

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE ("Agreement") is made between Seller and Purchaser, herein identified in Sections 1(b) and 1(c) hereof, respectively, and constitutes an Agreement between the parties with respect to the Property, herein identified in Section 1(d) hereof, on the terms and conditions and with and subject to the covenants and agreements of the parties herein set forth.

WITNESSETH:

For and in consideration of the mutual covenants and premises herein contained, the parties hereto hereby agree as follows:

1. **Basic Provisions.** The following are certain provisions which are part of, and, in certain instances, referred to in subsequent provisions hereof:
 - a) **Effective Date:** The date of execution set forth under the signature block of the last party hereof to execute this Agreement. However, if changes are made by addendum or upon this Agreement, then the Effective Date shall be the last date that any party executes an addendum or initials and accepts any written changes.
 - b) **Seller: City of South Euclid, Ohio**, whose address is 1349 South Green Road, South Euclid, OH 44121.
 - c) **Purchaser: Ohio Retail Stores, LLC**, an Ohio limited liability company, whose address is PO Box 1787, Grand Rapids, Michigan 49501.
 - d) **Property:** a parcel of land located in the city of South Euclid, Cuyahoga County, OH, consisting of approximately 1.41 acres, as approximately outlined in red on Exhibit 1 attached hereto and made a part hereof.
 - e) **Purchase Price:** \$2,350,000
 - f) **Earnest Money Deposit:** \$25,000
 - g) **Title Insurer:** The Company issuing the Title Commitment and Owner's Policy of Title Insurance.
 - h) **Title Commitment:** a commitment for a standard ALTA owner's policy of title insurance from the Title Insurer committing the Title Insurer to insure Purchaser as the owner of marketable fee simple, title to the Property, in the full amount of the Purchase Price, subject to Permitted Exceptions (as hereinafter defined).
 - i) **Approval Period: One hundred fifty (150) days**, commencing upon the Purchaser's receipt of the Survey provided by Seller pursuant to Paragraph 5, and expiring at 5:00 p.m. Eastern Time on the last day of such period.
 - j) **Intended Use:** The Property is intended to be utilized for the retail and wholesale of unprepared food items, food related warehouse type clubpack items and restaurant supplies.
 - k) **Duration of Offer:** If this Agreement is not accepted and executed by Seller within ten (10) days after the date set forth below the signature block of the Purchaser, this Agreement shall become null and void and of no further force or effect and all earnest money deposits shall be returned to Purchaser.
 - l) **Development Property:** The Development Property is that parcel of property owned by Seller, of which the Property is a part, which parcel consists of approximately 12.10 acres and which Seller intends to develop into commercial sites.
2. **Sale and Conveyance.** On the terms and subject to the conditions set forth in this Agreement, Seller agrees to sell and convey to Purchaser, and Purchaser agrees to buy from Seller, the Property for the Intended Use. The Property conveyed and Seller's Agreement shall include:
 - a) All rights of Seller in and to all air, mineral and riparian rights, and all tenements, hereditaments, privileges and appurtenances belonging or in any way appertaining thereto;
 - b) All easements, whether or not recorded, benefiting the Property, but only to the extent of Seller's interest, if any.
 - c) All improvements and personal property on the Property unless required to be repaired by Seller as stated herein.
 - d) Seller agrees that within the REA (defined below), Seller will impose restrictions upon the Development Property, which shall run with the land, precluding the future owners of parcels within the Development Property from utilizing a parcel for the Intended Use (other than the Property) if the Property is purchased by Ohio Retail Stores, LLC, its parent or either of their affiliates which will use the Property for the Intended Use, but only until such time as Ohio Retail Stores, LLC, its parent or either of their affiliates are no longer operating a business on the Property for the Intended Use. In addition, Seller shall include in the REA covenants that impose restrictions, restricting the size of a building which may be constructed on a parcel near the north corner of Cedar and the western most traffic signalized access to the Development Property to 5000 square

feet and which will provide that the Development Property will not be used for pornographic or adult sexual interest uses.

