

ORDINANCE NO. 37-2015

Authorizing the Worthington Community Improvement Corporation to Execute a Lease Agreement Between the WCIC and Sweet Carrot Worthington, LLC for a Portion of the Kilbourne Building.

WHEREAS, in 2006 the City authorized the purchase of the James Kilbourne Memorial Library Building (the "Building") located at 752 High Street on the northeast corner of the Village Green; and,

WHEREAS, certain repairs and improvements have been made to the Building over the years since the City's acquisition, but it has remained vacant during that time; and,

WHEREAS, as part of the State Capital Budget the City was granted \$300,000 for improvements to the Building, which, together with additional funds appropriated by City Council, has been expended to make the Building accessible to the public for future commercial or public uses; and,

WHEREAS, Sweet Carrot Worthington, LLC ("Sweet Carrot"), a to-be-formed Ohio limited liability company, has expressed interest in the Building to operate a restaurant in a portion of the first floor, with plans to construct an outdoor patio; and,

WHEREAS, Sweet Carrot has agreed to construct the tenant improvements in and around the Building as needed for its restaurant operations in exchange for rent concessions; and,

WHEREAS, the CIC, as agent of the City, will administer the lease which sets forth the parties' respective rights and obligations for the use of the Building.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That the Worthington Community Improvement Corporation, as agent for the City, is hereby authorized and directed to execute and deliver on behalf of the City the Lease Agreement for the Kilbourne Building with Sweet Carrot Worthington, LLC, substantially in the form of the Lease Agreement attached hereto as Exhibit "A" and made a part hereof, with such changes as approved by the Director of Law that are not inconsistent with this Ordinance and adverse to the City and the WCIC.

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SECTION 2. That the City Manager is authorized to execute and deliver all necessary documents to evidence the City's consent to the lease of the James Kilbourne Building, including without limitation a master lease agreement between the City and the WCIC, to be prepared by the City's Director of Law.

SECTION 3. That notice of passage of this Ordinance shall be posted in the Municipal Administration Building, the Worthington Library, the Griswold Center and the Worthington Community Center and shall set forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council. This Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed September 21, 2015

/s/ Bonnie D. Michael
President of Council

Attest:

/s/ D. Kay Thress
Clerk of Council

Introduced September 8, 2015
P.H. September 21, 2015
Effective October 14, 2015

EXHIBIT "A"

Draft 9/17/15

LEASE

This lease is made effective as of _____, 2015 at Worthington, Ohio between the Worthington Community Improvement Corporation, a community improvement corporation formed under Chapter 1724 of the Ohio Revised Code and whose address is 6550 North High Street, Worthington, Ohio 43085 and which has been designated by the City of Worthington, the owner of record of the Premises defined below ("**Owner**"), as the Owner's agent for industrial, commercial, distribution and research development under Ordinance 13-2006 adopted April 3, 2006 ("**Landlord**") and Sweet Carrot Worthington, LLC, an Ohio limited liability company whose address is 550 South High Street, Columbus, Ohio 43215 ("**Tenant**") (both collectively referred to herein as the "**Parties**"), who hereby agree as follows:

§1. Lease of Premises. On the terms and subject to the conditions set forth in this agreement, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord a portion of the commercial building known as The James Kilbourne Memorial Library Building at 752 High Street, Worthington, Ohio (the "**Kilbourne Building**"), which portion consists of approximately 2,422 square feet of interior floor space (47% of the entire first floor), inclusive of the basement space directly beneath Tenant's first floor space for use related to Tenant's retail food operations and subject to §§7 and 8 hereunder, but at no time shall Tenant use such basement space for the storage of food, and including outdoor patio dining facilities to be installed or constructed on the concrete and/or grassy area immediately outside said interior floor space, parallel to the Village Green and immediately adjacent to the western and southern facades of the Kilbourne Building, which shall be reserved for the exclusive use of Tenant, subject to the provisions of §8 of this lease, all as described in more detail and depicted in the attached EXHIBIT A (the "**Premises**"), together with all appurtenances and other improvements thereto and a proportionate share of the parking spaces now or hereafter located thereon, but excluding from the definition of the Premises the northern half of the main floor (the "**Northern Leasehold**") and northern portion of the basement of the Kilbourne Building (the "**Northern Basement Space**"). Until such time as either or both the Northern Leasehold and Northern Basement Space are leased by Landlord, Tenant may make use of each such leasehold's proportionate share(s) of the parking spaces located on the Kilbourne Building property.

The Parties hereby acknowledge and agree that during the term of this lease, Landlord shall not knowingly let, or otherwise allow to be let, the Northern Leasehold and/or the Northern Basement Space to a lessee or sub-lessee that, in Landlord's good faith determination, is a direct business competitor to Tenant.

§2. Term. The initial term of this lease shall be for a period of ten (10) years and shall begin on the earlier of November 1, 2015 or the date on which Tenant first bears the obligation to pay rent to Landlord (the "**Commencement Date**"). For purposes of this lease, the term "**Lease Year**" shall mean a period of 12 consecutive calendar months during each such period for which Tenant bears rent obligations; the first Lease Year shall begin on March 1, 2016. Each succeeding Lease Year shall commence upon the anniversary date of the first Lease Year (i.e., March 1 of each successive year).

