemning authority to repair and restore the Premises at the expiration of such Temporary Taking.

D. In the event of a Taking of less than all of the Premises for other than a temporary use ("Partial Taking") or of damage or destruction to all or any part of the Premises, all awards, compensation or damages shall be paid to Lessor, and Lessor shall have the option to (i) terminate this Lease by notifying Lessee within 60 days after Lessee gives Lessor notice of such damage or destruction or that title has vested in the taking authority or (ii) continue this Lease in effect, which election may be evidenced by either a notice from Lessor to Lessee or Lessor's failure to notify Lessee that Lessor has elected to terminate this Lease within such 60-day period. Lessee shall have a period of 60 days after Lessor's notice that it has elected to terminate this Lease during which to elect to continue this Lease on the terms herein provided. If Lessee does not elect to continue this Lease or shall fail during such 60-day period to notify Lessor of Lessee's intent to continue this Lease, then this Lease shall terminate as of the last day of the month during which such period expired. Lessee shall then immediately vacate and surrender the Premises, all obligations of either party hereunder shall cease as of the date of termination (provided, however, Lessee's obligations to Lessor under Section 18 and Lessee's obligations to pay Base Annual Rental, Additional Rent and all other sums (whether payable to Lessor or to a third-party) accruing under this Lease prior to the date of termination shall survive such termination) and Lessor may retain all such awards, compensation or damages. If Lessor elects not to terminate this Lease, or if Lessor elects to terminate this Lease but Lessee elects to continue this Lease, then this Lease shall continue in full force and effect on the following terms: (i) all Base Annual Rental, Additional Rent and other sums and obligations due under this Lease shall continue unabated, and (ii) Lessee shall promptly commence and diligently prosecute restoration of the Premises to the same condition, as nearly as practicable, as prior to such partial condemnation, damage or destruction as approved by Lessor. Lessor shall promptly make available in installments as restoration progresses an amount up to but not exceeding the amount of any award, compensation or damages received by Lessor, upon request of Lessee accompanied by evidence reasonably satisfactory to Lessor that such amount has been paid or is due and payable and is properly a part of such costs and that Lessee has complied with the terms of Section 17 above in connection with the restoration. Lessor shall be entitled to keep any portion of such award, compensation or damages which may be in excess of the cost of restoration, and Lessee shall bear all additional costs, fees and expenses of such restoration in excess of the amount of any such award, compensation or damages.

E. Notwithstanding the foregoing, if at the time of any Taking or at any time thereafter Lessee shall be in default under this Lease and such default shall be continuing, Lessor is hereby authorized and empowered but shall not be obligated, in the name and on behalf of Lessee and otherwise, to file and prosecute Lessee's claim, if any, for an award on account of any Taking and to collect such award and apply the same, after deducting all costs, fees and expenses incident to the collection thereof, to the curing of such default and any other then existing default under this Lease.

21. **Inspection/Keys.** Provided Lessor gives Lessee 24 hour prior notice (except in cases of emergency, where no notice shall be required), Lessor and its authorized representatives shall have the right to enter the Premises or any part thereof and inspect the same and make photographic or other evidence concerning Lessee's compliance with the terms of this Lease. Lessee hereby waives any claim for damages for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises and any other loss occasioned by such entry. Lessee shall not be permitted to change the locks to the Premises without prior written approval by the Lessor.

22. **Default, Remedies and Measure of Damages.** A. Each of the following shall be an event of default under this Lease (each, an "Event of Default"):

(i) If any representation or warranty of Lessee set forth in this Lease is false in any material respect, or if Lessee renders any false statement or account;

(ii) If any rent or other monetary sum due under this Lease is not paid within ten days from the date when due; provided, however, notwithstanding the occurrence of such an Event of Default, Lessor shall not be entitled to exercise its remedies set forth below unless and until Lessor shall have given Lessee notice thereof and a period of five days from the delivery of such notice shall have elapsed without such Event of Default being cured;

(iii) If Lessee fails to pay, prior to delinquency, any taxes, assessments or other charges the failure of which to pay will result in the imposition of a lien against the Premises;

