

**A RESOLUTION OF THE TOWN OF BROWNSBURG  
ECONOMIC DEVELOPMENT COMMISSION PROVIDING  
FINAL APPROVAL OF THE ECONOMIC DEVELOPMENT  
AGREEMENT WITH ROSE-HILL RESTAURANTS, LLC FOR  
THE PURPOSE OF FINANCING THE ACQUISITION OF  
CERTAIN ECONOMIC DEVELOPMENT FACILITIES**

**WHEREAS**, the Town of Brownsburg, Indiana (the “Town”), is authorized by Indiana Code 6-3.5-7 *et seq.* and Indiana Code 36-7-12, *et seq.* (collectively as supplemented and amended the “Act”) to enter into agreements with developers for the acquisition and financing of economic development projects and economic development facilities; and

**WHEREAS**, Rose-Hill Restaurants, LLC (the “Developer”) desires to develop certain Premises consisting of 6,650 rental square feet located at 773 East Main Street, Suite 3-5, Brownsburg, Indiana (the “Premises”); and

**WHEREAS**, the Developer has requested assistance from the Town in the lease of the Premises for a five (5) year period subject to the substantial compliance with certain investment and employment objectives set forth in the Economic Development Agreement attached hereto as Exhibit “A” (the “Agreement”); and

**WHEREAS**, the Town has determined that the undertakings of the Developer as set forth in the Agreement and the lease and development of the Premises as set forth therein will promote significant opportunities for the gainful employment of the Town’s citizens and serve to retain and expand the significant business enterprise currently operated by Developer within the Town; and

**WHEREAS**, the Town has determined that the undertakings of the Town set forth in the Agreement, and the incentives to Developer set forth therein, will serve a public purpose and will be of benefit to the health and general welfare of the Town, and that the proposed financing contained therein complies with the provisions of the Act; and

**WHEREAS**, it appears that the development of the Premises will not have an adverse competitive effect on any similar facility already constructed or operating in the Town; and

**WHEREAS**, after notice of and a public hearing thereon, the Commission now recommends that the Town finally approve and enter into the transactions set forth in the Agreement, and that the Town takes all further action necessary to allocate funds to the Developer pursuant to its powers under the Act to partially finance the acquisition of interests in, and improvements to, the Premises by Developer.

**NOW THEREFORE, BE IT RESOLVED** by the Commission, as follows:

1. The promotion of significant opportunities for the gainful employment of residents of the Town and the creation of business opportunities in the Town to be achieved in accordance with the terms of the Agreement would be a benefit to the health and general welfare of the citizens of the Town and it is in the public interest that this Commission take such action as it lawfully may to encourage diversification of industry and promotion of job opportunities in and near the Town.

2. Based upon the information provided to it, the Commission hereby finds that the provisions of the Agreement attached hereto as Exhibit "A" will result in the promotion of significant opportunities for the gainful employment of residents of the Town, attract and retain a major new business enterprise to the Town and involves an expenditure for the acquisition of interests in land in accordance with the provisions of the Act and that the development described therein constitutes an "economic development project" as provided in I.C. 6-3.5-7-13.1(c). The Report and Findings of Fact attached hereto as Exhibit "B" are hereby approved and adopted by the Commission.

3. The assistance granted to the Developer pursuant to the Agreement, subject to the conditions contained in the Agreement, will be of benefit to the health and general welfare of the citizens of the Town and in the public interest, and the Agreement is hereby approved in every way, and all such documents related thereto shall be kept on file by the Clerk-Treasurer of the Town.

4. The entering into of the Agreement and the financing of the acquisition of interests in the Premises by the Developer as contemplated therein complies with the provisions of the Act.

5. The Commission hereby recommends that the President of the Town Council and the Town Clerk be authorized, empowered and directed to execute all documents relating to the transactions contemplated herein, including, but not limited to, the Agreement. The Commission further authorizes, empowers and directs the President and Vice President of the Commission to execute all documents which may require authorization from the Commission at any time after approval of the Agreement by the Town Council. Pursuant to the provisions of I.C. 36-7-12-25(c), the President, Clerk and officers of the Commission may, by their signatures thereon, approve such changes to any of the foregoing documents as are allowable by law without further authorization of this Commission or the Town Council.

6. The Secretary of the Commission is directed to cause this Resolution and two copies of the Agreement in the form presented to this Commission to be transmitted to the office of the Clerk-Treasurer for presentation to the Town Council of the Town with the recommendation that the Town Council approve such documents in their final forms pursuant to the proposed form of Ordinance hereby recommended.

7. This Resolution shall be effective immediately upon its passage.

\* \* \* \* \*

ADOPTED THIS 19<sup>th</sup> day of April, 2012.

**BROWNSBURG, INDIANA ECONOMIC  
DEVELOPMENT COMMISSION**

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Lamoura Munse, Vice President

\_\_\_\_\_  
Allan Bolante, Secretary

**ECONOMIC DEVELOPMENT AGREEMENT**  
**BY AND BETWEEN**  
**THE TOWN OF BROWNSBURG AND ROSE-HILL RESTAURANTS, LLC**

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into on the \_\_\_\_\_ day of May, 2012, by and among the **Town of Brownsburg, Indiana** (the "Town") by its Town Council and the **Brownsburg Economic Development Commission** (the "Commission") and **Rose-Hill Restaurants, LLC**, an Indiana limited liability company (the "Developer"),

WITNESSETH:

WHEREAS, Developer desires to develop and operate a restaurant to be located within the jurisdiction of the Town (the "Business") to be located at 773 E. Main Street, Suite 3-5, Brownsburg, Indiana 46112 in 6,650 rentable square feet of space more particularly shown on Exhibit "A" and Exhibit "B" attached hereto (the "Premises"); and

WHEREAS, the Developer has entered into a certain lease of the Premises dated June 1, 2011, as amended by Amendment No. 1 to Lease Agreement, a true and accurate copy of which is attached hereto as Exhibit "C" (the "Lease"); and

WHEREAS, the Developer has made or intends to make at least Seven Hundred Thousand and 00/100 (\$700,000.00) of capital improvements to the improvements located on the Premises, and upon the completion thereof, to provide no less than 30 full-time positions and sufficient additional full and part-time employment in the Business to provide an annual payroll of not less than \$600,000; and

WHEREAS, the Town has found that the location of the Business within the jurisdiction of the Town promotes significant opportunities for the gainful employment of its citizens and attracts and retains a major new business enterprise to the Town and consequently qualifies the location of the Business at the Premises as an "economic development project" as that term is defined at I.C. 6-3.5-7-13.1(c); and

WHEREAS, to induce the Developer to locate the Business in the Town, the Town has offered certain incentives to the Developer which are evidenced by this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, the parties do hereby agree as follows:

**ARTICLE I. RECITALS**

1.01 **Recitals Part of Agreement.** The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

## ARTICLE II. MUTUAL ASSISTANCE

2.01 **Mutual Assistance.** The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the Town and the Commission, the consideration of such ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

## ARTICLE III. ECONOMIC DEVELOPMENT INCENTIVES

3.01 **Lease Assistance and Grant.** Subject to the conditions contained in this Agreement, and pursuant to the Town's authority under I.C. 6-3.5-7-13.1 and I.C. 36-7-12 (collectively, as amended, the "Act") the Town agrees to assist Developer in its lease of the Premises with an annual lease assistance grant in the amount of Six Thousand and 00/100 Dollars (\$6,000.00) (the "Annual Grant"), the first installment of which shall be paid upon the execution of this Agreement, with subsequent grants occurring annually thereafter on June 1 of each year for four (4) consecutive years thereafter (with the last installment payable on June 1, 2016), for a total of five (5) Annual Grant payments, subject to the conditions of this Agreement. In addition, in the event the Lease is extended for an additional five (5) year period on or about January 1, 2017, upon the submittal of evidence to the Town of such extension not later than March 31, 2017, an additional payment in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) (the "Additional Grant") shall be made to Developer on June 1, 2017, subject to the conditions of this Agreement.

3.02 **Conditions of Annual Grant.** No less than sixty (60) days prior to the date of payment of any portion of the Annual Grant or the Additional Grant (the Annual Grant and Additional Grant collectively the "Grant"), Developer shall submit a Request for Grant in the form attached hereto as Exhibit "D" which shall evidence that the Developer has substantially complied with the following employment objectives (the "Objectives") for the prior calendar year period immediately prior to filing the Request for Grant:

- (a) Average annual full-time employment on the Premises equivalent to not less than thirty (30) full-time positions at local market rates for the type of employment offered, and sufficient additional full time and part time employment to meet the annual payroll requirement below;
- (b) An annual payroll of not less than \$600,000 in the conduct of the Business exclusive of salary or other payments made to principals of the Business not exclusively employed at the Premises;
- (c) Tenant improvements to the Premises in an amount not less than Seven Hundred and 00/100 Thousand (\$700,000.00) in the first six (6) month period from the date of execution of this Agreement (or the date of occupancy of the Premises, whichever is earlier), and the continued maintenance of such improvements throughout the term of this Agreement.

3.03 **Objective Compliance.** Developer will use its best efforts to meet the Objectives and will timely file all reports required herein with the Town evidencing the same, along with all documentation reasonably required by the Town to determine the same. Unless otherwise determined by the Town, compliance with the Objectives shall be a condition precedent to the receipt of all or any portion of the Grant provided for in this Agreement. The determination of compliance with the Objectives shall be made in the Commission's reasonable discretion based on evidence submitted by Developer in a form reasonably satisfactory to the Town. Unless otherwise specified by the Town, such evidence shall include the submission of employee number and wage information and such additional supporting documentation and information evidencing compliance with the Objectives as reasonably requested by the Town. The determination by the Commission shall be made in writing provided to the Developer no later than forty-five (45) days following the Developer's submission of all requested information and supporting data. In the event of an adverse determination by the Commission, the Developer shall have the right to a hearing before the Commission, and upon such hearing, the determination of the Commission shall be final.

3.04 **Source of Funding.** It is anticipated that the Grant shall be funded from Economic Development Income Tax (EDIT) funds available to the Town at the time of payment of each installment; however, at the Town's option, Grant funds may come from any other source available to the Town.

#### **ARTICLE IV. AUTHORITY**

4.01 **Actions.** Notwithstanding anything contained herein, the parties further acknowledge and recognize that the obligations of the governmental parties hereunder, including those of the Council and the Commission, are subject to and conditioned upon certain legal approval requirements, including public hearings and formal approvals of the Council and the Commission. The governmental parties shall use their best efforts to obtain such approvals.

4.02 **Powers.** The Council and the Commission represent and warrant that they have full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform their respective obligations under this Agreement.

#### **ARTICLE V. GENERAL PROVISIONS**

5.01 **Indemnity; No Joint Venture or Partnership.** Developer covenants and agrees at its expense to pay and to indemnify and save the Commission, the Council and the Town, and their respective officers, attorneys and agents (the "Indemnitees") harmless of, from and against, any and all claims, damages, demands, expenses and liabilities relating to bodily injury or property damage resulting directly or indirectly from Developer's (and/or any affiliate's thereof) development activities with respect to the Property unless such claims, damages, demands, expenses or liabilities arise by reason of the negligent act or omission of the Indemnitees. However, nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship between the Indemnitees, and the Developer or any affiliate thereof. Notwithstanding the foregoing, if any action or proceeding is brought against one or more Indemnitees, the Indemnitee or Indemnitees seeking indemnification shall give notice of that action or proceeding to the Developer in writing, and the Developer, upon receipt of that notice, shall have the right to assume the defense of such action or proceeding. An Indemnitee at

its own expense may employ separate counsel and participate in the defense of such action or proceeding. The Developer shall not be liable for any settlement made without the Developer's written consent.