§3. Rent. Tenant shall pay Landlord the following rent per square foot of interior space comprising the Premises, and unless provided otherwise under this lease, the calculated amount due, if any, shall be paid in equal monthly installments in advance on or before the first day of each and every calendar month during the respective Lease Year (the “**Base Rent**”):

<u>Lease Years</u>	<u>Rent per Square Foot</u>
1 thru 7	\$15.00
8	\$17.23
9	\$17.57
10	\$17.93

The Base Rent set forth above shall be adjusted concurrently with the start of the first Lease Year and thereafter annually upon the start of each consecutive Lease Year throughout the initial term of this lease, in the form of the following rent offset amounts (“**Rent Offsets**”). Rent Offsets shall be applied against the Base Rent throughout the duration of each respective Lease Year as described below:

<u>Lease Years</u>	<u>Rent Offsets (per Square Foot)</u>
1 thru 7	<\$15.00>
8 thru 10	<\$15.18>

The Base Rent shall be adjusted by applying against it the respective Rent Offset so as to reduce the Base Rent obligation due to Landlord. The net rent due hereunder, so adjusted as specified herein, shall be the “Base Rent” for all purposes under this lease.

Any payments to be made by Tenant to Landlord under this lease shall be made by normal business methods, and shall be paid to Landlord at Landlord address for receiving notices under §25 of this lease.

This lease is a net lease, and the rent shall be absolutely net to Landlord at all times during the term of this lease, so that this lease shall yield to Landlord the full amount of the rent throughout the term of this lease, unless otherwise adjusted hereby, and that all costs, expenses, taxes, charges, and other obligations of any character directly or indirectly relating to the Premises or the ownership, possession, use, occupation, operation, maintenance, repair, alteration, improvement or replacement of the Premises which may arise or become due or payable during the term of this lease shall be paid by Tenant, whether or not specifically described in this lease.

§4. Utilities and Related Equipment. Landlord has caused to be provided electricity, natural gas, water and sanitary sewer service access to the Premises in the manner and type described in EXHIBIT B (collectively “**Utilities Service**”), and installed equipment comprising the Backbone HVAC System, defined in §9, below; beyond said Utilities Service and limited installation, Landlord shall not be obligated to furnish heat, electricity or water for the Premises. Tenant shall maintain and keep operating any air conditioning, heating equipment, hot water and lighting equipment for the Premises, and repair such equipment if it becomes necessary during the term of the lease. Should the equipment have to be replaced through no fault of Tenant, Landlord shall replace any equipment belonging to Landlord; all air conditioning and heating units and equipment, other than that comprising the Backbone HVAC System, are excluded from this provision, with all maintenance, repair or replacement thereof to be the sole responsibility of

Tenant.

Landlord has caused to be provided separate meters for the Premises. As such, Tenant shall directly pay or cause to be directly paid when due any and all bills and charges for gas, electricity, water, sewage, trash disposal, telephone, and other utility services used or wasted in connection with the Premises during the term of this lease. If such charges are paid by Landlord, Tenant shall reimburse Landlord within ten days after receipt from Landlord of a statement setting the amount of such utilities. Such charges shall be deemed additional rent under the terms of this lease.

§5. Taxes and Assessments. Landlord shall pay or cause to be paid any and all real estate taxes and installments or assessments on the Premises when due and payable during the term of this lease. Tenant shall pay all taxes or charges now or hereafter imposed with respect to any business conducted by Tenant on the Premises and with respect to any materials purchased or used by Tenant in connection therewith.

Notwithstanding the foregoing, Tenant shall pay or reimburse Landlord an amount equal to that amount of annual real estate taxes and assessments due for the portion of the Kilbourne Building comprised by the Premises with respect to Franklin County Auditor tax parcel ID 100-006616-00. Tenant shall pay such amount to Landlord within ten days after receipt of a statement from Landlord evidencing the amount of such charges. Such charges shall be deemed additional rent under the terms of this lease.

§6. Insurance. Tenant shall obtain and thereafter maintain or cause to be maintained in force at all times during the term of this lease:

- (a) Comprehensive public liability insurance with respect to the Premises having limits not less than \$2,000,000 for a bodily injury to any one person, \$2,000,000 for bodily injuries arising out of one occurrence, and \$2,000,000 for property damage, or such increased policy limits as may from time to time hereinafter be requested by Landlord if Landlord is acting upon the advice of Landlord's licensed insurance advisor. If coverage is not available in the exact amount state above, then coverage in the nearest higher amount available shall be obtained. Each insurance policy furnished under this §6(a) shall specifically include coverage of the indemnification provision contained in §16 of this lease.
- (b) Fire and extended coverage insurance with respect to all Tenant's personal property within or about the Premises.