(iv) If Lessee becomes insolvent within the meaning of the Code, files or notifies Lessor that it intends to file a petition under the Code, initiates a proceeding under any similar law or statute relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts (collectively, hereinafter, an "Action"), becomes the subject of either a petition under the Code or an Action, or is not generally paying its debts as the same become due;

(v) If Lessee vacates or abandons the Premises;

UNOFFICIAL COPY

(vi) If Lessee fails to observe or perform any of the other covenants, conditions, or obligations of this Lease; provided, however, if any such failure does not involve the payment of any monetary sum, is not willful or intentional, does not place any rights or property of Lessor in immediate jeopardy, and is within the reasonable power of Lessee to promptly cure after receipt of notice thereof, all as determined by Lessor in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Lessor shall have given Lessee notice thereof and a period of 30 days shall have elapsed, during which period Lessee may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Lessor in its reasonable discretion, and Lessee is diligently pursuing a cure of such failure, then Lessee shall have a reasonable period to cure such failure beyond such 30-day period, which shall in no event exceed 90 days after receiving notice of the failure from Lessor. If Lessee shall fail to correct or cure such failure within such 90-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required;

(vii) If there is an "Event of Default" or a breach or default, after the passage of all applicable notice and cure or grace periods, under any other leases between Lessor or its affiliates and Lessee or its affiliates such shall be an Event of Default under this Lease;

(viii) If there is a breach or default, after the passage of all applicable notice and cure or grace periods or any of the other agreements with Lessor;

(ix) Intentionally Omitted; or

(x) If a final, nonappealable judgment is rendered by a court against Lessee which has a material adverse effect on the ability to conduct business at the Premises for its intended use, or which does not have a material adverse effect on the ability to conduct business at the Premises for its intended use.

B. Upon the occurrence of an Event of Default, with or without notice or demand, except the notice prior to default required under certain circumstances by subsection A above or such other notice as may be required by statute and cannot be waived by Lessee (all other notices being hereby waived) Lessor shall be entitled to exercise, at its option, concurrently, successively, or in any combination, all remedies available at law or in equity, including without limitation any one or more of the following:

(i) To terminate this Lease, whereupon Lessee's right to possession of the Premises shall cease and this Lease, except as to Lessee's liability, shall be terminated.

(ii) To reenter and take possession of the Premises, any or all personal property or fixtures of Lessee upon the Premises and, to the extent permissible, all franchises, licenses, area development agreements, permits and other rights or privileges of Lessee pertaining to the use and operation of the Premises and to expel Lessee and those claiming under or through Lessee, without being deemed guilty in any manner of trespass or becoming liable for any loss or damage resulting therefrom, without resort to legal or judicial process, procedure or action. No notice from Lessor hereunder or under a forcible entry and detainer statute or similar law shall constitute an election by Lessor to terminate this Lease unless such notice specifically so states. If Lessee shall, after default, voluntarily give up possession of the Premises to Lessor, deliver to Lessor or its agents the keys to the Premises, or both, such actions shall be deemed to be in compliance with Lessor's rights and the acceptance thereof by Lessor or its agents shall not be deemed to constitute a termination of the Lease. Lessor reserves the right following any reentry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate as specified in said notice.

(iii) To seize all personal property or fixtures upon the Premises which Lessee owns or in which it has an interest, in which Lessor shall have a landlord's lien and/or security interest, and to dispose thereof in accordance with the laws prevailing at the time and place of such seizure or to remove all or any portion of such property and cause the same to be stored in a public warehouse or elsewhere at Lessee's sole expense, without becoming liable for any loss or damage resulting therefrom and without resorting to legal or judicial process, procedure or action.

(iv) To bring an action against Lessee for any damages sustained by Lessor or any equitable relief available to Lessor.