5.02 **Time of Essence.** Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

5.03 **Breach.** Before any failure of any party to this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. In the event of a breach of this Agreement, each party shall have the remedy of specific performance in addition to any other remedies available at law.

5.04 **Amendment.** This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties, by the adoption of an amendment approved in the same manner as this Agreement, and by the execution of said amendment by the parties or their successors in interest.

5.05 **General Terms.** Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable. This Agreement shall be construed in accordance with the laws of the State of Indiana. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same agreement.

5.06 **Notices.** All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

<p>To the Town:  Town of Brownsburg  61 N. Green Street  Brownsburg, IN 46112  Attn: Town Manager</p>	<p>To Developer:  Rose-Hill Restaurants, LLC  773 East Main Street, Suite 3-5  Brownsburg, IN 46112  Attn: Anthony R. Hill, President</p>
<p>With a copy to:   Brian C. Bosma, Esq.  Kroger, Gardis &amp; Regas, LLP  111 Monument Circle, Suite 900  Indianapolis, IN 46204-5125  Phone: (317) 692-9000  Fax: (317) 264-6832</p>	

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by overnight or certified mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

5.07 **Assignment.** The rights and obligations contained in this Agreement may not be assigned by the Developer or any affiliate thereof without the express prior written consent of the Council and the Commission. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.

5.08 **Effective Date.** Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement and the Commission and the Council have each approved or ratified this Agreement at a public meeting, and it has been accepted and approved by the Brownsburg Plan Commission.

5.09 **Authority.** Each party executing below represents that he or she has been authorized by the governing body identified to execute this Agreement and has the full authority to execute this Agreement.

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

(Signature Page of the Town Council of the Town of Brownsburg, Indiana  
to the Economic Development Agreement)

Approved at an open meeting on the \_\_\_\_ day of \_\_\_\_\_, 2012.

**TOWN COUNCIL OF THE TOWN OF  
BROWNSBURG, INDIANA**

By: \_\_\_\_\_  
**Dwayne Sawyer, Town Council President**

**ATTEST:**

\_\_\_\_\_  
**Jeanette M. Brickler**  
**Clerk-Treasurer**

(Signature Page of the Brownsburg Economic Development Commission  
to the Economic Development Agreement)

Approved at an open meeting on the \_\_\_\_ day of \_\_\_\_\_, 2012.

**BROWNSBURG ECONOMIC  
DEVELOPMENT COMMISSION**

By: \_\_\_\_\_  
**Joe Dunbar, President**

**ATTEST:**

\_\_\_\_\_  
**Allan Bolante, Secretary**

(Signature Page of the Developer to the Economic Development Agreement)

Date: \_\_\_\_\_

**DEVELOPER**

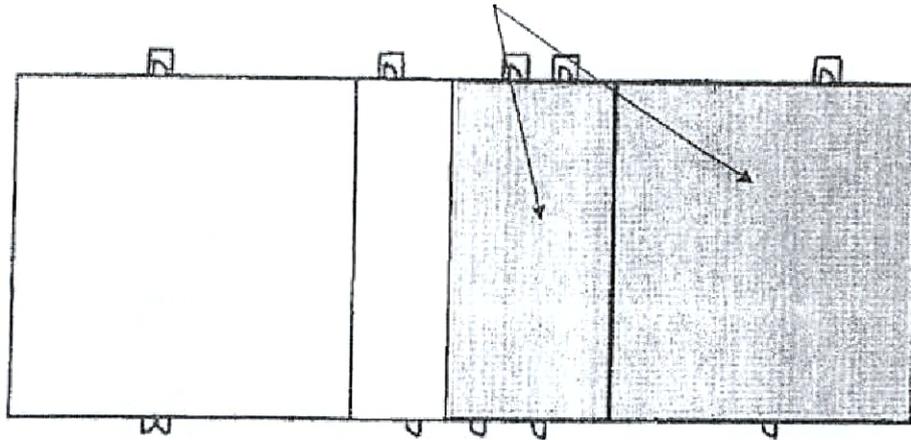
**ROSE-HILL RESTAURANTS, LLC**

By: \_\_\_\_\_  
**Anthony R. Hill, President**

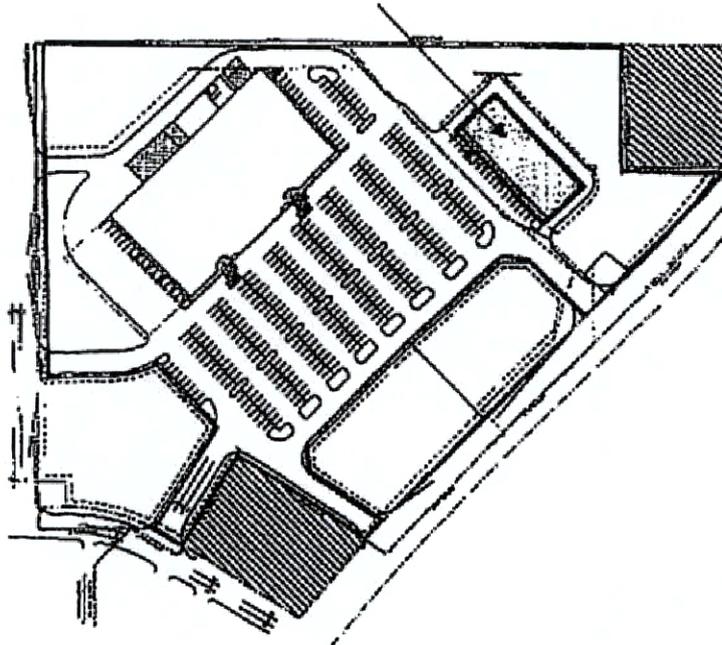
EXHIBIT A

SITE PLAN – PREMISES AND CENTER

PREMISES:  
773 E. Main Street, Suite 3-5  
Brownsburg, IN 46112  
6,650 square feet



The Center: Brownsburg "B" Shoppes



**EXHIBIT B - LEGAL DESCRIPTION**

A part of the Southeast Quarter of Section 11, Township 16 North, Range 1 East in Lincoln township, Hendricks County, Indiana, being bounded as follows:

Commencing at the Northeast corner of the Northeast Quarter of the Northeast Quarter of Section 14, Township 16 North, Range 1 East, in said County; thence South 00 degrees 00 minutes 00 seconds East (assumed bearing), along the East line of the said Quarter Quarter Section, a distance of 141.18 feet (140.00 feet by deed) to a point on the Northern right-of-way of Tilden Road; thence South 89 degrees 24 minutes 10 seconds West 778.90 feet (778.82 feet by deed) along said right-of-way line; thence North 00 degrees 14 minutes 14 seconds East 496.77 feet; thence North 46 degrees 30 minutes 00 seconds East 229.46 feet; thence North 43 degrees 30 minutes 00 seconds West 41.00 feet to the Point of Beginning of this description; thence continuing North 43 degrees 30 minutes 00 seconds West 85.00 feet; thence North 46 degrees 30 minutes 00 seconds East 205.00 feet; thence South 43 degrees 30 minutes 00 seconds East 85.00 feet; thence South 46 degrees 30 minutes 00 seconds West 205.00 feet to the Point of Beginning, containing 0.400 acres, more or less.

**EXHIBIT C**  
**LEASE OF PREMISES**

**ADDENDUM NO. 1 TO**  
**LEASE AGREEMENT**

This ADDENDUM NO. 1 TO LEASE AGREEMENT ("Addendum") is executed by and between Harshman & Hays Two, LLC, an Indiana limited liability company (the "Landlord") and Rose-Hill Restaurants, LLC, an Indiana limited liability company (the "Tenant"), as of this 1st day of June, 2011 and the Lease Agreement of even date herewith between the parties ("Lease") is hereby amended as follows:

1. Notwithstanding the provisions of the Option to Renew in 1.1 of the Lease, in no event will fair market rent for the first Extended Term (years 6 - 10) exceed (a) the Fixed Minimum Rent for the last year of the original Term plus the amount by which the actual amounts incurred by Landlord for Common Area Maintenance, Real Estate Taxes and Insurance for the Premises for the last year of the original Term have increased over such amounts for the first year of the original Term, and (b) the amount in (a) then being increased by three percent (3%) each year of the Extended Term (including the first year of the Extended Term).

2. In addition to the Option to Renew for the original Extended Term in 1.1, provided Tenant has exercised each preceding Extended Term and is not in default beyond the applicable cure periods of this Lease at the expiration of the applicable Extended Term or at the time of Tenant's exercise of the further Option to Renew provided below, Tenant is hereby granted two (2) additional options to renew this Lease, each for a period of five (5) years (years 11- 15 and years 16- 20 shall each be an additional Extended Term). Except for the Monthly Rent, which shall be adjusted as set forth below, and except for the responsibilities for repair and replacement of HVAC systems and components, the second Extended Term and third Extended Term shall be on the same terms and conditions as provided in the Lease. Each option to renew shall be exercised only by written notice to Landlord not less than two hundred ten (210) days prior to the Expiration Date of the current term of the Lease. In no event shall Monthly Rent in any Extended Term be less than the Monthly Rent for the immediately preceding term.

The parties agree that the annual Fixed Minimum Rent for the second Extended Term (years 11-15) and the third Extended Term (years 16 - 20) shall be increased on each anniversary of the Commencement Date in an amount equal to the proportion that the BLS Index, as hereinafter defined, averaged for the six (6) month period ending two (2) months prior to the expiration of the current lease year has increased over the BLS Index published and averaged for the six (6) month period ending two (2) months prior to the commencement of the current lease year (as used herein, a "lease year" shall refer to the twelve (12) month period beginning on the Commencement Date, or anniversary thereof, as applicable). Monthly Rent shall be an amount equal to one twelfth (1/12) of the annual Fixed Minimum Rent. "BLS Index" shall mean the Consumer Price Index

for Urban Wage Earners and Clerical Workers, U.S. city average, all items, 1982-84=100, published by the Bureau of Labor Statistics, United States Department of Labor (as reported for Hendricks County, Indiana, or if no such report is made for Hendricks County for the smallest geographic location reported in which the Center is located). If the Bureau of Labor Statistics shall discontinue publication of said BLS Index or shall adopt a new method of computing the BLS Index, the parties agree to use a published price or cost index or published data as comparable as possible to the BLS Index prior to the change in such method. If the BLS Index has not been published for any of the time periods set forth above, Landlord shall use the most recent publication dates available.

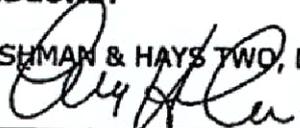
3. Notwithstanding the provisions of 11. (a) of the Lease, the parties agree that in the event it becomes necessary to replace any HVAC unit at any time during the second Extended Term and third Extended Term, Landlord and Tenant shall share equally in the cost of such replacement upon determination, as agreed upon by both Landlord and Tenant, that the replacement cost is equal to or less than the estimated repair costs.

4. The terms used in this Addendum and not otherwise defined herein shall have the definitions set forth in the Lease.

5. This Addendum shall be incorporated into and made a part of the Lease, and all provisions of the Lease not expressly modified or amended shall remain in full force and effect.