- e) Seller agrees to provide Purchaser with a draft Reciprocal Easement and Access Agreement ("REA") within 30 days of the Effective Date. The REA shall set forth the framework by which the Development Property will operate, including provisions to create easements for ingress, egress, signage, parking and utilities, any required party walls and the restrictions required by this Agreement, including those set forth at paragraphs 2(d), (e) and (f). The REA once reasonably acceptable to Seller, Purchaser and the owner of adjacent property will be a Permitted Exception. Seller agrees, with respect to the area bounded by the westernmost traffic signalized access to the Development Property and the Property itself, to obtain Purchaser's approval of a site plan, including building orientation and size, parking, signs, elevations, ingress, egress, and location of trash dumpsters, which shall be followed in connection with any other construction upon said parcels, but such approval shall not be unreasonably withheld, delayed, or conditioned.

f) Purchaser shall acquire the Property subject to all matters described as "Permitted Exceptions pursuant to this Section 2 and Section 5 and Section 6 hereof.

Purchaser agrees to execute at Closing a covenant agreeing that in the event that Purchaser has not undertaken construction of the Property as of March 15, 2012 or thereafter fails to complete construction within 35 weeks after construction started, Seller shall have the right to repurchase the Property at the Purchase Price, plus or minus the adjustments set forth in this Agreement

3. **Purchase Price.** The entire Purchase Price, plus or minus the adjustments set forth herein, shall be due and payable at the consummation of the transaction contemplated herein ("Closing") in immediately available funds by means of federal wire transfer or certified check.
4. **Deposit.** On or before ten (10) business days following the date on which Purchaser receives from Seller two fully-executed copies of this Agreement, Purchaser shall deliver to the Title Company the Earnest Money Deposit. The Earnest Money Deposit, and any interest thereon which shall be considered a part of the Earnest Money Deposit, shall be retained by the Title Company, applied to the Purchase Price or refunded to Purchaser or otherwise disposed of as provided for in this Agreement. In the event of Closing, Purchaser shall receive a credit against the Purchase Price for the Earnest Money Deposit.
5. **Survey.** Seller shall, within thirty (30) days after the Effective Date, at Seller's cost, deliver to Purchaser a current staked and topographical survey ("Survey") of the Property certified to Purchaser. The Survey shall include spot elevations on a 25 foot grid to and including 25 feet outside the Property and all street elevations. The Survey shall also include utility locations, depths and sizes, easements, restrictions encumbrances and matters benefiting the Property, other improvements, encroachments and other matters then currently of record. Purchaser shall notify Seller of any matters set forth on the Survey which would render title unmarketable and/or would hinder the development of the Property for the Intended Use, as determined in Purchaser's commercially reasonable judgment, and Seller shall have thirty (30) days after receipt of such notice to cure such defects. All matters set forth on the Survey which are not objected to by Purchaser within thirty (30) days after the receipt of the last of (a) the Title Commitment and all underlying documents; and (b) the Survey shall be deemed accepted by Purchaser and shall be "Permitted Exceptions" hereunder. If Seller is unable to cure such defects within such thirty (30) day period, Purchaser shall have the rights ascribed to Purchaser herein in the event of a failure by Seller to cure a title defect as set forth in Section 6 hereof. Purchaser agrees to reimburse Seller for one half (1/2) the cost of the Survey at Closing, up to a maximum of \$2,000.
6. **Evidence of Title.** Within thirty (30) days of the Effective Date, Seller, at its own expense, shall obtain the Title Commitment, together with a copy of all recorded documents affecting the Property which constitute (or will at Closing constitute) encumbrances against the Property, other than the REA which will be recorded at Closing, exceptions to Seller's title or benefits to the Property and will deliver same to Purchaser. If the Title Commitment shall contain any encumbrances or exceptions which will interfere with marketability of the Property or hinder the development of the Property for the Intended Use, In Purchaser's commercially reasonable judgment, Purchaser shall notify Seller of such exceptions in the Title Commitment, and Seller shall have thirty (30) days from the date of such notification to eliminate such encumbrances or exceptions to the commercially reasonable satisfaction of Purchaser. With respect to any encumbrances or exceptions of which Seller is so notified, other than liens or encumbrances securing monetary obligations caused by Seller, Seller may cause such objections to be cured, but shall have no obligation to do so. Liens or encumbrances against the Property securing monetary obligations shall be paid off by Seller at the Closing. With respect to any other encumbrances or exceptions to which Purchaser may object, of which Seller is notified and which Seller does not eliminate within the aforesaid period, Purchaser shall elect within fifteen (15)

days of the expiration of Seller's aforesaid thirty (30) day period to eliminate such encumbrances or exceptions, either:

- a) to waive its objections to and accept title subject to such encumbrances or exceptions; or
- b) to rescind this Agreement, whereupon the Earnest Money Deposit shall be promptly returned to Purchaser, and this Agreement shall thereafter be of no further force or effect, except for those obligations expressly surviving hereunder.