Each insurance policy furnished under this §6 shall be issued by a reputable insurance company approved by Landlord, shall name Tenant and Landlord as their interests may appear as insured parties therein; shall provide that no act or omission shall affect or limit the obligation of the insurer to pay to the respective party any and all amounts which would otherwise be payable to that party thereunder; shall contain a provision by which the insurance company specifically waives its right of subrogation against Landlord with respect to any loss or losses paid thereunder; shall provide for written notice to Landlord at least 30 days prior to any cancellation, expiration without renewal, or modification thereof; and shall be in form and content satisfactory to both parties. Each party shall furnish the other with original or memorandum copies of such insurance policies, including renewal or replacement policies, and certificates of coverage and

evidence of payment of premiums thereon from time to time.

Landlord shall obtain and thereafter maintain or cause to be maintained in force at all times during the term of this lease fire and extended coverage insurance on the Kilbourne Building in amounts acceptable to Landlord, which coverage shall not include any personal property of Tenant.

§7. Use of Premises. Tenant shall use the Premises for the operation of a retail food establishment for on-premises and carry-out service of foods and beverages, including uses incidental thereto, and shall not permit the Premises to be used for any other purpose without first obtaining Landlord's express written consent to that specific use. Tenant shall occupy and use the Premises only in a careful, safe and reputable manner and shall not commit or permit any waste of or on the Premises. Due to the proximity of the Premises to the adjacent Kilbourne Middle School, Tenant has agreed to prohibit alcohol sales or consumption on the outdoor patio while the School is in session. No limitation shall be placed on alcohol service during times in which school is not in session. This arrangement will be evaluated by Landlord and Tenant at the end of the first Lease Year to determine the effect of continuing as initially established.

§8. Compliance with Laws. Tenant, at Tenant's own cost and expense, shall promptly comply or cause compliance with all laws, regulations, orders and requirements of all federal, state and local governments, courts and agencies and all regulations and orders of the National Board of Fire Underwriters or other organization hereafter exercising similar functions, which may be, and to the extent are, applicable to or affect the Premises or any business conducted thereon, including without limitation any exterior areas of the Premises, whether present or future, foreseen or unforeseen, ordinary or extraordinary, and whether or not the same shall be within the present contemplation of Landlord and Tenant or shall involve any change of governmental policy or require structural or extraordinary repairs, alterations and additions.

Tenant shall obtain, maintain, and comply with all permits, licenses and other authorizations required for any use then being made of the Premises, including but not limited to State of Ohio Department of Commerce Division of Liquor Control requirements, as appropriate.

No abatement or interruption in rent or other charges required to be paid by Tenant pursuant to this lease shall be claimed by or allowed the Tenant for any inconvenience or interruption or loss of business caused directly by or indirectly by any present or future laws, ordinances, regulations, requirements or orders of any lawful authority whatsoever, or by rationing, priorities or curtailment of labor or materials, or by war, civil commotion, strikes, riots or anything resulting therefrom, or by any other cause or causes beyond the control of Landlord nor shall this lease be affected by any such causes; and no diminution in the amount of fixtures, equipment, operation or use of the Premises by Tenant shall entitle Tenant to any abatement or reduction in rent or any other charges required to be paid by Tenant pursuant to this lease.

Tenant shall not use or occupy the Premises in violation of law or any covenant, condition or restriction affecting the Premises or the certificate of occupancy issued for the Premises. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Kilbourne Building, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purposes, nor shall Tenant cause, maintain, or permit any nuisance in, on or about the Kilbourne Building. Tenant shall not use or permit the Premises to

be used for any purpose or in any manner that would, in Landlord's opinion, invalidate any policy of insurance under §6 of this lease or increase the rate of premiums payable on such insurance policy without first obtaining Landlord's express written consent to such use and paying Landlord, if and when due, any and all increases in Landlord's insurance premiums that result from such use by Tenant. Tenant shall provide and maintain on the Premises fire extinguishers, smoke detectors, hoods and other equipment to protect the Premises against casual fires.

§9. Condition of Premises. Landlord has made no representation or warranty, express or implied, with respect to the condition of the Premises or the fitness of the Premises for any particular use. Landlord has caused to be provided Utilities Service and a basic heating, ventilation and air conditioning system to heat and cool the interior space of the Premises to the minimum required to protect the Kilbourne Building and the Premises from inclement weather conditions, including the potential for water pipes to freeze (the "**Backbone HVAC System**"). Tenant acknowledges that it has fully investigated and is familiar with the size, dimensions, and physical condition of the Premises, the Utilities Service and the Backbone HVAC System, and is accepting the Premises "as is." Except as may be expressly described in this lease, Landlord shall not be required to make any improvement, repair, alteration, or restoration of the Premises or in any manner maintain the Premises, and shall have no liability for any latent or patent defects in or pertaining to any condition of the Premises.