**LANDLORD:**

HARSHMAN & HAYS TWO, LLC

By:   
Larry W. Harshman, Member

**TENANT:**

ROSE-HILL RESTAURANTS, LLC

By: 

Printed: ANTHONY D HILL

Title: \_\_\_\_\_

## LEASE AGREEMENT

### 1.1. Basic Lease Provisions.

**DATE:** June 1, 2011

**LANDLORD:** Harshman & Hays Two, LLC, an Indiana limited liability company

**ADDRESS OF LANDLORD:** 3266 N. Meridian Street, Suite 104, Indianapolis, IN 46208  
P.O. Box 532968, Indianapolis, IN 46253

**TENANT:** Rose-Hill Restaurants, LLC, an Indiana limited liability company.

**ADDRESS OF PREMISES (TENANT):** 773 E. Main Street, Suite 3-5, Brownsburg, IN 46112

**PREMISES & PROPORTIONATE SHARE:** The Premises is approximately 6,650 Rentable Square Feet and more particularly shown on Exhibit A attached hereto. The total square feet of the Center, more commonly known as Brownsburg "B" Shoppes, is 13,650 rentable square feet; the legal description for which is attached hereto as Exhibit B ("Center"). Tenant's proportionate share of the Center is 48.72%. Notwithstanding the establishment of Tenant's proportionate share, as set forth below Tenant shall not be required to pay Additional Rent for Common Area Maintenance, Real Estate Taxes & Insurance during the term of the Lease, including the Extended Term (as hereinafter defined).

**PERMITTED USES:** Casual dining sit-down restaurant with bar sales where the sale of alcoholic beverages (including, without limitation, beer, wine and liquor) shall not exceed 40% of its gross sales. Tenant shall be entitled to use the area shown on Exhibit B for outdoor seating (which shall not be counted in the square footage of the Premises nor increase the Fixed Minimum Rent payable hereunder), subject to compliance with applicable zoning and any other restrictions encumbering the Center. The Center is zoned C-3. It is the Tenant's responsibility to ensure that its permitted use, including any outdoor seating, complies with the Center's zoning and all zoning ordinances and other restrictions pertaining to the Center. Landlord shall reasonably cooperate with Tenant in Tenant's efforts (and Tenant's sole cost and expense) to obtain the governmental approvals necessary to permit outdoor seating as set forth above and to permit Tenant make reasonable modifications to the Premises necessary to accommodate such outdoor seating.

**TENANT'S TRADE NAME:** Dawson's Sticks and Stones with a Federal Identification Number 45-2345095.

**TARGETED POSSESSION DATE:** Landlord shall deliver the Premises on or before July 10, 2011 for purposes of completing the Leasehold Improvements as set forth on Exhibit C. Tenant's Targeted Possession Date shall be the earlier of November 1, 2011, or set by a declaration of Commencement of Lease. Landlord shall be responsible for obtaining any approvals under or removal of restrictions which might limit Tenant's ability to operate a restaurant containing 6,650 rentable square feet.

**LEASE YEAR:** Each Lease Year shall be a successive period of twelve (12) calendar months commencing on the Rental Commencement Date; provided, however, that if the Rental Commencement Date is other than the first day of a calendar month, the first Lease Year shall be the period from said Rental Commencement Date to the end of the month in which said Rental Commencement Date occurs plus the following twelve (12) calendar months.

**LEASE TERM:** The Lease Term shall be for five (5) years and two (2) months beginning on the date the Leasehold Improvements are substantially completed, so long as Harshman Property Services acts as the general contractor as set forth on Exhibit C; the parties anticipate that the Term will commence November 1, 2011, and end December 31, 2016, unless extended by a fully-executed written amendment to Lease.

**RENTAL COMMENCEMENT:** Payment of Fixed Minimum Rent will begin on the day on which Landlord delivers the Premises to Tenant with Tenant's improvements substantially completed. In either case, Landlord and Tenant shall execute a Commencement Letter memorializing the date ("Rental Commencement Date"). Upon execution of the Lease, Tenant shall pay to Landlord the Security Deposit and one month's Rent, which Rent payment shall be applied to the first month's Rent due as set forth below.

**FIXED MINIMUM RENT (Paragraph 4(a):**

<u>PERIOD</u>	<u>RATE</u>	<u>MONTHLY RENT</u>	<u>ANNUALLY</u>
11/1/11 to 11/30/11 (6,650 sf)	\$12.87*	\$7,133.33	85,600.00
12/01/11 to 12/31/11		FREE RENT	
1/1/12 to 5/31/12 (6,650 sf)	\$12.87*	\$7,133.33	\$85,600.00
*this is a blended rate of \$14 psf for 5,650 sf and \$6.50 psf for 1,000 sf			
06/01/12 to 6/30/12 (6,650 sf)	FREE RENT		
7/1/12 to 10/31/12 (6,650 sf)	\$14.00	\$7,758.33	\$93,100.00
11/1/12 to 12/31/16 (6,650 sf)	\$15.00	\$8,312.50	\$99,750.00

See Rent Schedule Exhibit

**OPTION TO RENEW:** Provided Tenant is not in default beyond the applicable cure periods of this Lease at the commencement of each Extended Term (as hereinafter defined), Tenant is hereby granted one (1) option to renew this Lease for a period of five (5) years (an "Extended Term"). Except for the Monthly Rent, which shall be at then-current fair market rent, the Extended Term shall be on the same terms and conditions as provided in this Lease. The option to renew shall be exercised only by written notice to Landlord not less than two hundred ten (210) days prior to the Expiration Date of the current term of the Lease. In no event shall Monthly Rent in any Extended Term be less than the Monthly Rent for the immediately preceding term; fair market rent shall be

determined by Landlord in its sole discretion based upon rental rates for the Center and other similar retail centers in the greater Indianapolis metropolitan area.

**COMMON AREA MAINTENANCE, REAL ESTATE TAXES AND INSURANCE:** Tenant does not pay Additional Rent for Common Area Maintenance, Real Estate Taxes & Insurance during the term of the Lease during the original Term and the first Extended Term.

**SECURITY DEPOSIT (Paragraph 5):** Eight Thousand Three Hundred Twelve Dollars and 50/100 (\$8,312.50) due at lease signing.

**TENANT'S MINIMUM COMMERCIAL GENERAL LIABILITY INSURANCE LIMITS:** \$2,000,000.00. Liquor liability insurance is also required, together with workers' compensation insurance as required by law.

**BROKER(s) (Paragraph 28):** Rich Thomas of Dan Moore Real Estate Services representing the Tenant.

**GUARANTOR(s):** Chris R. Hill, Gregory Rose and Anthony R. Hill - shall personally guaranty the Lease.

**GUARANTOR SS # and ADDRESS:** See Exhibit E; Guarantors shall execute and deliver a guaranty substantially in the form set forth on such Exhibit E.

**1.2. Significance of a Basic Lease Provision.** Each reference in this Lease to any of the Basic Lease Provisions contained in paragraph 1.1 shall be deemed to incorporate all of the terms thereof. The Basic Lease Provisions shall be construed in connection with and limited by any such reference.

**1.3. Enumeration of Exhibits.** The exhibits described below and attached to this Lease are incorporated in this Lease by this reference and are to be construed as a part of this Lease:

- Exhibit A – Site Plan of Center
- Exhibit B – Legal Description
- Exhibit C – Leasehold Improvements
- Exhibit D – Sign Regulations
- Exhibit E – Guarantee
- Exhibit F – Easements with Covenants and Restrictions Affecting Land
- Exhibit G– Rent Schedule

**2. Premises.** Landlord hereby lets and demises to Tenant and Tenant hereby leases from Landlord, upon and subject to the terms and provisions of this Lease, the Premises described in paragraph 1.1 of this Lease (hereinafter referred to as the "Premises"). Landlord grants to Tenant, its invitees, employees, and customers, together with and subject to the rights granted from time to time by Landlord to other tenants of the Center, the right to use the parking and other common areas of the Center. The term "Center" when used herein shall mean the Center described in paragraph 1.1 of this Lease, including any and all structures, parking areas,

common areas, utility facilities and the like on the real estate described in Exhibit A, as the same may from time to time be changed by Landlord, together with additional structures thereon which may from time to time be included by Landlord in the development or expansion of the Center. Tenant's occupancy shall be subject to compliance with the Easements with Covenants and Restrictions Affecting Land attached hereto as Exhibit F.

Landlord reserves the right: (a) to change the plans, facilities and plot plan of the Center and the size and configuration of the common areas, including, without implied limitation, the right to restrict the use and reduce the size of the common areas from time to time as described in paragraph 17 of this Lease; and (b) to use the roof and exterior walls of the Premises, and to install, maintain, use, repair and replace pipes, duct work, conduits, utility lines, and wires above, below and behind the finished ceiling, floor and exterior walls of the Premises. Tenant's employees shall park in those areas which Landlord may from time to time designate for employee parking and all delivery vehicles shall be parked in designated areas conforming to city code requirements.

3. **Term and Possession Date.** The Term of this Lease and Tenant's Possession Date shall be as set forth in paragraph 1.1 hereof. All terms and provisions of this Lease, except those provisions requiring Tenant to pay Monthly Rent prior to the Rental Commencement, shall be in force and effect from and after Tenant's Possession Date. In the event Landlord is unable to give possession of the Premises to Tenant on the Possession Date specified in paragraph 1.1 for any reason, Landlord shall have no liability to Tenant, and Tenant agrees to accept possession of the Premises at any time thereafter upon ten (10) days' prior written notice to Tenant, which later date shall then be Tenant's Possession Date; provided, however, that if possession of the Premises is not tendered to Tenant within ninety (90) days following the Possession Date specified in paragraph 1.1, Tenant shall have the right to terminate this Lease upon ten (10) days' written notice to Landlord, so long as such notice is delivered prior to the date Landlord delivers possession of the Premises to Tenant.

4. **Rental.**

(a) **Fixed Minimum Rent.** Tenant shall pay to Landlord as Fixed Minimum Rent during the Term of this Lease the amounts specified in paragraph 1.1 of this Lease and the amounts set forth in paragraph 3 (a) during any Extended Term, and in addition thereto the Storage Rent.

(b) **Delinquent Rental.** In the event any installment of Fixed Minimum Rent or other charge occurring under this Lease shall become overdue for a period of ten (10) days or more, a late charge of Four Hundred Dollars (\$400.00) may be charged by the Landlord for the purpose of defraying expenses incident to such delinquency. Payments overdue for thirty (30) days or more shall bear interest at the per annum rate of the greater of eight percent (8%) or the prime rate quoted from time to time by Chase Bank, N.A. plus six percent (6%) from the due date thereof until paid. In addition, Landlord may exercise its rights under paragraph 18 of this Lease.

(c) **Gross Sales Reports and Consent to Disclosure to Mortgagees.** Tenant shall furnish to Landlord, within sixty (60) days after the last day of each Lease Year, a report of gross sales of the preceding Lease Year ("Annual Report"). Tenant shall agree to keep such reports confidential and use them only for Landlord's internal purposes and as

necessary to provide information regarding tenants of the Center to any lenders or prospective purchasers.