Encumbrances or exceptions to title shown in the Title commitment to which Purchaser does not object, or which are otherwise allowed pursuant to this Agreement, including, but not limited to those shown or contemplated in the REA, or which are waived or accepted by Purchaser or any act of Purchaser which may or does encumber title or shall show on the Survey shall also be deemed "Permitted Exceptions". After the Closing, Seller shall pay for and cause to be delivered to Purchaser a policy of title insurance to be issued pursuant to the Title Commitment, with the full amount of the Purchase Price insuring marketable fee simple title in Purchaser, subject only to the Permitted Exceptions.

7. **Approval Period.**

- a) After the Effective Date and during the Approval Period, at its sole cost and expense, Purchaser, its agents and employees may conduct, or cause to be conducted, the following inspections, investigations, appraisals, evaluations and tests of the Property. It is expressly understood and agreed by Purchaser that notwithstanding anything contained herein to the contrary, promptly after Purchaser is satisfied with the results of (i), ii), v) and (vi) below, Purchaser, at its sole cost and expense, will use all diligent efforts, in accordance with stated procedure of the municipality, to obtain any and all site plan and building approvals necessary to construct a building with associated common areas that is architecturally compatible with the remainder of the proposed buildings of the Development Property. Entry onto the Property shall be at Purchaser's sole risk and expense, and shall only be permitted after submitting to Seller such insurance in forms and amounts as Seller shall determine is reasonable in order to permit such inspections, investigations, appraisals, evaluations and tests of the Property:
 - i) Seller and Purchaser agreeing upon the REA (and to be recorded on or prior to Closing) within the first ninety (90) days of the Approval Period.
 - ii) Seller providing to Purchaser, for its approval, which shall not be unreasonably withheld, delayed or conditioned, within the first sixty (60) days of the Approval Period, those drawings and specifications ("Construction Specifications") depicting and describing the Seller's Work as discussed at paragraph 15.
 - iii) Purchaser determining that the Property is properly zoned and that such zoning shall permit the construction and operation of the Intended Use.
 - iv) Purchaser applying for and receiving site plan approval or any other approvals necessary to utilize the Property for its Intended Use.
 - v) Purchaser determining and receiving related approvals that it shall be entitled to construct a freestanding sign upon the Property with no less than 60 square feet. Purchaser, at its sole cost and expense, shall be responsible for obtaining any variance necessary to obtain such signage.
 - vi) Purchaser determining that the soil and environmental conditions of the Property are satisfactory for the construction of the improvements to be used in connection with the Intended Use.
 - a) To the extent Seller has soil borings or environmental studies pertaining to the Property or Development Property, Seller shall provide copies of such studies to Purchaser within ten (10) days of the Effective Date.
 - b) Purchaser may order and pay for the cost of a Phase I environmental study of the Property by a contractor selected by Purchaser. If the Phase I report indicates any contamination, on the Property, then Purchaser shall have the right to terminate this Agreement by notifying Seller thereof during the Approval Period, in which event Seller shall return all monies deposited hereunder to Purchaser, this Agreement shall terminate, and the parties shall have no further liability to each other hereunder, except as expressly stated herein.
 - c) Purchaser may order and pay for the cost of a soil boring study of the Property by a contractor selected by Purchaser. If the soil boring report indicates that the Property can not be developed by using normal footings and Purchaser will incur additional costs to prepare the site for construction including the installation of pylons, then Purchaser shall have the right to terminate this Agreement by notifying Seller thereof during the Approval Period, in which event Seller shall return all monies deposited hereunder to Purchaser, this Agreement

shall terminate, and the parties shall have no further liability to each other hereunder, except as expressly stated herein.