§10. Maintenance and Repairs. Tenant shall maintain the Premises and the main floor common area of the Kilbourne Building in as good order and condition of repair, safety, cleanliness and appearance as the same are in at the commencement of this lease, ordinary wear and tear and damage by fire or other casualty covered by fire and extended coverage insurance excepted, and Tenant shall make all repairs necessary or appropriate to so maintain the Premises; provided that Tenant shall have no obligation under the preceding sentence to make major structural repairs (other than to any outdoor patio dining facilities as they may be constructed and comprise the Premises), repairs to the roof or exterior of the Kilbourne Building, or major repairs to the electrical or plumbing service access infrastructure as has been provided by Landlord and described under §4, unless such repairs become necessary because of the acts or omissions of Tenant or Tenant's agents, employees, invitees or licensees. The repairs and maintenance to be made by Tenant under this §10 shall include, without limitation: repairs or replacements of any type of the heating and cooling systems beyond the Backbone HVAC System as provided by Landlord, electrical and plumbing system infrastructure beyond the Utilities Service provided by Landlord, plate glass, windows, doors, fixtures, equipment, furniture and appliances, and removal of rubbish, snow, ice and other obstacles from the Premises and the sidewalk and other common areas surrounding the Premises.

Landlord shall maintain and keep in repair the structural, exterior parts of the Kilbourne Building, including without limitation the foundation, roof and walls, and parking area, except to the extent of and subject to Tenant's obligations as set forth in the preceding paragraph of this section. In addition, Landlord shall be responsible for the maintenance, repair and replacement of the Backbone HVAC System and Utilities Service, and, for such limited purpose, Landlord, Owner and their agents, employees and designees shall have the right to enter the Premises at any reasonable times, after either oral or written prior notice to Tenant's manager of the Premises to the extent possible, which prior notice shall not be required in the event of any emergency.

§11. Alterations and Improvements. Upon execution of this lease, Tenant shall

improve the Premises by having constructed those elements required of a retail food establishment, to include indoor kitchen and seating and outdoor patio dining facilities on the Premises. Such improvement may include improvements to the exterior of the Kilbourne Building, immediately adjacent to and exterior from the indoor space comprising the Premises, provided the same are made in accordance with plans approved in advance by Landlord, Owner and/or the Worthington Architectural Review Board and the Municipal Planning Commission as appropriate. Thereafter, no further alteration, addition, improvement, or other change in or to the Premises (hereinafter collectively called an “**alteration**”) shall be made by Tenant except under the following circumstances:

- (a) no alteration shall be made without first obtaining the prior written consent of Landlord to the specific alteration, which consent shall not be unreasonably withheld, except usual nonstructural interior remodeling which enhances the value of the Premises;
- (b) no alteration shall be commenced until Tenant has first obtained and paid for all required permits and authorizations of all governmental authorities having jurisdiction, including but not limited to the Worthington Architectural Review Board and the Municipal Planning Commission;
- (c) any alteration shall be made promptly and in good workmanlike manner and in compliance with all applicable permits, authorizations, building and zoning laws, and all other laws, ordinances, regulations, and requirements of all governmental authorities and in accordance with the requirements of the National Board of Fire Underwriters or other body hereafter exercising similar functions;
- (d) the cost of any such alteration shall be paid promptly by Tenant such that the Premises are free of liens and claims for work, labor, or materials supplied or claimed to have been supplied to the Premises, or any such liens are paid, bonded or otherwise caused to be paid by Tenant forthwith and, if Landlord at any time so requests, no alteration shall commence or proceed unless Tenant gives evidence satisfactory to Landlord that the same will be fully paid for upon completion; and,
- (e) any alteration shall immediately become and remain the property of Landlord, unless Landlord otherwise agrees, in writing, subject always to the rights of Tenant hereunder, provided that upon termination of this lease, Landlord shall have the right at its option to require Tenant to remove any alteration made pursuant to subparagraphs (a) through (d) of this §11 and to restore the Premises to the same condition as before such alteration was made, unless Landlord expressly waives the foregoing right in its written consent to the alteration.

[As an incentive to Tenant to enter into this Lease pursuant to all terms and conditions contained herein, at Tenant’s request, Landlord shall contribute up to \$_____ toward the cost of Tenant’s improvements related to the installation of fixtures and equipment necessary for the occupation of the Premises.]

§12. Restoration. If all or materially all (“materially all” being defined in §13, below) of the Premises is damaged or destroyed at any time during the term of this lease, then either Tenant or Landlord, upon written notice delivered to the other within 60 days after such

destruction or damage, may terminate this lease. If neither Landlord nor Tenant so terminates this lease, or in the event that less than materially all of the Premises are damaged or destroyed, Tenant forthwith shall commence and thereafter shall diligently complete repair and restoration of the Premises to the same or better condition as the same were in immediately prior to such damage or destruction (except for changes in design or materials which then may be required by law), all at Tenant's cost and expense, provided that all proceeds payable with respect to any insurance policy maintained by either Landlord or Tenant under §6, above, to the extent reasonably allocated to the Premises as part of the Building, shall be applied first in payment of such repair and restoration to the standards reasonably required by Landlord, and the remainder, if any, shall be retained by Tenant.

If all or any part of the Premises is damaged or destroyed, Tenant promptly shall notify Landlord thereof and make proof of loss to the insurance company or companies involved. No damage to or destruction of all or any part of the Premises by fire, other casualty or any other cause whatsoever shall entitle Tenant to surrender possession of the Premises or to terminate this lease, unless Tenant is entitled to and does exercise its option to terminate this lease as described above, and then only after receipt by Landlord of the notice described above. In the event of any damage or destruction of the Premises, unless such damage or destruction was caused by Tenant, the rent payable by Tenant shall be equitably and proportionally abated on the basis of the damaged or destroyed portions of the Premises during the period of time during which all or any part of the Premises are untenantable.