5. **Security Deposit.** Tenant has deposited with Landlord the Security Deposit, if any, described in paragraph 1.1 hereof. Said deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term. Tenant waives any right to receive interest on such deposit and agrees that Landlord has no duty to segregate such deposit in a separate account or accounts. If Tenant is in default under this Lease more than two (2) times within any twelve-month period, irrespective of whether or not such default is cured, then, without limiting Landlord's other rights and remedies provided for in this Lease or at law or equity, the Security Deposit shall automatically be increased to three (3) times the original Security Deposit. If at any time during the Term of this Lease any of the rent or any other sum payable by Tenant to Landlord shall be past due and unpaid, or in the event of a failure of Tenant to keep and perform any of the other terms, covenants and conditions of this Lease to be kept and performed by Tenant, then the Landlord at its option may appropriate and apply the entire deposit, or so much thereof as may be necessary, to pay such past-due rent or other sums or to compensate the Landlord for loss or damage sustained or suffered by Landlord due to such breach on the part of Tenant. Should the entire deposit, or any portion thereof, be appropriated and applied by Landlord for the payment of overdue rent or other sums due and payable to Landlord by Tenant hereunder, then Tenant shall, upon the written demand of Landlord, forthwith remit to Landlord a sufficient amount in cash to restore said security to the original sum deposited, and Tenant's failure to do so within five (5) days after receipt of such demand shall constitute a breach of this Lease. Should Tenant comply with all of said terms, covenants and conditions and promptly pay all of the rental herein provided for as it falls due, and all other sums payable by Tenant to Landlord hereunder, an amount equal to the said deposit shall be paid to Tenant within thirty (30) days following the end of the Term or the earlier termination of this Lease. Landlord may assign its obligations hereunder to any purchaser of Landlord's interest in the Premises and thereupon Landlord shall be discharged from any further liability with respect to such deposit.

6. **Condition of Premises -- Tenant's Certificates.** Tenant acknowledges that Tenant has inspected the Premises and accepts them in their present condition. Upon request, Tenant agrees to execute a certificate to Landlord, or to any proposed mortgagee or purchaser of the Center, certifying that this Lease is in full force and effect, that all work has been satisfactorily completed, that there are no defaults, offsets or counterclaims (or stating the same) and such other facts as Landlord may reasonably request from time to time.

7. **Real Estate Taxes and Insurance.** Landlord shall pay, or see to the payment of, all real estate taxes assessed by any governmental authority upon the Premises and the Center, and shall cause commercial general liability insurance and fire and extended coverage insurance in an amount not to exceed the full replacement cost of the Center improvements to be maintained thereon. The term "Real Estate Taxes" shall mean all ad valorem real property taxes, charges, levies and assessments payable to any governmental authority with respect to the land, buildings and improvements constituting the Center, and all expenses and fees, including appraisal and attorneys' fees, incurred by Landlord in contesting or negotiating the same with governmental authorities; provided, however, in no event shall the expenses or fees in contesting or negotiating with governmental authorities allocated to the Center in any calendar year exceed the amount of savings in Real Estate Taxes realized in the year in which such expenses and fees are charged to tenants of the Center under this paragraph. "Real

Estate Taxes" shall also include any tax levied in lieu of real property taxes or for real property tax relief purposes, such as a local option tax, an excise tax on rentals, or a license fee or tax measured by the rents received from the Center. The term "Real Estate Taxes" shall not include any taxes levied upon or with respect to any equipment, fixtures, inventory or other property of Tenant, which shall be the sole responsibility of Tenant. Real Estate Taxes shall be deemed to accrue equally throughout each calendar year in which such taxes are payable. Expenses and fees incurred by Landlord in contesting or negotiating such Real Estate Taxes shall be apportioned equally among all years to which such contests or negotiations relate, and shall be subject to the limitations set forth above in this paragraph. Notwithstanding the payment and apportionment of Real Estate Taxes under this Section, as hereinbefore provided Tenant shall not be required to pay Real Estate Taxes during the original Term or the first Extended Term of the Lease.

**8. Use and Occupancy; Trade Name.** Tenant shall use the Premises solely for the Permitted Uses, and under the Trade Name designated in paragraph 1.1 hereof, and for no other purpose or purposes or under any other name or names without Landlord's prior written consent. Tenant shall not do or permit anything to be done in or about the Premises, or bring or keep anything therein, which will in any way increase the rate of fire insurance upon the Premises or the building wherein the Premises are situated. Tenant shall comply with all laws, ordinances, orders and regulations affecting the occupation and use of the Premises, and the rules and regulations, which the Landlord may from time to time establish for the Center.

Tenant shall not cause or permit injury or waste to the Premises or other portions of the Center, or cause or permit a nuisance to exist, and shall keep the Premises and the walkways adjacent to the Premises and any grading, platform and service areas used by Tenant clean and free from snow, rubbish and dirt at all times, and shall store all garbage and other waste within the Premises and arrange for the regular pick-up of such garbage and waste at Tenant's expense. Tenant shall not dispose of or burn any garbage or waste of any kind in or about the Premises or the Center. Tenant shall also be responsible for the regular maintenance and cleaning of the grease trap(s) serving the Premises.

Tenant agrees that it will continuously occupy the Premises, and will use and operate 100% of the Premises for the conduct of its business throughout the Lease Term. Tenant will conduct such business at all times in good faith and in such manner, consistent with Tenant's operating practices and policies. Tenant shall keep the Premises open for business to the general public, at a minimum, during Regular Business Hours. The term "Regular Business Hours" shall mean 11 a.m. to 10 p.m. Monday through Saturday or such other business hours as may be reasonably determined by Landlord.

Tenant agrees that it will not operate, maintain or allow on the Premises vending machines, arcade games, video games, or any other similar device, without the prior written consent of Landlord.

Tenant shall not use any advertising media in or about the Premises which shall be deemed objectionable to the Landlord or other tenants or the public, including, without limiting the generality thereof, loudspeakers, phonographs, television or radio broadcasts in a manner to be heard outside the Premises; provided, however, subject to any restrictions under zoning or any covenants governing the Center, Tenant shall be entitled to and may broadcast music through speakers serving any outdoor seating area, so long as no such events are conducted

and no such music is broadcast in a manner that disturbs the quiet use and enjoyment of premises by other tenants during the hours of 11 a.m. through 11 p.m. Monday through Saturday or at any time after 11 p.m. The Tenant shall not conduct any auction, fire, going out of business, lost our lease, or bankruptcy sale in the Premises.

Tenant shall not install any exterior lighting or plumbing fixtures, or attach any signs, advertisements, shades, awnings, decorations, or painting on the store front or exterior of the Premises (including the doors and plate glass), without the prior written consent of the Landlord; provided that (a) Tenant shall caused to be installed as part of the Tenant's improvements, a submeter to meter Tenant's water usage for the Premises, and Landlord shall read such meter and invoice Tenant for the cost of water utilities consumed at the Premises, and (b) Tenant shall affix and maintain one identification sign in the space provided therefor above the store-front closure of the Premises, as approved by Landlord in accordance with Landlord's sign regulations attached hereto as Exhibit D, at Tenant's expense; Tenant shall be entitle to install signage consistent with the drawings and elevations of Tenant's signs attached hereto as Exhibit D-1. So long as such sign complies with applicable zoning, is in compliance with Landlord's sign regulations and does not otherwise reduce signage available for each other leased premises in the Center, Tenant shall also be entitled to install an identification sign on the north (side) elevation of the Building in a location and configuration approved by Landlord.

9. **Holding Over.** Tenant covenants and agrees to deliver up and surrender to the Landlord possession of the Premises upon the expiration of this Lease or its termination, as herein provided, in as good condition as at the commencement of the Term, destruction by casualty, reasonable wear and tear and the effects of time excepted. Tenant shall not hold over beyond the end of any term for failure of Landlord to give notice to vacate, any such notice being waived by Tenant. In the event Tenant, notwithstanding, shall hold over after termination of this Lease, such tenancy shall constitute a month-to-month tenancy, which may be terminated as provided by applicable state law. During such tenancy, Tenant agrees to pay to Landlord, each month, the greater of the fair market rental value for the Premises or one hundred fifty percent (150%) of the Fixed Minimum Rent and Additional Rent payable by Tenant for the last month of the Term of this Lease. Upon termination of this Lease, Landlord shall be entitled to evict Tenant and shall be entitled to recover from Tenant reasonable expenses, including attorneys fees, and damages resulting from Tenant's failure to vacate.

10. **Rights of Landlord to Mortgage the Premises -- Notice to Mortgagee.** This Lease is subordinate to the rights of any mortgagee holding a mortgage on the Center, and Landlord reserves the right to subordinate this Lease to the lien of any mortgage hereafter placed upon the Premises or the Center. Tenant hereby constitutes and appoints Landlord its attorney-in-fact to execute any subordination and attornment agreements which may be required in connection with the negotiation or execution of any mortgage. Tenant further agrees upon request to execute such subordination and attornment agreements as Landlord may reasonably request. The terms and provisions of this Lease may require approval by a mortgagee. If any such mortgagee should require as a condition to Landlord's financing, as may be determined necessary or desirable by Landlord, any modification of the terms and provisions of this Lease, and if Tenant should refuse to approve and execute any modifications so required, then Landlord shall have the right, prior to the delivery of possession of the Premises to Tenant, to cancel this Lease by written notice to the Tenant without liability on the part of the Landlord.

From and after receipt of notice of assignment of this Lease to a mortgagee and the name and address of such mortgagee, Tenant agrees to give written notice of any claimed default on the part of Landlord hereunder to such mortgagee and to permit such mortgagee a period of thirty (30) days within which to cure any such default of Landlord, at its option, prior to exercising any right to terminate this Lease. Tenant agrees not to deduct any amount from the rental and other charges due hereunder because of any default or claimed default on the part of Landlord.

11. **Maintenance, Repairs and Alterations.**

(a) **Landlord's Responsibility.** Landlord shall keep in good order, condition, and repair the exterior, foundations, exterior walls (except the interior faces thereof), downspouts, gutters and roof of the Premises, excluding any uninsured damage thereto caused by Tenant, its agents or invitees. In the event it becomes necessary to replace any one heating and air-conditioning unit (the "HVAC unit") at any time after Lease Commencement Date during the original Term or the first Extended Term, Landlord shall pay for the cost of such replacement upon determination as agreed upon by both Landlord and Tenant that the replacement cost is equal to or less than the estimated repair costs.

(b) **Tenant's Responsibility.** Tenant shall keep and maintain the Premises and every part thereof, and the exterior and interior portions of all doors, windows, plate glass and showcases surrounding the Premises and the store front in good order, condition and repair, including, without implied limitation, the repair, and maintenance of all heating and air-conditioning equipment, and the repair of all plumbing within or serving the Premises, fixtures, interior walls, floors, ceiling, signs and all interior building appliances, coolers and similar equipment. Tenant shall cause the heating and air-conditioning systems serving the Premises to be (i) maintained by qualified contractors under maintenance contracts approved in writing by Landlord; or (ii) inspected by licensed heating and air-conditioning contractors acceptable to Landlord twice per year, with written reports of said inspections being submitted to Landlord within thirty (30) days after Tenant's receipt of such reports, and any suggested maintenance, replacements and repairs shall be performed promptly by Tenant. Tenant, at its expense, shall obtain a preventative maintenance contract on any grease trap for the Premises which shall be subject to Landlord's reasonable approval. Tenant shall provide Landlord with a copy of the preventative maintenance contract no later than ninety (90) days after the Rental Commencement Date and thereafter within thirty (30) days of Landlord's request. The preventative maintenance contract shall provide for the inspection and maintenance of the grease trap on not less than a quarterly basis. Tenant shall be responsible for all other periodic cleaning of the grease trap that may be necessary for it to properly function, irrespective of whether such grease trap may be located outside the Premises. If the Tenant shall fail to start any maintenance or repairs required to be made by the Tenant within fifteen (15) days after written notice thereof by the Landlord or to complete such maintenance or repairs promptly thereafter, then the Landlord may provide such repairs or maintenance for the account of the Tenant and the cost thereof shall be added to and collected with the next installment of the Fixed Minimum Rent.