- vii) Purchaser determining that there are (or will be by Closing) adequate and sufficient utilities, including, but not limited to water, sanitary sewer and storm water drainage capacity servicing the Property for the Intended Use.

Seller shall extend all reasonable cooperation to Purchaser, its agents, employees and contractors to facilitate such investigations and approvals. The provisions of Section 10 hereof and Section 7 shall apply during the Approval Period.

- b) In the event that Purchaser, in its sole discretion, is not satisfied with one or more of the contingencies described in subsection (a) above, Purchaser shall have the right to terminate this Agreement by notifying Seller thereof during the Approval Period, in which event Seller shall return all monies deposited hereunder to Purchaser, this Agreement shall terminate, and the parties shall have no further liability to each other hereunder, except as expressly stated herein as surviving. In the event that Purchaser fails to notify Seller of its termination of this Agreement within the Approval Period, Purchaser shall be deemed to have satisfied such condition.
- c) This Agreement is contingent upon Purchaser obtaining its approval by its Board of Directors during the first sixty (60) days of the Approval Period. If Purchaser is unable to obtain such approval, Purchaser shall have the right to terminate this Agreement by notifying Seller thereof within ten (10) days after such sixty (60) day period, in which event Seller shall return all monies deposited hereunder to Purchaser, this Agreement shall terminate, and the parties shall have no further liability to each other hereunder, except as expressly stated herein as surviving.
- d) In the event that Purchaser fails to notify Seller of its termination of this Agreement within the applicable period, Purchaser shall be deemed to have satisfied all conditions precedent to this Agreement.

In addition to the terms of Section 10 which also shall survive the expiration or termination of this Agreement, Purchaser hereby indemnifies, defends (with counsel reasonably acceptable to Seller) and holds harmless Seller against any loss, cost, claim or the like, including reasonable attorney's fees and court costs, arising out of Purchaser's or its agents or employees entry unto the Property or any other person or entity entering the Property at the request of Purchaser. The indemnity in this paragraph shall survive any termination or expiration of this Agreement and shall survive the Closing.

8. **Closing.**

- a) The Closing shall take place at the office of the Title Insurer or via escrow within ten (10) days after the last of the conditions precedent to Purchaser's and Seller's obligations, as set forth in paragraphs 5-7 of this Agreement, have been fulfilled, waived in writing or deemed satisfied hereunder, as the case may be.
- b) The purchase and sale of the Property shall be closed in the following manner:
 - i) Seller shall execute and deliver a warranty deed conveying the Property to Purchaser subject only to the Permitted Exceptions.
 - ii) Seller and Purchaser shall mutually execute and deliver to each other copies of a closing statement setting forth any customary adjustments, prorations and payments required by or among the parties pursuant to the terms of this Agreement.
 - iii) Seller shall execute an affidavit in form reasonably acceptable to Purchaser stating that Seller is not a "foreign person" pursuant to IRS Section 1445.
 - iv) Purchaser shall pay to Seller any net amounts due to be paid to Seller pursuant to this Agreement.
 - v) Seller shall deliver possession of the Property to Purchaser.
 - vi) Purchaser and Seller shall execute all other documents necessary to close, including an agreement regarding payment of taxes if the Property is part of a larger tax parcel at Closing and Seller and Purchaser agree that the Property can be conveyed as such notwithstanding the terms of this Agreement, the REA and, if required, an Escrow Agreement (as hereinafter defined) as contemplated by paragraph 15.
- c) Seller and Purchaser shall execute any and all other customary documents necessary to close the transaction or to comply with this Agreement.

9. **Prorations and Adjustments.** The following shall be paid and/or adjusted at Closing:

- a) All real estate taxes shall be prorated to the date of Closing as if taxes are paid in arrears. If applicable tax bills are not available for the year of Closing, then the prior year tax bills shall be utilized to prorate taxes. If, parties agree that notwithstanding the terms of this Agreement regarding Purchaser separately platting the Property, the tax bills include property in addition to the Property being sold, then Purchaser's prorated share of the tax bills shall be determined by

multiplying the tax bill which is subject to proration by a fraction, the numerator of which is the acreage of the Property and the denominator of which is the acreage included within the tax bill. If a separate tax bill is not issued for the property after Closing and before the next tax bill is issued, then the Seller shall pay such tax bills and seek reimbursement from the Purchaser for Purchaser's prorata share as determined by this paragraph.