§13. Condemnation. If all or materially all of the Premises are taken by any condemning authority, other than the Owner (which the Parties acknowledge is a municipal corporation formed under Ohio law and wielding its own condemnation authority thereunder), under the power of eminent domain or by any purchase or other acquisition in lieu of condemnation, then this lease shall terminate as of the date Tenant is deprived of physical possession thereof and the rent and other charges herein to be paid by Tenant shall be paid to that date.

In any event, Owner and/or Landlord shall be entitled to all compensation and damages (including consequential damages) awarded for any such taking of all or any part of the Premises and Tenant shall not be entitled to share in any award or consideration or have any claim against Landlord for any part hereof except to the extent set forth above in this §13, but there shall be a proportionate abatement of rent by reason thereof and provided that Tenant shall have the right to claim and receive from the condemning authority any special damages from such taking which are separately allowable and separately awarded to Tenant.

For purposes of this lease, “**materially all of the Premises**” shall be considered as having been taken, damaged or destroyed if the portion of the Premises which is taken, damaged or destroyed would leave remaining a portion which (due either to the area so taken, damaged or destroyed or the location of the parts taken, damaged or destroyed) would not under then-existing economic conditions, zoning laws or building regulations readily accommodate improvements of a nature similar to the improvements existing on the Premises taken, damaged or destroyed to produce a fair and reasonable return after payment of rent and other charges to be borne by Tenant hereunder and normal operating expenses relating to the improvements.

§14. Default. Each of the following events shall be deemed an event of default under this lease and also a material breach of this lease:

- (a) failure by Tenant to make any payment of rent to Landlord within 10 days following the date it becomes payable hereunder;
- (b) failure by Tenant to make any other payment or perform or observe any other obligation or condition to be performed or observed by Tenant under this lease and failure by Tenant to correct such default within 30 days after Landlord gives Tenant notice to do so or, if because of the nature of such default it cannot be corrected within such 30-day period, failure by Tenant to commence correction within such 30-day period and thereafter to expeditiously and continuously prosecute the correction to completion;
- (c) abandonment or vacation of the Premises by Tenant;
- (d) termination, assignment or sublease of Tenant's interest in this lease or change of ownership in Tenant, whether voluntary or by operation of law, unless pursuant to §20 of this lease; or
- (e) the filing or execution or occurrence of any one or more of:
 - i. a petition in bankruptcy by or against Tenant;
 - ii. a petition or answer seeking with respect to Tenant a reorganization, arrangement, composition, readjustment, liquidation, dissolution or relief of the same or different kind, under any provision of the Bankruptcy Act or any statute of like tenor or effect;
 - iii. an adjudication of Tenant as a bankrupt or insolvent;
 - iv. an assignment for the benefit of creditors of Tenant, whether by trust, mortgage or otherwise or the execution of a composition agreement with Tenant's creditors;
 - v. the petition or other proceeding by or against Tenant for the appointment of a trustee, receiver, guardian, conservator, or liquidator of Tenant with respect to all or substantially all of Tenant's property;
 - vi. a petition or other proceeding by or against Tenant for its dissolution or termination; or
 - vii. a taking of the leasehold created hereby or any part thereof or any property of Tenant materially affecting or used in Tenant's business located therein upon execution, attachment or other process of law or equity.

Immediately upon occurrence of any event of default or at any time thereafter, unless the default has therefore been cured with the written consent of Landlord or expressly waived by it in writing, Landlord may at its exclusive option elect either to continue this lease in full force and effect notwithstanding the occurrence of such event of default, or terminate this lease, in which event all rights, titles, and all interests of Tenant in, to, or under the Premises and this lease shall terminate forthwith, Landlord shall be entitled immediately to re-enter and repossess the Premises and Landlord shall be entitled to recover from Tenant and Tenant shall pay to Landlord forthwith an amount equal to: (A) all unpaid rent accruing hereunder prior to Landlord's actual recovery of possession of the Premises, (B) all other unpaid amounts which were to have been paid by Tenant to anyone hereunder prior to Landlord's actual recovery of possession of the Premises, (C) Landlord's damages for Tenant's breach of lease (including,

without limitation, damages to Landlord resulting from lost rent during the remainder of what would otherwise have been the term of this lease, clean-up expenses, leasing commissions to real estate brokers, legal expenses in connection with re-letting the Premises, advertising costs and expenses of any repairs or redecoration that may be necessary in connection with re-letting the Premises); (D) late charges, if any due and unpaid under the following paragraph; and (E) interest on the foregoing amounts from the date of Landlord's election to terminate this lease hereunder until the date of payment, at the interest rate per annum equal to the interest rate determined by the Ohio Tax Commissioner for each year pursuant to Ohio Revised Code §5703.47(B). Until such time as Landlord expressly elects to terminate this lease under the preceding sentence, this lease shall continue in full force and effect notwithstanding the occurrence of such event of default. In the event Landlord elects to so terminate this lease, Tenant thereupon shall be deemed to have assigned and transferred to Landlord all unexpired insurance premiums, all deposits made with public utilities, and all rights of Tenant under all insurance policies to the extent such policies relate to the Premises, and Tenant shall deliver to Landlord any and all leases of any subtenant which have been approved in advance by Landlord and security deposits and advance rentals then held by Tenant.