(v) To relet the Premises or any part thereof for such term or terms (including a term which extends beyond the original Lease Term), at such rentals and upon such other terms as Lessor, in its sole discretion, may determine, with all proceeds received from such reletting being applied to the rental and other sums due from Lessee in such order as Lessor, may, in its sole discretion, determine, which other sums include, without limitation, all repossession costs, brokerage commissions, attorneys' fees and expenses, employee expenses, alteration, remodeling and repair costs and

UNOFFICIAL COPY

expenses of preparing for such reletting. Except to the extent required by applicable law, Lessor shall have no obligation to relet the Premises or any part thereof and shall in no event be liable for refusal or failure to relet the Premises or any part thereof, or, in the event of any such reletting, for refusal or failure to collect any rent due upon such reletting, and no such refusal or failure shall operate to relieve Lessee of any liability under this Lease or otherwise to affect any such liability. Lessor reserves the right following any such reentry and/or reletting to exercise its right to terminate this Lease by giving Lessee written notice thereof, in which event this Lease will terminate as specified in said notice.

(vi) To accelerate and recover from Lessee all rent and other monetary sums due and owing and scheduled to become due and owing under the Lease both before and after the date of such breach for the entire original scheduled Lease Term.

(vii) The prevailing party may recover from the non-prevailing party all costs and expenses, including reasonable attorneys' fees, court costs, expert witness fees, costs of tests and analyses, travel and accommodation expenses, deposition and trial transcripts, copies and other similar costs and fees, paid or incurred by Lessor as a result of such breach, regardless of whether or not legal proceedings are actually commenced.

(viii) To immediately or at any time thereafter, and with or without notice, at Lessor's sole option but without any obligation to do so, correct such breach or default and charge Lessee all costs and expenses incurred by Lessor therein. Any sum or sums so paid by Lessor, together with interest at the then existing maximum legal rate, but not higher than 18% per annum, shall be deemed to be additional rent hereunder and shall be immediately due from Lessee to Lessor. Any such acts by Lessor in correcting Lessee's breaches or defaults hereunder shall not be deemed to cure said breaches or defaults or constitute any waiver of Lessor's right to exercise any or all remedies set forth herein.

(ix) To immediately or at any time thereafter, and with or without notice, except as required herein, set off any money of Lessee held by Lessor under this Lease against any sum owing by Lessee.

(x) To seek any equitable relief available to Lessor, including, without limitation, the right of specific performance.

All powers and remedies given by this Section to Lessor, subject to applicable law, shall be cumulative and not exclusive of one another or of any other right or remedy or of any other powers and remedies available to Lessor under this Lease or the Sale-Leaseback Agreement, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of Lessee contained in this Lease, and no delay or omission of Lessor to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any other or subsequent Event of Default or impair any rights or remedies consequent thereto. Every power and remedy given by this Section or by law to Lessor may be exercised from time to time, and as often as may be deemed expedient, by Lessor, subject at all times to Lessor's right in its sole judgment to discontinue any work commenced by Lessor or change any course of action undertaken by Lessor.

23. **Mortgage, Subordination, Nondisturbance and Attornment.** Lessor's interest in this Lease and/or the Premises shall not be subordinate to any encumbrances placed upon the Premises by or resulting from any act of Lessee, and nothing herein contained shall be construed to require such subordination by Lessor. Lessee shall keep the Premises free from any liens for work performed, materials furnished or obligations incurred by Lessee. EXCEPT AS OTHERWISE CONSENTED TO BY LESSOR PURSUANT TO SECTION 27, NOTICE IS HEREBY GIVEN THAT LESSEE IS NOT AUTHORIZED TO PLACE OR ALLOW TO BE PLACED ANY LIEN, MORTGAGE, DEED OF TRUST OR ENCUMBRANCE OF ANY KIND UPON ALL OR ANY PART OF THE PREMISES OR LESSEE'S LEASEHOLD INTEREST THEREIN, AND ANY SUCH PURPORTED TRANSACTION SHALL BE VOID. FURTHERMORE, ANY SUCH PURPORTED TRANSACTION SHALL BE DEEMED A TORTIOUS INTERFERENCE WITH LESSOR'S RELATIONSHIP WITH LESSEE AND LESSOR'S FEE OWNERSHIP OF THE PREMISES.