- b) All utility charges and other charges related to Seller's ownership and/or use of the Property shall be paid by Seller to the date of Closing.
- c) Seller shall at or before the Closing pay in full all special assessments which become due and payable or a lien or both against the Property prior to the Closing, regardless of whether such assessments are payable in installments or, if payable in installments, whether or not all such installments have become due and payable.
- d) All conveyance fees and transfer taxes shall be paid by Purchaser and Seller, as appropriate, at Closing, in accordance with the local custom used in typical land transactions in the county and municipality, if any municipal transfer taxes are payable, where the Property is located.

10. **Entry.** During such periods of time as Purchaser is allowed to enter the Property pursuant to the terms of this Agreement, Purchaser shall take all steps necessary to protect the Property from damage to the Property. Purchaser shall promptly restore or cause to be restored that portion of the Property so damaged to the condition existing prior to such damage. Purchaser shall not permit any construction, mechanic's materialmen's or other lien to be filed against any of the Property as the result of any work, labor, service or materials performed or furnished, by, for or to Purchaser, its employees, agents and/or contractors. If any such lien shall at any time be filed against the Property, Purchaser shall, without expense to Seller, cause the same to be discharged of record by payment, bonds, order of a court of competent jurisdiction or otherwise, within thirty (30) days of the filing thereof.

11. **Assignment.** The Seller shall be allowed to assign this Agreement without the prior written consent of Purchaser which shall not be unreasonably withheld, delayed or conditioned. The Purchaser shall be entitled to assign its interest in this Agreement to any affiliated company, provided such company is either the parent of Ohio Retail Stores, LLC or is an affiliate of the parent or an affiliate of Ohio Retail Stores LLC, without the consent of Seller. All other transfers shall require the consent of Seller, which shall not be unreasonably withheld, delayed or conditioned. Upon such assignment, the assigning party shall be relieved of all responsibility and obligation under this Agreement, except as expressly stated as surviving herein, and the non-assigning party shall remain bound to all the terms and obligations of this Agreement.

12. **Default.**

- a) If Purchaser shall default in the performance of its obligations hereunder, and such default shall continue for a period of ten (10) days after notice thereof from Seller to Purchaser, then provided Seller is not then in default hereunder, Seller shall be entitled to terminate this Agreement by giving written notice thereof to Purchaser, whereupon Seller shall retain the Earnest Money Deposit as liquidated damages, and neither party shall have any further liability or obligation to the other, except as expressly stated as surviving herein.
- b) If Seller shall default in the performance of its obligations hereunder, and such default shall continue for a period of ten (10) days after notice thereof from Purchaser to Seller, then provided Purchaser is not then in default hereunder, Purchaser shall be entitled either: (i) to terminate this Agreement by giving written notice thereof to Seller, whereupon the Earnest Money Deposit shall be promptly returned to Purchaser; or (ii) to seek judgment against Seller for specific performance of this Agreement.

13. **Brokers.** Except as stated herein, Seller shall pay for all real estate brokerage charges and expenses which may be owed by either party in connection with this transaction and shall defend, indemnify and hold Purchaser harmless from all liability for brokerage commissions, finder's fees or the like arising in connection with the sale of the Property. Purchaser represents and warrants it has not used a broker in connection with this transaction.

14. **As Is Condition.**

- a) Seller represents and warrants that to the best of Seller's knowledge, (i) subject to any documents pertaining to the environmental cleanup discussed in the "No Further Action" letter obtained by Seller, the Property has been used and operated in compliance with all applicable federal, state and local laws and regulations related to air quality, water quality, waste disposal or management, hazardous or toxic substances, and the protection of health and the environment, (ii) Seller has not disposed of any hazardous or toxic substances on or in the Property and, to the best of Seller's knowledge, the Property and the groundwater beneath the Property are free from environmental

contamination of any kind, (iii) subject to any documents pertaining to the environmental cleanup discussed in the "No Further Action" letter obtained by Seller, the Property does not include any "underground storage tank," as that term is defined in the Hazardous Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act, and (iv) other than the existing storm and sanitary lines, which will be abandoned in place and filled, and a gas line which will be relocated, there are no operating or abandoned mines, septic tanks, wells or cisterns, caves or caverns and that there are no buried foundations, basements, concrete, bricks, wood, construction, demolition debris, landfill or any other refuse or debris. Such representations and warranties shall be deemed to have been made again by Seller as of the Closing date. Seller agrees to indemnify Purchaser and hold it harmless from and against any and all claims, demands, liabilities, costs, expenses, penalties, damages and losses, including, but not limited to, reasonable attorneys' fees, resulting from any misrepresentation or breach of the warranties set forth in this paragraph. The representations, warranties and covenants set forth in this paragraph shall survive the Closing.