(c) **Alterations.** Tenant shall have no right to make alterations to the interior of the Premises except with the prior written consent of Landlord. All alterations shall be made at Tenant's expense pursuant to drawings and specifications and by a contractor or contractors approved in writing by Landlord. All work shall be in conformity with applicable governmental

laws and regulations and with the regulations of fire insurance underwriters carrying insurance on the Premises. All necessary permits and approvals shall be in effect and posted at the Premises prior to the commencement of construction. Unless Landlord has otherwise agreed in writing, Tenant shall upon termination of this Lease, at its own expense, if Landlord shall so request, restore the Premises to their former condition, ordinary wear and tear and damage by elements excepted.

(d) **Risk of Damage.** Tenant agrees that all personal property of every kind or description which may at any time be in the Premises shall be at Tenant's sole risk, or at the risk of those claiming through or under the Tenant, and Landlord shall not be liable for and shall be held harmless by Tenant against all claims (including subrogation claims by Tenant's insurance carrier and the insurance policies maintained by Tenant shall include an endorsement containing an express waiver of any rights of subrogation by such insurance carrier) for any damage to said property or loss suffered by the business or property of the Tenant arising from bursting, overflowing or leaking of water, sewer, steam pipes, the heating or plumbing fixtures, the electric wiring, gas or odors, or caused in any other manner. Tenant hereby waives and releases any and all claims which it might have against Landlord for any injuries, damages, or losses of or to persons, property or otherwise, sustained by Tenant, however caused. Except with respect to Tenant's repair obligations in paragraph 11 (b), Tenant shall not be liable for and Landlord hereby waives all claims it might have against Tenant (including subrogation claims by Landlord's insurance carrier and the insurance policies maintained by Landlord shall include an endorsement containing an express waiver of any rights of subrogation by such insurance carrier) for any damage to the Center or loss suffered by the business or property of the Landlord caused by any casualty or in any other manner.

(e) **Trade Fixtures.** All improvements to the Premises and all fixtures that are integrated into the structural, plumbing, electrical and mechanical systems of the Premises shall be and become the property of the Landlord, except that all machinery, restaurant and kitchen equipment (except for walk-in coolers, cooking hood(s) and Ansel fire suppression system(s) and trade fixtures installed by the Tenant (including point of sale systems, restaurant seating and furniture) shall remain the personal property of the Tenant. Tenant's "trade fixtures" shall not include sound systems, carpeting, vinyl or other floor or wall coverings (other than unattached rugs, pictures and art objects), attached shelving, lighting fixtures (other than free-standing lamps), walk-in coolers, or similar attached improvements. -

(f) **Liens.** Tenant shall not cause or permit the creation of any lien against the Premises on account of any labor or materials furnished in connection with maintenance, repairs or alterations undertaken by Tenant. In the event any such lien shall be filed against the Premises, Tenant shall cause such lien to be released within ten (10) days after actual notice of the filing thereof (but in every event prior to foreclosure of such lien) or shall furnish to Landlord a bond, or other security satisfactory to Landlord, to indemnify Landlord against the foreclosure of such lien.

(g) **Entry by Landlord.** Landlord shall have the right to enter upon the Premises for the purpose of inspection, to perform Landlord's duties, or to exercise Landlord's rights hereunder at all reasonable times. For a period commencing ninety (90) days prior to the expiration of this Lease, Landlord shall have the right to reasonable access to the Premises for the purpose of exhibiting the same to prospective tenants.

(h) **Repairs by Landlord Upon Tenant's Default** If Tenant shall fail or refuse to make repairs in accordance with the provisions of this Lease, or if Landlord is required to make any repairs by reason of any act, omission to act or negligence of Tenant, the Tenant's subtenants, business invitees or licensees, or their respective employees, agents or contractors, Landlord shall have the right, at its option, after ten (10) days' notice to Tenant (except no notice shall be required in case of an emergency), to enter upon the Premises, to make such repairs on behalf of and for the account of Tenant, and to add the cost and expense thereof to the next installment of rent due hereunder. Tenant agrees to pay such amount as billed. Nothing contained in this subparagraph shall be deemed to impose any duty upon Landlord or affect in any manner the obligations assumed by Tenant hereunder. Any cost or expense incurred by Landlord and chargeable to Tenant as herein provided shall be reduced to the extent Landlord is reimbursed therefor under any policy of insurance.

12. **Indemnity and Insurance**. Tenant assumes all risks and responsibilities for accidents, injuries, and damages to persons or property resulting from or in connection with the condition and Tenant's use or control of the Premises during the Term, and covenants at all times to indemnify and save the Landlord harmless from all loss, cost, and damages, including attorneys' fees, which may occur or be claimed with respect to any person, corporation or firm, or their property. Tenant's obligations under this paragraph 12 shall survive the expiration or termination of this Lease. Landlord covenants at all times to maintain commercial general liability insurance against injury to persons and damage to property occurring on the Common Areas in amounts not less than Tenant is required to maintain as hereinafter provided, and shall indemnify and hold Tenant harmless from all liabilities to the extent covered by this insurance. Landlord covenants at all times to indemnify and save Tenant harmless from all loss, cost, and damages, including attorneys' fees, which may occur or be claimed with respect to any accidents, injuries, and damages to persons or property resulting from or in connection with the condition and Landlord's use or control of the common areas and other portions of the Center outside the Premises during the Term; Landlord's obligations under this paragraph 12 shall survive the expiration or termination of this Lease.

Tenant agrees to place and maintain, at Tenant's own expense, with insurance companies qualified to do business in the State of Indiana and acceptable to Landlord, commercial general liability, bodily injury/property damage, insurance with respect to Tenant's use and occupancy of the Premises in amounts of at least the minimum limits set forth in paragraph 1.1 hereof. Such insurance shall also be for the benefit of the Landlord and shall name the Landlord as an insured and the property manager for the Center (at the commencement of this Lease **Harshman Property Services, LLC**) as additional insured, Tenant shall provide to Landlord a certificate evidencing such insurance is in effect and agreeing that Landlord will be given at least thirty (30) days' written notice prior to cancellation or change in such insurance. Such certificate shall be replaced no later than thirty (30) days prior to the expiration date of the then current policy.

Tenant shall furnish at its own cost and expense replacement for any cracked or broken glass, including plate glass and interior and exterior windows and doors in the Premises. Landlord and Tenant agree that all fire and extended coverage insurance carried by either of them on the Center improvements or fixtures, or upon personal property to be maintained in the Premises, shall contain standard waiver of subrogation clauses in favor of the other.

13. **Casualty.** If the Premises shall be partially or totally destroyed by fire or other casualty insured under standard or extended risk insurance policies so as to become partially or totally untenable, the Premises shall be repaired as speedily as possible at Landlord's expense, unless the Landlord shall elect not to repair as hereinafter provided, and an adjusted proportionate part of the Fixed Minimum Rent shall be abated until the Premises are so repaired. The obligations of the Landlord hereunder shall be limited to rebuilding or repair of the Premises to be similar in size, floor area and quality to the Premises prior to such damage.

If the Premises are so damaged as to become wholly untenable, then the Landlord may, if it so elects, restore or rebuild to put the Premises in good condition and fit for occupancy within a reasonable time after such destruction or damage, so long as the insurance proceeds available to Landlord are sufficient to rebuild the Premises, or it may elect to terminate this Lease. If Landlord elects to repair or rebuild, it shall, within thirty (30) days after the later of the date such damage occurred or the date on which Landlord has received the proceeds from Landlord's casualty insurance, give the Tenant notice of its intention to repair and Landlord shall then proceed with reasonable speed to repair and restore the Premises. If Landlord elects to rebuild or repair, then its obligations hereunder shall be to restore the Premises to be similar in size, floor area and quality to that prior to such damage.

In the event buildings comprising the Center shall be destroyed or damaged by fire or other casualty as to render at least fifty percent (50%) thereof untenable and such damage cannot be repaired or restored within one hundred twenty (120) days as determined by a certificate of Landlord's architect or if the proceeds from Landlord's casualty insurance are not available or are not sufficient to restore the Center, then Landlord, by notice in writing to Tenant within thirty (30) days after the later of the date such casualty occurred or the date on which Landlord has received the proceeds from Landlord's casualty insurance, may terminate this Lease. If Landlord elects to rebuild or restore and does not elect to terminate the Lease, Landlord shall proceed with rebuilding and restoration as promptly as possible, and if Tenant's use of the Premises is materially affected, a proportionate part of the Fixed Minimum Rent based on the amount of square footage in the Premises Tenant is prevented from using as a result of the casualty shall be abated until the buildings are so repaired and restored. All insurance proceeds by reason of any such casualty shall be paid to and belong to the Landlord.

Promptly following completion of Landlord's repairs and restoration, Tenant shall, at Tenant's expense, replace its trade fixtures, furniture, equipment, furnishings, floor and wall coverings and inventories and, if Tenant has ceased operating in the Premises, reopen for business.

14. **Condemnation.** If any part of the Premises or more than fifty percent (50%) of the parking spaces in the Center are condemned or taken in whole or in part by any public authority under the power of eminent domain, either Landlord or Tenant shall have the right, as of the day possession shall be taken by such public authority, to terminate this Lease by notice to the other in writing and rent shall be paid to the date of such possession or proportionate refund made by the Landlord if rent has been paid in advance. If neither party shall elect to terminate the Lease by reason of such condemnation, the Fixed Minimum Rent shall be reduced by the proportion of the floor area of the Premises taken by such condemnation and Landlord shall make all necessary repairs or alterations so as to constitute the remaining Premises a complete architectural unit.

All damages awarded for such taking, whether for a whole or a part of the Premises or Center shall belong to and be the property of the Landlord, whether such damages shall be awarded as compensation for diminution in value to the leasehold or to the fee of the Premises; provided, however, that the Landlord shall not be entitled to any award made to Tenant for the cost of removal of stock and trade fixtures.

15. **Utilities.** Tenant agrees to pay for all utilities supplied to the Premises, including, without limiting the generality thereof, electricity, gas, water, heat and charges for air conditioning, fire protection services, and sewerage, if any charge is made therefor. Tenant shall pay its proportionate charge if jointly metered with other premises. For purposes of this Lease, "proportionate charge" shall mean Tenant's usage of such jointly metered utilities as determined by Landlord. Tenant shall pay the charges for water utilities invoiced by Landlord based upon Landlord's reading of the water submeter which Tenant is obligated under this Lease to have installed as part of Tenant's improvements.