This Lease at all times shall automatically be subordinate to the lien of any and all ground leases, mortgages and trust deeds now or hereafter placed upon the Premises by Lessor, and Lessee covenants and agrees to execute and deliver, upon demand, such further instruments subordinating this Lease to the lien of any or all such ground leases, mortgages or trust deeds as shall be desired by Lessor, or any present or proposed mortgagees or trustees under trust deeds, upon the condition that Lessee shall have the right to remain in possession of the Premises under the terms of this Lease, notwithstanding any default in any or all such mortgages or trust deeds, or after foreclosure thereof, so long as Lessee is not in default under any of the covenants, conditions and agreements contained in this Lease.

If any mortgagee or trustee elects to have this Lease and the interest of Lessee hereunder be superior to any such interest or right and evidences such election by notice given to Lessee, then this Lease and the interest of Lessee hereunder shall be deemed superior to any such mortgage or trust deed, whether this Lease was executed before or after such mortgage or trust deed and in that

UNOFFICIAL COPY

event such mortgagee or trustee shall have the same rights with respect to this Lease as if it had been executed and delivered prior to the execution and delivery of the mortgage or trust deed and has been assigned to such mortgagee or trustee.

Although the foregoing provisions shall be self-operative and no future instrument of subordination shall be required, upon request by Lessor, Lessee shall execute and deliver whatever instruments may be required for such purposes, and in the event Lessee fails so to do within 10 days after demand, Lessee does hereby make, constitute and irrevocably appoint Lessor as its agent and attorney-in-fact and in its name, place and stead so to do, which appointment shall be deemed coupled with an interest.

In the event any collateral assignee or purchaser at a foreclosure sale acquires title to the Premises pursuant to the exercise of any remedy provided for in the collateral assignment, mortgage or trust deed or otherwise, Lessee shall attorn to such purchaser and recognize such purchaser as Lessor under this Lease, which shall continue in full force and effect as a direct lease between such purchaser and Lessee. The foregoing provision shall be self operative and effective without the execution of any further instruments.

Lessee shall give written notice to any lender of Lessor having a recorded lien upon the Premises or any part thereof of which Lessee has been notified of any breach or default by Lessor of any of its obligations under this Lease and give such lender at least 60 days beyond any notice period to which Lessor might be entitled to cure such default before Lessee may exercise any remedy with respect thereto. Upon request by Lessor, Lessee shall also provide Lessee's most recent audited financial statements to Lessor or any such lender and certify the continuing accuracy of such financial statements in such manner as Lessor or such lender may request.

24. **Estoppel Certificate.** A. At any time, and from time to time, Lessee agrees, promptly and in no event later than 10 days after a request from Lessor, to execute, acknowledge and deliver to Lessor or any present or proposed mortgagee or purchaser designated by Lessor a certificate in the form supplied by Lessor, certifying: (i) that Lessee has accepted the Premises (or, if Lessee has not done so, that Lessee has not accepted the Premises, and specifying the reasons therefore); (ii) that this Lease is in full force and effect and has not been modified (or if modified, setting forth all modifications), or, if this Lease is not in full force and effect, the certificate shall so specify the reasons therefore; (iii) the commencement and expiration dates of the Lease Term and the terms of any extension options of Lessee; (iv) the date to which the rentals have been paid under this Lease and the amount thereof then payable; (v) whether there are then any existing defaults by Lessor in the performance of its obligations under this Lease, and, if there are any such defaults, specifying the nature and extent thereof; (vi) that no notice has been received by Lessee of any default under this Lease which has not been cured, except as to defaults specified in the certificate; (vii) the capacity of the person executing such certificate, and that such person is duly authorized to execute the same on behalf of Lessee; and (viii) any other information reasonably requested by Lessor, or its present or proposed purchaser or mortgagee.

B. If Lessee shall fail or refuse to sign a certificate in accordance with the provisions of this Section within 10 days following a request by Lessor, Lessee irrevocably constitutes and appoints Lessor as its attorney-in-fact to execute and deliver the certificate to any such third party, it being stipulated that such power of attorney is coupled with an interest and is irrevocable and binding.