- b) Except as specifically set forth at subparagraph (a) or elsewhere in this Agreement, Seller has not made and does not make any representation or warranty as to the physical condition of the Property or any other matter or thing affecting or relating to the Property, and Purchaser hereby expressly acknowledges and represents that no such other representations or warranties have been made or implied except as otherwise stated. Except as otherwise stated, Purchaser further agrees to take the Property in its physical condition as it existed on the Effective Date. Seller shall remain responsible for maintaining the Property after the Effective Date through the Closing date with reasonable wear and tear excepted. It is understood and agreed that all contemporaneous or prior representations, statements, understandings and agreements, oral or written, between the parties are merged in this Agreement, which fully and completely expresses the agreement of the parties, and that following the Approval Period, Purchaser is acquiring the Property after full investigation, neither party relying upon any statement or representation made by the other which is not embodied in this Agreement.

15. Seller's and Purchaser's Covenants.

- a) In accordance with the timeframes stated below, Seller shall perform the following work (collectively "Seller's Work"). The parties agree that the terms of this paragraph shall survive the Closing and, at the request of either party, the parties shall enter into an agreement at Closing redocumenting the covenants contained in this paragraph 15.
- (i) On or prior to Closing, Seller shall subdivide, plat or otherwise split the Property from the Development Property such that Seller may convey the Property as a separate tax parcel in compliance with all laws and ordinances.
 - (ii) Within thirty (30) days after Closing, Seller shall rough grade the Property in accordance with the Construction Specifications and other than the existing water, storm and sanitary lines, which will be abandoned in place and filled, and a gas line which will be relocated, Seller shall remove the remainder of any existing utilities from the Property which would be under the building to be constructed on the Property.
 - (iii) After the Closing, but, subject to force majeure (as detailed below), by April 30, 2011, provided the Closing Date occurs by December 1, 2010, or such other date as the parties shall agree upon, Seller shall install all utilities, including water, sewer, and storm water to the boundary of the Property in a location agreed to by Purchaser and Seller, in the exercise of their commercially reasonable judgment. Purchaser acknowledges that electric is available at the north boundary of the Property.
 - (iv) After the Closing, but in accordance with Purchaser's building schedule, Seller shall construct or cause to be constructed the driveways and paving improvements in the location shown on Exhibit 1, which is attached hereto and made a part hereof. Notwithstanding the foregoing, Seller agrees that access to the Property for construction shall be provided by April 1, 2011, subject to force majeure (as detailed below), provided the Closing Date occurs by December 1, 2010, or such other date as the parties shall agree upon.
- b) At Closing, if Seller's Work is not completed, then Seller and Purchaser agree to enter into an escrow agreement ("Escrow Agreement") which will be a holdback of the mutually agreeable amount of the net closing proceeds which reasonably approximates the costs for Seller's Work which is not yet performed (which will not include any retainage for any contractor) ("Seller's Work Escrow"). Seller's Work Escrow shall be held in a joint order escrow with the Title Company ("Escrow Agent") at Purchaser's cost. Seller may use the funds in Seller's Work Escrow to pay contractors performing Seller's Work on a monthly payment application basis. Funds shall be payable directly to Seller after Seller certifies that the sum invoiced is then payable to contractors

which have performed the completed portion of Seller's Work and Purchaser has reviewed and approved the monthly payment application for that portion of Seller's Work for which Seller is then requesting the funds ("Approved Funds Payment"). Seller shall send any monthly payment application to the Escrow Agent simultaneously with submitting such payment application to Purchaser. Purchaser may not unreasonably withhold, delay or condition approval of any payment application, and Purchaser shall either approve or disapprove, with specificity, the monthly payment application within three (3) business days after the receipt of the same by copy of written notice to the Escrow Agent and to Seller within such three (3) business day period. Any Approved Funds Payment shall be made to Seller within five (5) business days after Purchaser approves the monthly payment application.