Any rent or other sums payable hereunder by Tenant which are not paid within 30 days after the date due shall bear interest from the date due to the date paid at the rate of 18% per annum.

The provisions of this §14 shall be cumulative in nature, and nothing contained in this section shall in any manner curtail, supplant, abridge, or otherwise affect adversely any right, recourse, or remedy which otherwise would be available to Landlord at law or in equity.

§15. Right to Cure Defaults. If Tenant fails to perform and observe all obligations and conditions to be performed and observed by it under this lease, then Landlord may, but shall not be obligated to, and, if notice is required, only upon the expiration of the notice period set forth in §14, above, cause the performance and observance of the obligation or condition to which the default relates, and any and all costs and expenses incurred by Landlord in connection therewith, including without limitation reasonable attorneys' fees, shall thereupon be due and payable immediately from Tenant to Landlord, with interest thereon at a rate equal to equal to the interest rate determined by the Ohio Tax Commissioner for each year pursuant to Ohio Revised Code §5703.47(B), from the time such costs and expenses were incurred by Landlord until Landlord is reimbursed in full by Tenant and the same shall be deemed additional rent hereunder to be paid by Tenant to Landlord.

§16. Indemnification. Tenant shall indemnify and save harmless Landlord against and from any and all claims, liabilities, losses, damages, injuries, costs, and expenses that hereafter may occur, arise or be claimed to occur or arise directly or indirectly from or out of: (a) any failure by Tenant to make any payment to be made by Tenant hereunder or fully to perform or observe any obligation or condition to be performed or observed by Tenant hereunder, (b) any cause whatsoever on, about or relating to the Premises during the term of this lease, however or by whomever caused, whether due in whole or in part to negligent acts or omissions on the part of Tenant or its employees, agents, invitees and licensees, and whether such acts or omissions are active or passive in character, including without limitation any use, misuse, possession, occupancy, or unoccupancy of the Premises by anyone during the term of this lease, or any failure by Tenant to perform and observe all obligations and conditions to be performed and observed by it under this lease, or the condition of the Premises, and (c) any costs or expenses

incurred or paid by Landlord in connection with the foregoing, including reasonable attorneys' fees and other costs and expenses in prosecuting or defending any of the foregoing, whether litigated or unlitigated.

Tenant hereby assumes the risk of any and all matters described in this §16. Landlord shall not be liable to Tenant for any loss, damage, injury, cost or expense whatsoever relating to the Premises, including without limitation any interruption or cessation of the business of Tenant or any subtenant, or loss incurred as a consequence of damage to or destruction of the Premises, however caused, and whether or not resulting from the negligence of Landlord and/or Owner, their agents or employees.

§17. Memorandum of Lease. This lease shall not be recorded; however, at the request of either Landlord or Tenant, the other party shall execute, acknowledge and deliver a memorandum of this lease pursuant to Ohio Revised Code §5301.251, for purposes of giving public notice of the rights and obligations of Landlord and Tenant under this lease.

§18. Cumulative Rights and Remedies. Each right or remedy of Landlord under this lease now or hereafter available to Landlord by statute, at law, in equity, or otherwise shall be cumulative and concurrent and shall be in addition to every other such right or remedy, and neither the existence, availability, nor exercise of any one or more of such rights of remedies shall preclude or otherwise affect the simultaneous or later exercise by Landlord of any or all such other rights or remedies.

§19. Survival of Obligations. No termination of this lease and no repossession of the Premises or any part thereof shall relieve Tenant of its liabilities and obligations hereunder, all of which shall survive such termination or repossession.

§20. Assignment or Sublease. Tenant shall not pledge, mortgage, assign or otherwise transfer this lease nor sublease all or any part of the Premises without first obtaining Landlord's express written consent to such assignment or sublease, which consent shall not be unreasonably withheld. Landlord may request such information as is reasonable to render its consent hereunder, including without limitation the character and type of business of the purported assignee or sub-lessee, as well as the financial capability thereof. Consent by Landlord to one or more assignments of this lease or to one or more sub-lettings of the Premises shall not operate as a waiver of Landlord's rights under this §20. No assignment shall release Tenant of any of its obligations under this lease or be construed or taken as a waiver of any of Landlord's rights hereunder. Notwithstanding the foregoing provisions of this §20, Tenant shall not be required to obtain Landlord's consent for a sublease of the Premises or the assignment of this lease to a subsidiary, affiliate, franchisor or franchisee of Tenant; provided, however, that such sublease or assignment and any future subleases or assignments shall be subject to all other provisions of this §20.