25. **Assignment.** Lessor shall have the right to sell or convey the Premises subject to this Lease or to assign its right, title and interest as Lessor under this Lease in whole or in part. In the event of any such sale or assignment other than a security assignment, Lessee shall attorn to such purchaser or assignee and Lessor shall be relieved, from and after the date of such transfer or conveyance, of liability for the performance of any obligation of Lessor contained herein, except for obligations or liabilities accrued prior to such assignment or sale.

Lessee acknowledges that Lessor has relied both on the business experience and creditworthiness of Lessee and upon the particular purposes for which Lessee intends to use the Premises in entering into this Lease. Without the consent of Lessor (i) Lessee shall not assign, transfer, convey, pledge or mortgage this Lease or any interest therein, whether by operation of law or otherwise; (ii) no interest in Lessee which is a corporation, partnership, limited liability company or other form of entity shall be assigned, transferred, conveyed, pledged or mortgaged, whether by operation of law or otherwise, including, without limitation, a dissolution of Lessee, and if Lessee is a corporation, a transfer (by one or more transactions) of a majority of the voting stock of Lessee, or if Lessee is a partnership, a transfer of the controlling interest in Lessee (including the admission of new partners or withdrawal of existing partners having a controlling interest), regardless of whether the transfer is made by one or more transactions, or whether one or more persons hold the controlling interest prior to the transfer or afterwards; and (iii) Lessee shall not sublet all or any part of the Premises. It is expressly agreed that Lessor may withhold or condition such consent based upon such matters as Lessor may in its reasonable discretion determine, including, without limitation, the experience and creditworthiness of any assignee, the assumption by any assignee of all of Lessee's obligations hereunder by undertakings enforceable by Lessor, payment to Lessor of any rentals owing under a sublease which are in excess of the rentals owing hereunder, the transfer to any assignee of all necessary licenses and franchises to continue operating the Premises for the purposes herein provided, receipt of such representations and warranties from any assignee as Lessor may request, including such matters as its organization, existence, good standing and finances and other matters, whether or not similar in kind. At the time of any assignment of this Lease which is

UNOFFICIAL COPY

approved by Lessor, the assignee shall assume all of the obligations of Lessee under this Lease pursuant to Lessor's standard form of assumption agreement. No such assignment nor any subletting of the Premises shall relieve Lessee of their obligations respecting this Lease. Any assignment, transfer, conveyance, pledge or mortgage in violation of this paragraph shall be voidable at the sole option of Lessor.

26. **Notices.** All notices, consents, approvals or other instruments required or permitted to be given by either party pursuant to this Lease shall be in writing and given by (i) express overnight delivery service or (ii) certified mail, return receipt requested, and shall be deemed to have been delivered upon (a) the next business day, if delivered by express overnight delivery service, or (b) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Lessee: Shree Schiller Park, Inc.
4111-41 No. Mannheim Road
Schiller Park, Illinois 60176
Attn: Mr. Ashok Pandya

If to Lessor: O'Hare Shell Partners, LLC
4111-41 No. Mannheim Road
Schiller Park, Illinois 60176

Copy to: BRIAN FLISK
P.O. Box 5542
Chicago, Illinois 60680

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above.

27. **Holding Over.** If Lessee remains in possession of the Premises after the expiration of the term hereof, Lessee, at Lessor's option and within Lessor's sole discretion, may be deemed a tenant on a month-to-month basis and shall continue to pay rentals and other sums in the amounts herein provided, except that the Base Monthly Rental shall be automatically 150% of the current Base Monthly Rental, and to comply with all the terms of this Lease; provided that nothing herein nor the acceptance of rent by Lessor shall be deemed a consent to such holding over. Lessee shall defend, indemnify, protect and hold Lessor harmless for, from and against any and all claims, losses and liabilities for damages resulting from Lessee's failure to surrender possession upon the expiration of the Lease Term, including, without limitation, any claims made by any succeeding lessee.