- c) If any item of Seller's Work is not completed by any specific date stated above or, if no specific date is stated, within one hundred fifty (150) days following the Closing (each a "Time Period"), unless due to force majeure i.e. weather, strike and any other cause which is beyond Seller's reasonable control, Purchaser may perform all or part of the incomplete Seller's Work. In such event, Purchaser shall send written notice to Seller ("Self Performance Notice") within five (5) business days after such Time Period stating what portion of Seller's Work Purchaser will be performing ("Self Performance Work"). The Self Performance Notice will be accompanied by a reasonably detailed writing stating the commercially reasonable costs of the Self Performance Work (the "Self Performance Costs"), which shall be subject to Seller's written approval, which approval shall not be unreasonably withheld, delayed or conditioned. Purchaser shall send any Self Performance Notice with Self Performance Costs to the Escrow Agent simultaneously with submitting the same to Seller. Seller shall either approve or disapprove, with specificity, the Self Performance Costs within three (3) business days after the receipt of the same by copy of written notice to the Escrow Agent and to Purchaser within such three (3) business day period. After approval of the Self Performance Costs ("Approved Self Performance Costs"), Purchaser may use the funds in Seller's Work Escrow to pay contractors performing Self Performance Work on a monthly payment application basis. Funds shall be payable directly to Purchaser after Purchaser certifies that the sum invoiced is then payable to contractors which have performed the completed portion of the Self Performance Work ("Self Performance Payment"). Any Self Performance Payment shall be made to Purchaser within five (5) business days after submittal to the Escrow Agent. After all Self Performance Work has been performed, the balance of the funds in Seller's Work Escrow, if any, shall be reimbursed to Seller.
- d) In the event Purchaser performs the Self Performance Work and the funds in Seller's Work Escrow are not sufficient to cover the Self Performance Work and the Approved Self Performance Costs exceed Seller's Work Escrow, upon monthly payment application, not more often than monthly, Seller shall pay to Purchaser the costs of the completed Self Performance Work, not to exceed the Approved Self Performance Costs.
- e) Purchaser agrees to pay Seller, not later than fifteen (15) days after receipt of invoice, a pro rata share of the cost ("Exhibit 1 Driveway Cost") to construct the 'West Drive Entrance by Owner' shown on Exhibit 1 which is attached hereto and made a part hereof ("Exhibit 1 Driveway") Purchaser's pro rata share of such cost shall equal the Exhibit 1 Driveway Cost times a fraction the numerator of which is the square footage of the building located on, or to be located on the Property and the denominator is the square footage of all buildings located on, and as currently shown on Exhibit 1. ~~or which could be located on, the Development Property.~~ In the event that the Exhibit 1 Driveway is any portion of the Self Performance Work, then Purchaser's pro rata share of the Exhibit 1 Driveway Cost shall be credited against the sum to be deposited in Seller's Work Escrow and/or the Approved Self Performance Costs, as the case may be.
- f) Purchaser may construct all or some of those parking spaces to the east of the Property ("East Property") in the area generally depicted upon exhibit 1 and if Purchaser shall do so, and the East Property shall be sold or rented, upon Purchaser providing to such owner or lessee of the East Property commercially reasonable documentation of the cost to construct such parking spaces, Seller agrees to cause such owner or lessee of the East Property to reimburse Purchaser for the commercially reasonable costs. Such costs shall not include any markup from Purchaser. These reimbursement provisions shall be included in the REA.
16. **Tax-Free Exchange.** Seller agrees to cooperate with Purchaser's election to acquire the Property under such terms and conditions as qualify pursuant to Section 1031 of the Internal Revenue Code of 1986 and the Regulations promulgated thereunder, provided that (1) Seller shall not be required to release Purchaser from any of its obligations under this Agreement as a result of such election, (2) Seller shall not be required to acquire title to any other property or otherwise undertake any risk or

expense not acceptable to Seller, and (3) Purchaser shall indemnify and hold Seller harmless against and from any claims, losses, costs or damages arising out of Seller's cooperation with Purchaser's election.