16. **Landlord's Lien on Personalty.** Tenant grants to Landlord a continuing security interest in all inventory, goods, equipment and fixtures of Tenant, including all "trade fixtures" as set forth in subparagraph 11 (e) above, which may now or hereafter be placed in or upon the Premises, and the proceeds thereof, to secure the payment of rent and all other liabilities and obligations of Tenant hereunder; provided, however, that Landlord's security interest in any of the aforementioned items shall be subordinated to any financing agreement or lease between Tenant and a vendor, supplier or lender. Landlord shall have the right to file financing statements pertaining to its security interest from time to time without the signature of Tenant. Upon failure to pay rent, or other default as described in paragraph 18 hereunder by Tenant, Landlord may possess and either retain or dispose of the security, at public or private sale, in accordance with the Uniform Commercial Code as enacted in this State. Any notice to Tenant shall be sufficient if given pursuant to paragraph 25 of this Lease, and ten (10) days' prior written notice of any sale shall be sufficient. After default, Landlord may enter the Premises to take possession of the Tenant's property and shall not be liable to Tenant in any way for damages caused thereby.

17. **Common Areas of Center.** Landlord agrees to clean, repair and maintain the common areas of the Center, including parking areas, sidewalks and driveways; to keep the common areas reasonably clear of snow and illuminated during business hours at night, in such manner as Landlord shall reasonably determine. Landlord shall also carry public liability insurance with respect to the common areas, which shall include "all tenants" as additional insureds.

Tenant shall not use the common areas of the Center for any display or storage of merchandise, or use such common areas in any way that would interfere with the use of such areas by others without the express written consent of the Landlord. Tenant shall comply with all reasonable rules and regulations of Landlord with respect to the common areas.

Landlord may at any time close temporarily any portion of the common areas to make repairs or changes, to prevent the acquisition of public rights therein, or for other reasonable purposes. Landlord shall have no liability to Tenant, nor shall Tenant have any right to abatement of rental, because of a temporary failure in or interruption of heat, light, air-conditioning or other services provided by Landlord so long as such interruptions or failures are not caused by the willful misconduct or gross neglect of the Landlord.

Landlord reserves the right to change the plans, facilities and plot plan of the Center and the size and configuration of the common areas, including, without limiting the generality of the foregoing, the right to restrict the use and reduce the size of the common areas from time to time, without consent of Tenant. No such action by the Landlord shall constitute a breach of this Lease, or give Tenant any rights whatsoever.

The provisions of this Lease respecting the common areas, as well as the entire Center, shall apply to the common areas and Center as they may be changed by Landlord from time to time.

**18. Default.** Landlord may terminate this Lease, or without terminating this Lease, terminate Tenant's right to possession of the Premises, or exercise any other rights available to Landlord under applicable law, upon the occurrence of any one or more of the following events:

(a) failure of Tenant to pay an installment of rent, or other charges specifically mentioned and required under the Lease within fifteen (15) days after it becomes due or to perform any other of its covenants under this Lease within thirty (30) days after written notice from Landlord to Tenant;

(b) Tenant abandons the Premises, or vacates the Premises, except following the occurrence of a casualty as provided in paragraph 13;

(c) the making by Tenant of an assignment for the benefit of its creditors;

(d) the levying of a writ of execution or attachment on or against Tenant;

(e) to the extent permitted by law, institution of proceedings for reorganization, liquidation, voluntary or involuntary bankruptcy of Tenant or its adjudication as a bankrupt or insolvent, or the appointment of a receiver, trustee, or liquidator to take charge of its assets;

(f) by doing or permitting to be done by Tenant any act which creates a mechanic's lien or claim therefor against the land or buildings of which the Premises are a part and the same is not released or otherwise provided for by indemnity within ten (10) days after written notice thereof is first given to the Tenant. Additionally, during the period of any default by Tenant of Tenant's covenants contained in paragraph 8 hereof, Tenant shall pay per diem liquidated damages, as determined by Landlord, but not to exceed Five Hundred Dollars (\$500.00) per day or for a period of more than thirty (30) days.

Upon the termination of this Lease or Tenant's right to possession, for any of the foregoing reasons, Landlord may re-enter the Premises with or without process of law, using such force as may be necessary, and remove all persons and property therefrom, and Landlord shall not be liable for damages or otherwise by reason of such re-entry. No such termination or re-entry, however, shall affect the liability of Tenant for rental and other charges hereunder. In the event of such termination, Landlord may, but shall not be obligated to, re-let the Premises, and Tenant shall be liable to Landlord for the difference between the rental and other charges herein provided and the net proceeds received by Landlord from such re-letting during the balance of the Term. Any such difference owing by Tenant for the entire remainder of the Term shall be

due and may be recovered at once, without awaiting the expiration of the Term, and shall be based upon the best estimates of the amounts thereof available at the time. Upon default, as herein described, Tenant shall become liable for and agrees to pay all expenses of Landlord in regard to the default, collection of rent due, and re-letting, which expenses shall include attorneys' fees of Landlord.

Landlord shall in no event be charged with default in the performance of its obligations hereunder unless and until Landlord shall have received written notice from Tenant specifying wherein Landlord has failed to perform any obligation hereunder, and Landlord shall have failed to perform such obligation, or remedy such default, within thirty (30) days (or such additional time as is reasonably required to correct any such default) after receipt of such notice from Tenant. Tenant shall also give notice of such default to any mortgagee of the Center and afford such mortgagee an opportunity to cure such default as provided in paragraph 10.

19. **Assignment and Sub-letting by Tenant.** Tenant shall have no right to assign, mortgage, or otherwise transfer or encumber this Lease, nor to sub-let all or any portion of the Premises or permit any other person to hold or occupy any portion thereof, unless the consent in writing of Landlord shall first have been obtained not to be unreasonably withheld, and then only in the manner and upon the conditions set forth in such consent.

In any event, Tenant shall remain liable to Landlord for performing all of the terms and provisions of this Lease.

Landlord shall also have the right, by written notice to Tenant within thirty (30) days following receipt of a request for consent to an assignment or sub-letting from Tenant, to terminate this Lease with respect to the Premises (or such portion thereof as is the subject of such request) and, at Landlord's option, to enter into a lease for the Premises (or a portion thereof) with the proposed assignee or sub-tenant.

If Tenant is a non-publicly owned corporation or partnership, any transfer of this Lease by merger, consolidation, or liquidation of Tenant, or any change in the control of Tenant shall constitute an assignment for the purpose of this Lease.

Unless Landlord elects to terminate this Lease, Tenant agrees to reimburse Landlord for expenses, including attorneys' fees, incurred by Landlord in connection with the processing of any request to approve a transfer, assignment, sub-letting, or encumbrance of this Lease.

By way of example and not limitation, Landlord shall not be deemed to have unreasonably withheld consent to a proposed assignment or sublease if in Landlord's judgment, reasonably exercised (i) the Premises will be in any way materially adversely affected; (ii) the business reputation of the proposed assignee or subtenant is not at least as good as that of Tenant; or (iii) the financial worth of the proposed assignee or subtenant is insufficient to meet the obligations hereunder.

20. **Limitation of Landlord's Liability.** Tenant agrees that Tenant shall look solely to Landlord's interest in the Center for collection of any judgment (or other judicial process) requiring payment of money by Landlord in the event of default as described in paragraph 18 or breach by Landlord of any of the covenants, terms or conditions of this Lease, and that no other assets of Landlord shall be subject to levy, execution or other process for satisfaction of

Tenant's remedies. The term "Landlord" as used in this Lease in relation to covenants, agreements and conditions to be observed and performed by Landlord, shall be limited to mean and include only the owner or owners from time to time of Landlord's interest in the Premises. In the event of any transfer or transfers of such interest (except a transfer for security), the Landlord named herein (or the transferor, in the case of a subsequent transfer) shall, after the date of such transfer, be released from all personal liability for performance of any covenant, agreement and condition on the part of the Landlord which are thereafter to be performed hereunder. The transferee shall be deemed to have assumed (subject to the limitations of this paragraph) all of the covenants, agreements and conditions herein to be observed by Landlord, with the result that such covenants, agreements and conditions shall bind Landlord, its successors and assigns, only during and in respect of their respective periods of ownership.

In the event Landlord is a partnership, Tenant further agrees that no partner of Landlord shall have any duty, responsibility or liability to Tenant hereunder in his individual capacity.

21. **Environmental Matters.** Tenant shall indemnify, defend and hold harmless Landlord from all fines, suits, proceedings, claims and actions of any kind arising out of or in any way connected with any spills or discharges of hazardous substances or wastes by Tenant, or any invitees or licensees of Tenant, at the Premises or the Center that occur during the term of this Lease, whether arising under laws and regulations now in effect and enacted or adopted at any time hereafter. Tenant's obligations and liabilities under this paragraph shall continue so long as Landlord remains responsible for any spills or discharges of hazardous substances or wastes at the Premises or the Center that occur during the term of this Lease. In addition, Tenant's rights hereunder with respect to assignment and sub-letting are subject to Tenant's compliance, at Tenant's expense, with all laws and regulations which may be hereafter enacted requiring environmental clearances prior to the transfer of interests in real estate, and Tenant agrees to cooperate with Landlord in obtaining any environmental clearances which may be required upon Landlord's transfer of its interest in the Center.

22. **Landlord's Covenant.** Landlord covenants and agrees that if the Tenant shall perform all of the covenants and agreements herein stipulated to be performed on the Tenant's part, the Tenant shall, at all times during the Term, have the peaceable and quiet enjoyment and possession of the Premises without any manner of hindrance or disturbance from the Landlord or any person lawfully claiming through the Landlord.

23. **Non-Waiver Provisions.** No waiver of any condition or covenant of this Lease or failure to exercise a remedy by either of the parties hereto shall be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant or remedy.

24. Intentionally Omitted.

25. **Notices.** Any notice, demand, request or other instrument which may be or are required to be given under this Lease shall be delivered personally or sent by either United States certified or registered mail postage prepaid or any national over-night delivery service and shall be addressed (a) if to Landlord at the address provided below or at such other address as Landlord may designate by written notice and (b) if to Tenant at the address provided below or at such other address as Tenant shall designate by written notice. Notices shall be effective upon delivery unless delivery is refused or cannot be made in which event

notice shall be effective on mailing or deposit with the delivery service. All rental payments shall be made to the Landlord at the address of Landlord provided below or at such other address as Landlord may designate by written notice.

**Landlord:** Harshman & Hays Two, LLC  
c/o Harshman Property Services, LLC  
P.O. Box 532968  
Indianapolis, IN 46253

**With a copy to:** George Abel  
Easter & Cavosie  
10455 N. College Avenue  
Indianapolis, IN 46280

**Tenant:** 773 E. Main Street, Suite 3-5  
Brownsburg, IN 46112  
Attn: Anthony R. Hill

**With a copy to:** N/A

26. **Other Tenant's – No Exclusive Rights / Exclusive Rights.** Tenant agrees that no representations have been made to Tenant that any other tenants have leased or will continue to lease space within the Center or that Tenant has any exclusive right to sell merchandise of any type and character in the Center EXCEPT Landlord shall not lease space within the Center to another tenant operating a competing restaurant, defined as a sit-down restaurant with full bar service (it being agreed, however, that Landlord shall have the right to lease other space in the Center to tenants selling merchandise and services similar to the merchandise and services sold by Tenant).