28. **Landlord's Lien/Security Interest.** Lessee agrees that Lessor shall have a landlord's lien, and additionally hereby separately grants to Lessor a first and prior security interest, in, on and against all personal property, appliances, furniture and equipment of Lessee from time to time situated on or used in connection with the Premises, which lien and security interest shall secure the payment of all rental and other charges payable by Lessee to Lessor under the terms hereof and all other obligations of Lessee to Lessor under this Lease. Lessee further agrees to execute and deliver to Lessor from time to time such financing statements and other documents as Lessor may then deem appropriate or necessary to perfect and maintain said lien and security interest, and expressly acknowledges and agrees that, in addition to any and all other rights and remedies of Lessor whether hereunder or at law or in equity, in the event of any default of Lessee hereunder, Lessor shall have any and all rights and remedies granted a secured party under the Uniform Commercial Code then in effect in the State in which the Premises is located. If Lessee shall fail for any reason to execute any such financing statement or document within 10 days after Lessor's request therefore, Lessor shall have the right to execute the same as attorney-in-fact of Lessee, coupled with an interest, for, and on behalf, and in the name of Lessee. Lessee covenants to promptly notify Lessor of any changes in Lessee's name and/or organizational structure which may necessitate the execution and filing of additional financing statements (provided, however, the foregoing shall not be construed as Lessor's consent to such changes).

29. **Removal of Lessee's Property.** At the expiration of the Lease Term, and if Lessee is not then in breach hereof, Lessee must remove from the Premises all personal property belonging to Lessee. Lessee shall repair any damage caused by such removal and shall leave the Premises broom clean and in good and working condition and repair inside and out. Any property of Lessee left on the Premises on the tenth day following the expiration of the Lease Term shall automatically and immediately become the property of Lessor. In the event Lessee fails to remove its personal property from the Premises, Lessor may remove said personal property at Lessee's sole cost and expense and said obligation shall survive the termination of this Lease.

30. **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, acts of God, enemy or hostile governmental action, civil commotion, fire or other casualty beyond the control of the party obligated to perform shall excuse the

UNOFFICIAL COPY

performance by such party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to rental and other monies to be paid by Lessee pursuant to this Lease.

31. **Document Review.** In the event Lessee makes any request upon Lessor requiring Lessor or its attorneys to review and/or prepare (or cause to be reviewed and/or prepared) any document or documents in connection with or arising out of or as a result of this Lease, then, except as expressly stated elsewhere herein, Lessee shall reimburse Lessor or its designee promptly upon Lessor's demand therefore a reasonable processing and review fee in an amount not less than \$500.00 for each such request.
32. **Time Is of the Essence.** Time is of the essence with respect to each and every provision of this Lease in which time is a factor.
33. **Lessor's Liability.** Notwithstanding anything to the contrary provided in this Lease, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Lease by Lessor, that (i) there shall be absolutely no personal liability on the part of Lessor, its successors or assigns and its officers, directors, employees and agents to Lessee with respect to any of the terms, covenants and conditions of this Lease, (ii) Lessee waives all claims, demands and causes of action against Lessor's officers, directors, employees and agents in the event of any breach by Lessor of any of the terms, covenants and conditions of this Lease to be performed by Lessor, and (iii) Lessee shall look solely to Lessor's interest in the Premises for the satisfaction of each and every remedy of Lessee in the event of any breach by Lessor of any of the terms, covenants and conditions of this Lease to be performed by Lessor, or any other matter in connection with this Lease or the Premises.
34. **Consent of Lessor.** Unless specified otherwise herein, Lessor's consent to any request of Lessee may be conditioned or withheld in Lessor's sole discretion. Lessor shall have no liability for damages resulting from Lessor's failure to give any consent, approval or instruction reserved to Lessor, Lessee's sole remedy in any such event being an action for injunctive relief.
35. **Waiver and Amendment.** No provision of this Lease shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion. No acceptance by Lessor of an amount less than the monthly rent and other payments stipulated to be due under this Lease shall be deemed to be other than a payment on account of the earliest such rent or other payments then due or in arrears nor shall any endorsement or statement on any check or letter accompanying any such payment be deemed a waiver of Lessor's right to collect any unpaid amounts or an accord and satisfaction.
36. **Successors Bound.** Except as otherwise specifically provided herein, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of the respective heirs, successors, executors, administrators and assigns of each of the parties hereto.
37. **No Merger.** The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not result in a merger of Lessor's and Lessee's estates, and shall, at the option of Lessor, either terminate any or all existing subleases or subtenancies, or operate as an assignment to Lessor of any or all of such subleases or subtenancies.
38. **Captions.** Captions are used throughout this Lease for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.
39. **Severability.** The provisions of this Lease shall be deemed severable. If any part of this Lease shall be held unenforceable by any court of competent jurisdiction, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.
40. **Characterization.** A. It is the intent of the parties hereto that the business relationship created by this Lease and any related documents is solely that of a long-term commercial lease between landlord and tenant and has been entered into by both parties in reliance upon the economic and legal bargains contained herein.
41. **Easements.** During the Lease Term Lessor shall have the right to grant utility easements on, over, under and above the Premises without the prior consent of Lessee, provided that such easements will not materially interfere with Lessee's long-term use of the Premises.
42. **Bankruptcy.** A. As a material inducement to Lessor executing this Lease, Lessee acknowledges and agrees that Lessor is relying upon (i) the financial condition and specific operating experience of Lessee and Lessee's obligation to use the Premises, (ii) Lessee's timely performance of all of its obligations under this Lease notwithstanding the entry of an order for relief under the Code for Lessee and (iii) all defaults under the Lease being cured promptly and the Lease being assumed within 60 days