- 17. General Provisions.** This written Agreement, including all exhibits attached hereto and documents to be delivered pursuant hereto, shall constitute the entire agreement and understanding of the parties, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties or covenants not contained herein.
- a) This Agreement may be amended only by a written agreement subsequently executed by both of the parties hereto.
 - b) No waiver of any provision or condition of this Agreement by any party shall be valid unless in writing and signed by such party. No such waiver shall be taken as a waiver of any other or similar provision or of any future event, act or default.
 - c) In the event that any provision of this Agreement shall be unenforceable in whole or in part, such provision shall be limited to the extent necessary to render the same valid, or shall be excised from this Agreement, as circumstances require, and this Agreement shall be construed as if said provision had been incorporated herein as so limited, or as if said provision had not been included herein, as the case may be.
 - d) Headings of paragraphs are for convenience of reference only, and shall not be construed as a part of this Agreement.
 - e) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives and permitted successors and assigns.
 - f) This Agreement shall be construed on accordance with and governed in all respects by the laws of the State of Ohio.
 - g) Time is of the essence with respect to the deadlines set forth in this Agreement.
 - h) Seller and Seller's agents agree to keep Purchaser's identity confidential from all other parties, except those who have a need to know in conjunction with the performance under this Agreement, unless authorized by Purchaser, disclosed by Purchaser or if required to be disclosed pursuant to any law, regulation or legal or administrative proceeding.
- 18. Condemnation.** If after the execution of this Agreement, the Property shall be subject to a total taking, by eminent domain, inverse condemnation or otherwise, or in the event that a portion of the Property shall be subjected to such a taking which would hinder or prevent Purchaser from using the Property for its Intended Use, Purchaser may at its sole option either: (a) rescind this Agreement, in which event Purchaser shall be entitled to the immediate refund of the Earnest Money Deposit and the parties hereto shall be relieved of all obligations hereunder, except as expressly stated as surviving; or (b) elect to proceed to Closing in which event Purchaser shall be entitled to participate in any such condemnation or eminent domain proceeding and to receive all of the proceeds attributable to any portion of the Property so taken. In the event that Purchaser elects to proceed to Closing, the Purchase Price hereunder shall not be adjusted. Seller and Purchaser each agree to forward promptly to the other any notice of intent received pertaining to a taking of all or a portion of the Property.
- 19. Notice.** Any and all notices permitted or required to be given hereunder shall be in writing and shall be either (i) personally delivered to the party; or (ii) sent postage prepaid by U.S. registered or certified mail; or (iii) sent by a reputable express mail company which guarantees next day delivery at the following addresses:

If to Purchaser:

Mr. Douglas Crocker
Ohio Retail Stores, LLC
c/o GFS MARKETPLACE, LLC
420 50th Street SW
PO Box 1787
Grand Rapids, MI 49501-1787
Phone: (616) 717-7048
Fax: (616) 717-9315

With a copy to:

Mr. James B. Doezema, Esq.
FOSTER, SWIFT, COLLINS & SMITH, P.C.
1700 East Beltline, N.E.
Suite 200

Grand Rapids, MI 49525
Phone: (616) 726-2205
Fax: (616) 726-2299

If to Seller:

City of South Euclid
Attention: _____
1349 South Green Road
South Euclid, OH 44121

With a copy to:

Carole Pechi
Laude Pechi Law
2254 Blacksmith
Wheaton, IL 60189
Phone: (312) 813-3424
Fax:

With a copy to:

Any such notice shall be deemed given and effective: (v) with respect to personal delivery, immediately upon the party receiving same; (vi) three (3) business days after depositing same in a U.S. mail receptacle, if sent by U.S. registered or certified mail; (vii) one (1) business day after depositing same with a reputable express mail company which guaranties next day delivery; or (viii) if sent by telefax, when sent.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

“SELLER”

“PURCHASER”

CITY OF SOUTH EUCLID

OHIO RETAIL STORES, LLC
An Ohio limited liability company

By: Gary Alb

By: Douglas Crocker

Its: Mayor

Its: Director of Real Estate

Dated: September 15, 2010

Dated: August 25, 2010

Exhibits

1 Property Drawing

EXHIBIT 1
PROPERTY DRAWING