§21. Landlord's Access. In addition to the right specified in §10 above, Landlord and/or Owner and their agents, employees and designees shall have the right to enter the Premises at any reasonable times, after either oral or written notice to Tenant's manager of the Premises, for the purpose of inspecting the Premises, performing any work which Landlord elects to undertake hereunder, and exhibiting the Premises for sale, lease or sublease. Nothing herein shall imply any duty upon Landlord to do any such work which under any provision of this lease Tenant is required to perform, and the performance thereof by Landlord shall not

constitute a waiver of Tenant's default.

§22. Non-Waiver. No failure by Landlord to exercise any option hereunder or to enforce its rights or seek its remedies upon any default, and no acceptance by Landlord of any rent accruing before or after any default, shall affect or constitute a waiver of Landlord's rights to exercise that option, enforce that right, or seek that remedy with respect to that default or any prior or subsequent default.

§23. No Third Party Benefit. This agreement is intended for the benefit of Landlord and Tenant and, except as otherwise provided in this agreement, their respective successors and assigns, and nothing contained in this agreement shall be construed as creating any rights or benefits in or to any third party.

§24. Litigation. If, because of Landlord's relationship with Tenant created by this lease, Landlord is made a party to any litigation commenced against Tenant or commenced by Tenant against any party other than Landlord, then Tenant shall pay all costs and expenses (including attorneys' fees) incurred by or imposed upon Landlord in connection with such litigation.

§25. Notices. Any notice, demand, request or other communication required or desired to be given to either party shall be in writing and shall be deemed given when delivered personally to that party's address set forth below or when deposited in the United States mail, first-class postage prepaid, certified or registered, return receipt requested, addressed to that party at said address or, in either case, at such other address as that party may theretofore have designated in notice to the other party as a place for the service of notice:

To Landlord: Worthington CIC
6550 North High Street
Worthington, Ohio 43085

To Tenant: Sweet Carrot Worthington, LLC
Attention: General Manager
550 South High Street
Columbus, Ohio 43215

§26. Surrender and Holding Over. Upon expiration of this lease or its termination in any way, Tenant shall deliver and surrender possession of the Premises to Landlord in as good condition and repair as the same shall be on the Commencement Date, ordinary wear and tear excepted. If Tenant, or any party claiming under Tenant, remains in possession of the Premises, or any part thereof, after any termination of this lease, Tenant or such party claiming under Tenant shall be deemed a tenant from month-to-month in the same rent and other terms and conditions as set forth in this lease, subject to termination by either party upon 30 days written notice to the other party.

§27. Severability of Provisions. The intention of the Parties to this agreement is to comply fully with all laws governing leases, and this agreement shall be construed consistently with all such laws to the extent possible. If and to the extent that any court of competent jurisdiction is unable to so construe part or all of any provision of this lease, and holds that part or all of the provision to be invalid, such invalidity shall not affect the balance of that provision or the remaining provisions of this agreement, which shall remain in full force and effect.

§28. Governing Law. This lease has been drawn and executed in the State of Ohio and the Premises are located in the State of Ohio. It is the intention of the Parties that all questions concerning the intention, validity or meaning of this lease or relating to the rights and obligations of the Parties with respect to performance hereunder shall be construed and resolved according to the laws of the State of Ohio.

§29. Entire Understanding. This document (with its exhibits) contains the entire agreement between the Parties and merges and supersedes all prior discussions, representations, warranties, agreements, or undertakings of every kind and nature between the Parties with respect to the subject matter of this document. No changes, alterations, modifications, additions or qualifications to this agreement shall be made or binding unless made in writing and signed by each of the Parties.

§30. Construction of Agreement. The captions at the beginnings of the several sections of this lease are not part of the context of this lease, but are merely labels to assist in locating those sections, and shall be ignored in construing this lease. The time for payment of rent and all other amounts to be paid by Tenant under this lease and for performance and observance of all other obligations and conditions to be performed or observed by Tenant under this lease shall be the essence of this lease. Each exhibit referred to in this lease is hereby incorporated herein by reference. Each pronoun used in this lease shall include other genders or numbers thereof, as the identity of the antecedent may require. This lease may be executed in several counterparts and each executed counterpart shall be considered as an original of this lease.

§31. Renewal Option. Tenant shall have an option to renew this lease for one additional term of seven years, with such renewal period to begin upon the full completion of the initial 10-year term of this lease, and provided that Tenant at all times theretofore has fully performed and observed all obligations and conditions to be performed and observed by Tenant under this lease. Tenant's renewal option shall be exercisable at any time not later than 270 days prior to the end of the initial term of this lease described in §2, above, and shall be deemed exercised if and when Tenant gives Landlord notice stating that Tenant thereby exercised. If Tenant exercises its renewal option as described herein, all provisions of this lease applicable during the initial term of this lease shall also be applicable during such renewal term, except that the Base Rent set forth in §3, above, shall for the first 12-month period of such renewal term be equal to \$18.28 per square foot, and for each of the following six consecutive 12-month periods of such renewal term shall be a sum equal to 102% of the Base Rent per square foot for the immediately preceding 12-month period; and any reference in this lease to the "term of this lease" shall include the renewal term with respect to which Tenant so exercises its option. If Tenant fails to exercise its renewal option as described in this §31, or fails to fully perform and observe all obligations and conditions to be performed and observed by Tenant under this lease, then Tenant's renewal option under this §31 thereupon shall terminate.