UNOFFICIAL COPY

of any order for relief entered under the Code for Lessee, or the Lease being rejected within such 60 day period and the Premises surrendered to Lessor.

B. No provision of this Lease shall be deemed a waiver of Lessor's rights or remedies under the Code or applicable law to oppose any assumption and/or assignment of this Lease, to require timely performance of Lessee's obligations under this Lease, or to regain possession of the Premises as a result of the failure of Lessee to comply with the terms and conditions of this Lease or the Code.

C. Notwithstanding anything in this Lease to the contrary, all amounts payable by Lessee to or on behalf of Lessor under this Lease, whether or not expressly denominated as such, shall constitute "rent" for the purposes of the Code.

D. For purposes of this Section addressing the rights and obligations of Lessor and Lessee in the event that an Action is commenced, the term "Lessee" shall include Lessee's successor in bankruptcy, whether a trustee, Lessee as debtor in possession or other responsible person.

43. *No Copy.* No contractual or other rights shall exist between Lessor and Lessee with respect to the Premises until both have executed and delivered this Lease, notwithstanding that deposits may have been received by Lessor and notwithstanding that Lessor may have delivered to Lessee an unexecuted copy of this Lease. The submission of this Lease to Lessee shall be for examination purposes only, and does not and shall not constitute a reservation of or an option for Lessee to lease or otherwise create any interest on the part of Lessee in the Premises.

44. *Other Documents.* Each of the parties agrees to sign such other and further documents as may be necessary or appropriate to carry out the intentions expressed in this Lease.

45. *Attorneys' Fees.* In the event of any judicial or other adversarial proceeding between the parties concerning this Lease, to the extent permitted by law, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and other costs in addition to any other relief to which it may be entitled. In addition, Lessor shall, upon demand, be entitled to all attorneys' fees and all other costs incurred in the preparation and service of any notice or demand hereunder, whether or not a legal action is subsequently commenced. References in this Lease to Lessor's attorneys' fees and/or costs shall mean both the fees and costs of independent counsel retained by Lessor with respect to the matter and the fees and costs of Lessor's in-house counsel incurred in connection with the matter.

46. *Entire Agreement.* This Lease and any other instruments or agreements referred to herein constitute the entire agreement between the parties with respect to the subject matter hereof, and there are no other representations, warranties or agreements except as herein provided. Without limiting the foregoing, Lessee specifically acknowledges that neither Lessor nor any agent, officer, employee or representative of Lessor has made any representation or warranty regarding the projected level of Lessee's gross sales or the projected profitability of the business to be conducted on the Premises. Furthermore, Lessee acknowledges that Lessor did not prepare or assist in the preparation of any of the projected figures used by Lessee in analyzing the economic viability and feasibility of the business to be conducted by Lessee at the Premises.

47. *Forum Selection; Jurisdiction; Venue; Choice of Law.* For purposes of any action or proceeding arising out of this Lease, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State of Illinois.