27. **Force Majeure.** In the event that Landlord shall be delayed or hindered in or prevented from doing or performing any act or thing required hereunder by reason of strikes, lockouts, casualties, Acts of God, labor troubles, inability to procure materials, failure of power, governmental laws or regulations, riots, insurrection, war or other causes beyond the reasonable control of Landlord, then Landlord shall not be liable or responsible for any such delays and the doing or performing of such act or thing shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

28. **Brokers.** Tenant represents and warrants to Landlord that neither it nor its officers or agents nor anyone acting on its behalf has dealt with any real estate broker in the negotiating or making of this Lease, except as listed in paragraph 1.1 herein, and Tenant agrees to indemnify and hold Landlord, its agents, employees, partners, directors, shareholders and independent contractors harmless from all liabilities, costs, demands, judgments, settlements, claims, and losses, including attorney's fees and costs, incurred by Landlord in conjunction with any such claim or claims of any other broker or brokers claiming to have caused Tenant to enter into this Lease.

29. **Time of the Essence.** Time is of the essence of this Agreement.
30. **Governing Law.** This Lease shall be governed according to the laws of the State of Indiana.
31. **Memorandum of Lease.** Landlord and Tenant agree not to place this Lease of record but upon the request of either party agree to execute for recording purposes a Memorandum of Lease indicating the Premises, the Term, and other provisions with respect to which notice to third parties is deemed advisable, but omitting rental and other terms of the Lease.
32. **No Option.** The submission of this Lease for examination or execution by Tenant shall not constitute a reservation of or option for the Premises. This Lease shall become effective as a Lease only upon execution and delivery by both Landlord and Tenant.
33. **Representations.** Tenant acknowledges that neither Landlord nor Landlord's agents, employees or contractors have made any representations or promises with respect to the Premises, the Center or this Lease except as expressly set forth herein.
34. **Interior Improvements.** Tenant is responsible for all interior improvements ("Leasehold Improvements") it desires, subject to the provisions in the Work Letter attached hereto as Exhibit C. Tenant must submit detailed plans and specifications to Landlord for approval prior to the commencement of such Leasehold Improvements. Tenant shall, at its sole cost and expense, cause the construction of any Leasehold Improvements but only in accordance with plans and specifications for such Leasehold Improvements approved in writing by Landlord. Tenant shall cause all Leasehold Improvements to be constructed at Tenant's sole expense in a good and workmanlike manner and otherwise in accordance with the requirements set forth in subparagraph 11 (c) above. Tenant has inspected the Premises and accepts the condition thereof as of the date this Lease is executed, it being understood that Tenant is taking the Premises in "as-is" condition

{SIGNATURES TO APPEAR ON NEXT PAGE}

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease Agreement as of the day and year first-above written.

LANDLORD:

HARSHMAN & HAYS TWO LLC

By: [Signature]

Larry W. Harshman, Member

TENANT:

ROSE-HILO RESTAURANTS, LLC

By: [Signature]

Printed: ANTHONY D HILL

Title: \_\_\_\_\_

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HENDRICKS )

Before me, a Notary Public in and for said County and State, personally appeared Anthony D. Hill, who acknowledged the execution of the foregoing Lease Agreement on behalf of said business.

Witness my hand and Notarial Seal this 1st day of June, 2011.



[Signature]  
NOTARY PUBLIC

Printed: Dawn McClanahan

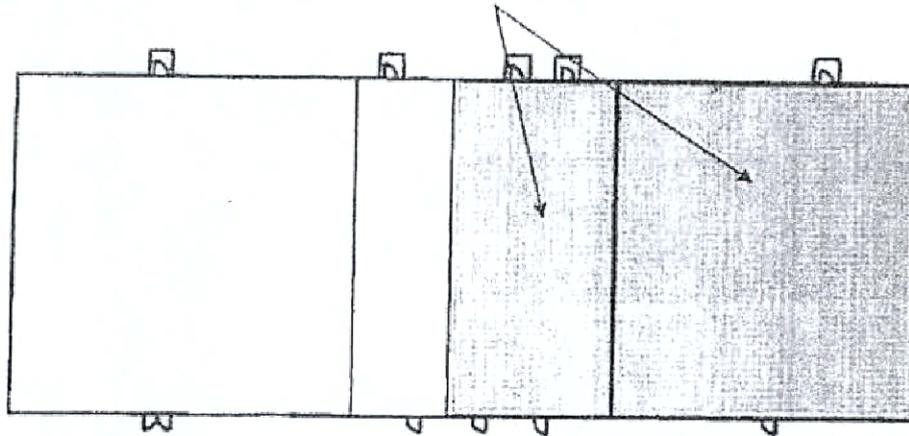
County of Residence: Marion

My Commission Expires: 9/22/13

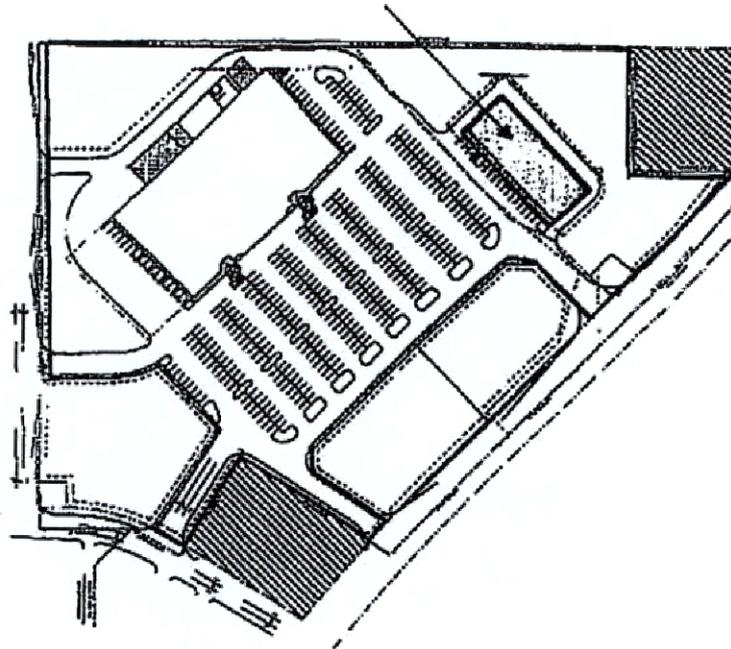
EXHIBIT A

SITE PLAN – PREMISES AND CENTER

PREMISES:  
773 E. Main Street, Suite 3-5  
Brownsburg, IN 46112  
6,650 square feet



The Center: Brownsburg "B" Shoppes



**EXHIBIT B - LEGAL DESCRIPTION**

A part of the Southeast Quarter of Section 11, Township 16 North, Range 1 East in Lincoln township, Hendricks County, Indiana, being bounded as follows:

Commencing at the Northeast corner of the Northeast Quarter of the Northeast Quarter of Section 14, Township 16 North, Range 1 East, in said County; thence South 00 degrees 00 minutes 00 seconds East (assumed bearing), along the East line of the said Quarter Quarter Section, a distance of 141.18 feet (140.00 feet by deed) to a point on the Northern right-of-way of Tilden Road; thence South 89 degrees 24 minutes 10 seconds West 778.90 feet (778.82 feet by deed) along said right-of-way line; thence North 00 degrees 14 minutes 14 seconds East 496.77 feet; thence North 46 degrees 30 minutes 00 seconds East 229.46 feet; thence North 43 degrees 30 minutes 00 seconds West 41.00 feet to the Point of Beginning of this description; thence continuing North 43 degrees 30 minutes 00 seconds West 85.00 feet; thence North 46 degrees 30 minutes 00 seconds East 205.00 feet; thence South 43 degrees 30 minutes 00 seconds East 85.00 feet; thence South 46 degrees 30 minutes 00 seconds West 205.00 feet to the Point of Beginning, containing 0.400 acres, more or less.

## EXHIBIT C

### LEASEHOLD IMPROVEMENTS - WORKLETTER

Landlord shall deliver the Premises to Tenant in "As-Is, Where-Is" condition. Landlord has caused Landlord's architect, at Landlord's sole cost and expense, to provide an initial set of drawings ("the Preliminary Plans"). Tenant shall thereafter be responsible for cause the final Construction Drawings to be prepared and submitted to the necessary governmental entity to obtain all necessary building permits. The architectural fees for the preparation of Construction Drawings shall be split equally between Landlord and Tenant, and the architect shall invoice Landlord and Tenant separately for their respective portions of the fees; the parties have preliminarily determined that the fees for architectural services will be approximately \$7,150.00. Tenant is responsible for all interior improvements ("Leasehold Improvements") it desires, which at a minimum shall include a 2-hour fire barrier between the Premises and the rest of the Building (a shaft wall next to the existing gypsum board wall, or at least one 2-hour UL listed stick-built assembly that can be built from one side of the existing demising wall), a fire alarm system throughout the entire Building and such other improvements as are required in order to cause construction of the Leasehold Improvements and Tenant's use of the Premises to be permitted without installing a sprinkler system throughout the Building, all constructed at Tenant's sole cost and expense. Tenant must submit detailed plans and specifications, which shall include an adequately sized grease trap and other plumbing facilities (unless the same are already present at the Premises), including a water submeter, to Landlord for approval prior to the commencement of such Leasehold Improvements. Tenant shall, at its sole cost and expense, cause the construction of any Leasehold Improvements but only in accordance with plans and specifications for such Leasehold Improvements approved in writing by Landlord.

Tenant agrees to hire Harshman Property Services, LLC to act as the general contractor for the Leasehold Improvements (the "GC"); provided, however, the GC shall use trade contractors submitted by Tenant, unless GC has a reasonable objection to any such trade contractor. The GC shall be paid by Tenant for all costs of the construction of the Leasehold Improvements on a "cost plus a fee" basis. Tenant shall provide to Landlord prior to execution of the Lease (a) financial statements and tax returns for 2009 and 2010 (except where 2010 tax returns are not available, in which case 2008 tax returns will be provided) for each of the Guarantors, (b) evidence satisfactory to Landlord that Tenant and/or the Guarantors have financing in place or sufficient financial resources to pay the costs for all Leasehold Improvements, and (c) copies of the organizational documents for Tenant, including the articles of organization filed with the Indiana Secretary of State and the operating agreement.

**EXHIBIT D**  
**SIGN REGULATIONS**

Tenant will not erect any signs unless otherwise approved in writing after color rendering review by Landlord.

A. **Tenant Responsibility for Sign**

1. Painted or printed signs on the exterior surface of any building, including paper signs, stickers or banners, are not permitted without Landlord's written approval. Landlord's approval may not be unreasonably withheld.
2. Tenant shall maintain signs in good repair at all times.
3. Upon vacating, tenant shall remove all signs and repair all damage caused by such removal. If Tenant fails to remove such signs within 30-days of vacating, Landlord may choose to remove the signs and repair the damage and charge the Tenant.
4. Tenant is responsible for obtaining all permits and permissions from the Town of Brownsburg.

**LANDLORD WILL NOT BE RESPONSIBLE FOR COST OF THE REFABRICATING OF SIGNS FABRICATED, ORDERED, OR CONSTRUCTED THAT DO NOT CONFORM TO THE SIGN CRITERIA.**

**EXHIBIT E**

**GUARANTY OF LEASE**

THIS GUARANTY, given this 1<sup>st</sup> day of June, 2011, by Chris R. Hill, Gregory Rose, and Anthony R. Hill (hereinafter jointly and severally designated "Guarantor") to **HARSHMAN & HAYS TWO, LLC** (hereinafter designated "Landlord").