§32. Signage. Tenant, at Tenant's own cost and expense, may install its customary and usual display and monument signs on and adjacent to the Kilbourne Building, subject to applicable zoning ordinances, Worthington Architectural Review Board regulations.

§33. Right to Terminate. Tenant shall have the right to terminate this lease under the following conditions:

(a) Permit Contingency. Tenant has entered into this lease in the expectation of obtaining, after expiration of all applicable appeal periods, all permits, including liquor permits issued by the State of Ohio Department of Commerce Division of Liquor Control, variances, special use permits, licenses, permissions, Worthington Architectural Review Board authorization for outdoor dining facilities, or other authorizations (collectively called “**Permits**”) necessary for the construction and operation within the Premises of a retail food establishment, built-out according to Tenant’s plans and specifications.

Tenant shall apply for Permits without unreasonable delay after last execution of this lease and Landlord shall execute such documents, make such appearances and do such other things as Tenant may reasonably request in connection therewith. Tenant or Landlord may (but shall not be obligated to) terminate this lease if, after first application, Permits are denied or are not obtained within 365 days. If any governmental agency whose approval is required for Tenant to obtain the necessary Permits requires a modification in Tenant’s plans and specifications prior to its granting the approval of Tenant’s plans and specification, and Tenant and Landlord, upon a good faith discussion and sharing of opinions, deem the modification to be impractical, unfeasible or too costly, the Permits required to be obtained by Tenant according to the terms of this §33 shall be deemed not to be received by Tenant and Tenant may terminate this lease as provided herein.

If Landlord elects to terminate this lease as provided in this §33, Tenant shall have 10 days after receiving Landlord’s written notice of termination to waive, in writing, the Permit contingency. If Tenant does not waive the Permit contingency, this lease will terminate and be of no further force and effect 10 days after Tenant’s receipt of the notice.

(b) Construction Cost Contingency. This lease is further contingent upon Tenant’s total constructions costs not exceeding \$550,000. “**Construction costs**” shall be defined as all costs and expenses related to the normal construction costs to remodel the Premises for Tenant’s intended use and site improvements, including proposed outdoor patio facilities, which the Parties agree for this site would be \$400,000, and for which the Parties have agreed the Rent Offsets set forth under §3 are provided under this lease. Construction costs shall include, but not be limited to: costs to enhance utility service to the site; costs to construct drainage and sewage capabilities and permanently install specialty fixtures incident to a retail food establishment; permit fees; legal fees; and design and architecture consulting fees. If Tenant determines that total construction costs will exceed \$550,000, Tenant may, at its option, declare this lease to be null and void and of no further force and effect by delivering notice to Landlord prior to the Commencement Date.

The failure of Tenant to exercise any right to terminate this lease under this §33 by the time provided for herein shall be deemed a waiver of such right to terminate by Tenant.

§34. Right of First Refusal to Lease. If at any time during the first five (5) years following the Commencement Date defined in §2, above, Landlord receives one or more bona fide offers to lease the Northern Leasehold and/or the Northern Basement Space, which Landlord desires to accept, Landlord will notify Tenant in writing together with a copy of each offer or contract. Tenant will then have ten (10) days from receipt thereof to match the offer in every respect and notify Landlord in writing by the close of business of the tenth day that it will lease the premises specified in Landlord’s notice on substantially the same terms and conditions contained in the offer. Tenant’s failure to so notify Landlord within such ten-day period shall

constitute Tenant's election not to lease such premises upon said offer or contract to Landlord. This right of first refusal shall be contingent upon Tenant not being in default under this lease beyond any applicable cure period.

§35. Successors in Interest: Personal Liability. Except as otherwise provided in this agreement, all provisions of this agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the respective heirs, successors and assigns of each party to this agreement. No representation, warranty, covenant, agreement, obligation, or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future official, member, officer, agent or employee of the Landlord. No official executing or approving the Landlord's roles and responsibilities under this Agreement shall be liable personally hereunder or be subject to any personal liability or accountability.

IN WITNESS WHEREOF, the Parties have executed this lease as of the day and year first written above.

LANDLORD:

TENANT:

By: _____
Its: _____

By: _____
Its: _____

Signed and acknowledged in the presence of:

STATE OF OHIO
COUNTY OF FRANKLIN

Before me, a Notary Public in and for said State, personally appeared the above-named _____ who acknowledged that s/he did sign the foregoing instrument and that the same is her/his free act and deed.

In Testimony Whereof, I have hereunto affixed my name and official seal at _____, this _____ day of _____, 2015.

Notary Public

STATE OF OHIO
COUNTY OF FRANKLIN

Before me, a Notary Public in and for said State, personally appeared the above-named _____ who acknowledged that s/he did sign the foregoing instrument and that the same is her/his free act and deed.

In Testimony Whereof, I have hereunto affixed my name and official seal at _____, Ohio this _____ day of _____, 2015.

Notary Public