48. *Counterparts.* This Lease may be executed in one or more counterparts, each of which shall be deemed an original.

49. *Joint and Several Liability.* If Lessee consists of more than one individual or entity, each such individual and/or entity shall be jointly and severally liable for all obligations of Lessee under this Lease.

50. *Memorandum of Lease.* At Lessor's request, Lessor and Lessee will execute Lessor's standard form memorandum of lease in recordable form.

51. *No Brokerage.* Lessor and Lessee represent and warrant to each other that they have had no conversation or negotiations with any broker concerning the leasing of the Premises. Each of Lessor and Lessee agrees to protect, indemnify, save and keep harmless the other, against and from all liabilities, claims, losses, costs, damages and expenses, including attorneys' fees, arising out of, resulting from or in connection with their breach of the foregoing warranty and representation.

52. *Intentionally Omitted.*

UNOFFICIAL COPY

IN WITNESS WHEREOF, Lessor and Lessee have entered into this Lease as of the date first above written.

LESSOR:

O'Hare Shell Partners LLC

By [Signature]
Printed Name STEVEN I. WATZMAN
Its MANAGER

LESSEE:

Shree Schiller Park, Inc

By [Signature]
Printed Name ASHOK A. PAROYA
Its PRESIDENT

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Guaranty

In order to induce O'Hare Sell Partners L.L.C. ("lessor"), to enter into that certain lease ("the lease") captioned "LEASE" dated 4-30-09, 2009, of the real property located at 4111-41 No Mannheim Road Schiller Park, Illinois, with parties (referred to herein as the "undersigned") do hereby absolutely and unconditionally, jointly and severally, guarantee to Lessor, its successors and assigns, the full performance and observance of all covenants, conditions, and agreements provided to be performed and observed by Lessee in the lease, including, without limitation, the prompt payment of the rent and all other amounts provided in the lease to be paid by Lessee, and all obligations of the Lessee under any parking agreement, storage agreement, work agreement or other agreement between the parties now or hereafter, entered in connection with the lease or the premises the under. Each capitalized term used as a defined term in this guaranty (the "Guaranty") but not otherwise defined in this guaranty shall have the same meaning ascribed to such term in the lease.

The undersigned hereby waives acceptance and notice of acceptance of this Guaranty. Further, the undersigned expressly agrees that his obligations hereunder shall in no way be terminated, affected or impaired by reason of the granting by Lessor of any indulgences to renewal, modification or extension of the Lease whether or not the undersigned shall have received any notice of or consented to such renewal, modifications or extension. The undersigned further agrees that his liability hereunder shall be primary, and that in any right of action which shall accrue to Lessor under the Lease, Lessor may, at its option, proceed against the undersigned and Lessee, Jointly or severally, and may proceed the undersigned without having commenced any action an action against or having obtained any judgment against Lessee. It is agreed that the failure of the Lessor to insist in any one or more instances upon strict performance or observance of any of the terms, provisions, or covenant or right, but the same shall continue and remain in full force and effect. Receipt by Lessor of rent or other payments with knowledge of the breach of any provision of the Lease shall not be deemed a waiver of such breach or of this Guaranty. No assignments or other transfers of the Lease, or any interest therein, shall operate to extinguish or diminish the liability of the undersigned hereunder. If the law2s applied by the jurisdiction applied by the jurisdiction in which this Guaranty to be valid or enforceable, then such rights shall be deemed a part hereof, but only to the extent necessary to make this Guaranty valid and enforceable. If Lessor obtains a judgment against the undersigned by reason of breach of this Guaranty, the undersigned shall pay all reasonable attorneys' fees and cost incurred in any collection or attempted collection of the obligations hereby guaranteed or in enforcing this Guaranty. This Guaranty shall be binding upon and inure to the benefit of the undersigned and its respective heirs, administrators, executors, successors and assigns.

In Witness Whereof, this Guaranty is executed contemporaneously with the lease this 30 day of April, 2009.

GUARANTOR: Ashok Pandya

Address

Ashok M. Pandya

1045 ANTIQUE LANE
NORTHBROOK, ILL 60062

Social Security Number

347-66-3793