**WITNESSES THAT:**

Guarantor is the Member of Rose-Hill Restaurants, LLC, an Indiana limited liability company (hereinafter with its successors and assigns to be referred to as "Tenant"). In order to induce Landlord to enter into the lease to which this Guaranty of Lease is attached (hereinafter referred to as the "Lease"), and in consideration of the benefits to be derived by Guarantor as such member as a result of the Lease to Tenant, Guarantor agrees as follows:

1. To pay all sums due and payable under or pursuant to the terms and conditions of the Lease on the respective dates provided therein and to cause the full and faithful performance and observance of each and all obligations of the Tenant under and pursuant to the terms and conditions of said Lease, as fully and to the same extent as though both Guarantor and Tenant had been named in the Lease as tenants therein with joint and several liability. The above guaranty shall constitute a guaranty of payment and performance.
2. Guarantor expressly waives any legal obligation, duty or necessity for Landlord to proceed first against Tenant or to exhaust any remedy Landlord may have against Tenant, including the resort to any security deposit or to any other credit in favor of Tenant, it being agreed that in the event of default or failure of performance in any respect by Tenant, Landlord may proceed and have right of action solely against either Guarantor or Tenant or jointly against Guarantor and Tenant.
3. Any modification, amendment, waiver, change or extension of any of the terms, covenants or conditions of the Lease which Tenant and Landlord may hereafter make or any forbearance, delay, neglect or failure on the part of Landlord in enforcing any of the terms, covenants, conditions or provisions of the Lease shall not in any way affect, impair or discharge Guarantor's primary and unconditional liability to Landlord hereunder, nor shall Guarantor's liability hereunder be impaired, affected or discharged by any act done or omitted to be done or by any waiver by either Landlord or Tenant, notwithstanding that Guarantor may not have consented thereto or may not have notice or knowledge thereof. Guarantor hereby ratifies and confirms any such modification, amendment, waiver, change or extension and agrees that the same shall be binding upon Guarantor, and hereby waives any and all defenses, counterclaims or offsets which Guarantor might or could have by reason thereof, it being understood that Guarantor, as guarantor hereunder, shall at all times be and remain liable to Landlord.
4. This Guaranty shall commence on execution and delivery of the Lease and continue until all of Tenant's obligations under the Lease are performed. If the Lease shall be renewed, or its term extended, for any period beyond the date specified in the Lease for the expiration of said term, either pursuant to an option granted under the Lease or otherwise, or if the Tenant

holds over beyond the term of the Lease, the obligations hereunder of Guarantor shall extend and apply with respect to the full and faithful performance and observance of all the covenants, terms and conditions of the Lease and any such modification thereof. This Guaranty shall not be diminished by any payment of rent or performance of the terms, covenants or conditions of the Lease by Guarantor. If payment of the obligations or any part thereof is made by Tenant or Guarantor, the liability of Guarantor hereunder shall continue, remain in full force and effect and be renewed if all or any part of said Payment is recovered as a preference or fraudulent transfer under any applicable bankruptcy or insolvency law.

Guarantor's obligation to make Payment in accordance with the terms of this Guaranty shall not be impaired, modified, changed, released or limited in any manner whatsoever by: (i) any impairment, modification, change, release or limitation of the liability of Tenant or its estate in bankruptcy resulting from the operation of any present or future provision of the federal bankruptcy statute or other statute, or from the decision of any court; (ii) any exercise or nonexercise of or delay in exercising any right, remedy, power or privilege under or in respect of this Guaranty or of any agreement related to the obligations (even if such right, remedy, power or privilege shall be lost thereby) or any waiver, consent, indulgence or other action or inaction in respect thereof; (iii) any failure to perfect or continue perfection of, or release or waiver of, and rights given to Landlord in any property as security for the performance of any obligations; (iv) any limitation of liability of Tenant or Guarantor contained in any agreement related to the obligations; (v) any defense that may arise by reason of Landlord's failure to file or enforce a claim against Tenant or any other surety or guarantor of the obligations in any bankruptcy or other proceeding; (vi) the voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the property of Tenant or any other surety or guarantor of the obligations, marshaling of assets and liabilities, or other similar proceeding affecting Tenant or any other surety or guarantor of the obligations or any of its assets; (vii) any assignment of Tenant's interest in the Lease or subletting of the premises; or (viii) any other circumstances which might otherwise constitute a legal or equitable discharge of a guarantor or surety.

6. Guarantor shall not be entitled to make any defense against any claim asserted by Landlord or in any suit or action instituted by Landlord to enforce this Guaranty or the Lease or be excused from any liability hereunder which Tenant could not make or invoke, and Guarantor hereby expressly waives any defense in law or in equity which is not or would not be available to Tenant, it being the intent hereof that the liability of Guarantor hereunder is primary and unconditional. Guarantor further hereby waives, surrenders and agrees not to claim or enforce, unless or until all of the obligations with respect to which Guarantor is liable hereunder have been paid in full or discharged to Landlord's satisfaction; (i) any right to be subrogated in whole or in part to any of Landlord's rights or claims against Tenant arising under any agreement related to the obligations, and (ii) any right to require the marshaling of any assets of Tenant, which right of subrogation or marshaling might otherwise arise from the partial or full payment by Guarantor of its obligations under this Guaranty. Guarantor further waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

7. Upon the occurrence of an event of default, Guarantor shall, at the request of Landlord, enter into a new lease with Landlord on the same terms and conditions as contained in the Lease immediately prior to its termination, for a term commencing on the termination date of the Lease and ending on the expiration date of the Lease.

8. Upon the occurrence of an event of default in the payment or other performance of the obligations, Landlord shall have the right, in addition to all other rights and remedies available to it to set off against and to appropriate and apply to the unpaid balance of the obligations any debt owing to, and any other funds held by Landlord or any currently existing or future affiliate in any manner for the account of Guarantor; and Landlord shall have, and there is hereby created in Landlord's favor, a security interest in any such deposit accounts. Guarantor waives any right to require that any action be brought against Tenant.

9. In the event suit or action be brought upon and in connection with the enforcement of this Guaranty, Guarantor shall pay in addition to any other remedies provided for in this Guaranty, attorney's fees and all court costs incurred by Landlord. Guarantor further agrees that in the event suit or action be brought upon this agreement, such suit or action shall be brought in any court of competent jurisdiction within the state that the premises described in the attached Lease are located and herewith submits itself to the jurisdiction of such court upon happening of such event, and waives personal service of any and all process and consents and agrees that all such service of process may be made by certified or requested mail, return receipt requested, directed to Guarantor at the address listed below. Guarantor waives the right to trial by jury in any action or proceeding that may hereinafter be instituted by Landlord against Guarantor in respect of this Guaranty.

10. This Guaranty shall be binding upon the successors, assigns and legal representatives of Guarantor and shall, without further notice to Guarantor, pass to and may be relied upon and enforced by the successors and assigns of Landlord, and any of its affiliated, associated or subsidiary companies and any transferees or subsequent holders of any of its obligations.

11. Guarantor hereby represents and warrants that this Guaranty has been duly authorized by all necessary corporate action on Guarantor's part, has been duly executed and delivered by a duly authorized officer, and constitutes Guarantor's valid and legally binding agreement in accordance with its terms.

12. Guarantor hereby represents that there are no actions, suits, investigations or proceedings pending or, to the knowledge and belief of Guarantor, threatened against or affecting Guarantor which is reasonably likely to result in any material adverse change in the business operations, properties or financial condition of Guarantor, or in the right or ability of Guarantor to perform this Guaranty. Guarantor shall submit periodic financial statements upon request of Landlord to assure performance of this Guaranty.

13. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when personally delivered to the other party or on the date deposited in the United States Postal Service, Postage Prepaid, Registered or Certified Mail, Return Receipt Requested, or with a courier or delivery service, addressed to the other party as follows:

To Landlord:

**HARSHMAN & HAYS TWO, LLC**  
c/o Harshman Property Services, LLC  
Attn: Larry Harshman  
P.O. Box 532968  
Indianapolis, IN 46253

With a Copy to: Easter & Cavosie  
10455 N. College Ave.  
Indianapolis, IN 46280  
Attention: George H. Abel, II

To Guarantor(s): 773 E. Main Street, Suite 3-5  
Brownsburg, IN 46112

With a Copy to: N/A

Notwithstanding the foregoing, Guarantor does not require notice of Tenant's nonpayment, nonperformance or nonobservance of the covenants, terms, and conditions of the Lease and hereby waives the right to receive such notice. Guarantor waives demand of payment from any person indebted or otherwise obligated in any manner on or for any of the obligations and any right of contribution from any guarantor other than Guarantor.

14. Notwithstanding any other provision of this Guaranty to the contrary, so long as Tenant has not been in default under the Lease, this Guaranty shall be released commencing at the expiration of the third year of the Lease. This instrument shall be construed in accordance with the laws of the State of Indiana.

Dated this 1st day of June, 2011.

GUARANTOR:

By: Chris R. Hill  
(Signature)

Chris R. Hill  
(Printed full name)

213 Woodland Place  
(Personal Address)

Pittsboro IN. 46167  
(City, State, Zip)

[REDACTED]  
(Social Security Number)

[REDACTED]  
(Drivers License Number)

*adh*

(Signature)

Anthony B Hill

(Printed full name)

8330 JAK DA

(Personal Address)

Brownsburg IN 46112

(City, State, Zip)

[REDACTED]

(Social Security Number)

*GAR*

(Signature)

Gregory Rose

(Printed full name)

5920 E CE 500 N

(Personal Address)

Brownsburg IN 46112

(City, State, Zip)

[REDACTED]

(Social Security Number)

(A PHOTOCOPY OF DRIVER'S LICENSE OR  
GOVERNMENT-ISSUED ID IS REQUIRED  
WITH THIS GUARANTY)

**EXHIBIT "D"**

**REQUEST FOR GRANT**

The undersigned, Rose-Hill Restaurants, LLC, an Indiana limited liability company (the "Developer") hereby requests from the Town of Brownsburg (the "Town") pursuant to that certain Economic Development Agreement by and between Developer and the Town dated May 10, 2012 (the "Agreement"), a Grant disbursement in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) as provided for in Article III of the Agreement. In support of this Request for Grant, the undersigned, a duly authorized office of the Developer, hereby certifies under the penalties of perjury that the Developer has substantially complied with the Objectives set forth in the Agreement, and in particular, certifies the following with respect to the Objectives set forth in the Agreement:

At all times during the calendar year period immediately prior to the date of this Request for Grant, the Developer has maintained the following:

- A. Average full-time employment on the Premises equivalent to not less than 30 full-time positions at local market rates for the type of employment offered, and sufficient additional full time and part time positions to meet the annual payroll requirement below;
- B. An annual payroll of not less than \$600,000 in the conduct of the Business, exclusive of salary or other payments made to principals of the Business not exclusively employed at the Premises;
- C. Tenant improvements to the Premises in an amount not less than \$700,000.00 in the six (6) month period from the date of execution of the Agreement (or the date of occupancy of the Premises, whichever is earlier) and the continued maintenance of such improvements throughout the term of the Agreement.

True and correct copies of payroll and other records evidencing compliance with the Objectives are attached hereto, and are certified to be accurate copies of original documents in the possession of the Developer.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ROSE-HILL RESTAURANTS, LLC**  
an Indiana limited liability company

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

**Anthony R. Hill, President**

[ Notary Follows on Next Page ]

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared Anthony R. Hill, President of Rose-Hill Restaurants, LLC, who acknowledged that the foregoing statements are true.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_

My County of Residence: \_\_\_\_\_