

**LEASE MODIFICATION AGREEMENT  
NO. 2**

This Lease Modification Agreement No. 2 ("Agreement") made as of the 14th day of October, 2010, by and between MORGANTOWN MALL ASSOCIATES LIMITED PARTNERSHIP, an Ohio limited partnership, ("Landlord") with its principal office at 180 East Broad Street, 21st Floor, Columbus, Ohio, 43215, and EATERIES, INC., an Oklahoma corporation ("Tenant") d/b/a GARFIELD'S RESTAURANT & PUB, with its principal office at 1220 South Santa Fe Avenue, Edmond, Oklahoma, 73003.

**WITNESSETH:**

**WHEREAS**, Landlord and Tenant entered into a Lease Agreement dated September 22, 2006, as modified by Lease Modification Agreement No. 1 and Option to Relet Agreement dated November 20, 2009 (collectively, the "Lease"), for those certain premises designated as space number 801 (the "Premises") within the Morgantown Mall (the "Shopping Center") located in the City of Morgantown, and State of West Virginia; and

**WHEREAS**, Landlord and Tenant mutually intend and desire to modify the Lease on and subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration for the terms and conditions of this Agreement and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Term:** The parties acknowledge that the term of the Lease is scheduled to expire on May 31, 2011. The term of the Lease is hereby extended for a period of five (5) years commencing on June 1, 2011 and expiring on May 31, 2016 (the "Extended Term").
  2. **Alternative Rent:** Notwithstanding anything contained in the Lease to the contrary, in lieu of Minimum Rent, Percentage Rent and Additional Rent, beginning on January 1, 2011 and expiring on May 31, 2016 ("Alternative Rent Period"), Tenant shall pay an amount equal to seven percent (7%) of Tenant's Gross Sales, due and payable in arrears on or before the fifteenth (15th) of each calendar month ("Alternative Rent"). If, at the end of each calendar year of the Extended Term, the amount paid by Tenant to Landlord for the immediately preceding 12 month period is less than a total of Eighty Thousand and 00/100 Dollars (\$80,000.00) ("Minimum Alternative Rent"), then Tenant shall immediately pay to Landlord the difference between the amount actually paid to Landlord and the Minimum Alternative Rent.
- Notwithstanding the foregoing, in the event that Tenant's Gross Sales exceed One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00) for the calendar year ending December 31, 2013 (the "Measuring Period"), then commencing on January 1, 2014, Tenant shall begin paying an amount equal to eight percent (8%) of Tenant's Gross Sales ("First Escalated Alternative Rent") and shall continue to pay the First Escalated Alternative Rent through the remainder of the Extended Term unless the First Escalated Alternative Rent is adjusted pursuant to the provisions of the next paragraph hereof. In the event that Tenant becomes obligated to pay the First Escalated Alternative Rent, then if, at the end of each calendar year of the remainder of the Extended Term, unless adjusted pursuant to the next paragraph, the amount paid by Tenant to Landlord for the immediately preceding 12 month period is less than a total of Ninety-Six Thousand and 00/100 Dollars (\$96,000.00) ("Second Minimum Alternative Rent"), then Tenant shall immediately pay to Landlord the difference between the amount actually paid to Landlord and the Second Minimum Alternative Rent.

Notwithstanding the foregoing, in the event that Tenant's Gross Sales for the Measuring Period exceed Two Million and 00/100 Dollars (\$2,000,000.00), then Tenant shall begin paying on January 1, 2014 an amount equal to nine percent (9%) of Tenant's Gross Sales ("Second Escalated Alternative Rent") and shall continue to pay the Second Escalated Alternative Rent through the remainder of the Extended Term. In the event that Tenant

becomes obligated to pay the Second Escalated Alternative Rent, then if, at the end of each calendar year of the remainder of the Extended Term, the amount paid by Tenant to Landlord for the immediately preceding 12 month period is less than a total of One Hundred Ten Thousand and 00/100 Dollars (\$110,000.00) (“Third Minimum Alternative Rent”), then Tenant shall immediately pay to Landlord the difference between the amount actually paid to Landlord and the Third Minimum Alternative Rent.

Notwithstanding the foregoing, throughout the Extended Term Tenant shall continue to pay for all utilities supplied to the Premises regardless of whether the same are supplied by Landlord or a third party.

Notwithstanding anything to the contrary, in the event Tenant is in default of the Lease, as amended, beyond applicable notice and cure periods, if any (the “Date of Default”), then, so long as Tenant is in default of the Lease, Minimum Rent, Percentage Rent, and Additional Rent shall revert automatically to the stipulated amounts of Minimum Rent, Percentage Rent, and Additional Rent as provided for in the Lease, plus escalations of Additional Rent, if any, as provided for in the Lease which would have been added to Additional Rent as of the Date of Default had the Alternative Rent never existed.

3. **Option to Extend:** Notwithstanding anything to the contrary, if Tenant’s Gross Sales reach or exceed One Million Seven Hundred Thousand and 00/100 Dollars (\$1,700,000.00) for calendar year 2015, then Tenant may, but shall not be obligated to, extend the Lease for a period of five (5) years (“Option Term”) by giving written notice to Landlord of Tenant’s exercise of the option no later than February 28, 2016. During the Option Term, Tenant shall pay monthly in arrears an amount equal to nine percent (9%) of Tenant’s Gross Sales, beginning retroactively on January 1, 2016. If, at the end of each calendar year of the Option Term, the amount paid by Tenant to Landlord for the immediately preceding 12 month period is less than a total of One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000.00) (“Minimum Option Rent”), then Tenant shall immediately pay to Landlord the difference between the amount actually paid to Landlord and the Minimum Option Rent.

Notwithstanding the foregoing, throughout the Option Term Tenant shall continue to pay for all utilities supplied to the Premises regardless of whether the same are supplied by Landlord or a third party.

4. **Remodel of Premises:** On or before June 1, 2011, Tenant shall complete a remodel of the Premises (“Tenant’s Work”). Tenant shall submit plans (scope of work) as well as sign drawings for Landlord’s prior approval. All such remodeling shall be carried out in accordance with the provisions of the Lease, including the provisions of the Lease governing construction of the Premises and Landlord’s then current design criteria.

5. **Landlord’s Contribution:** Provided Tenant is not in default, Landlord shall contribute up to the sum of One Hundred Fifty Thousand and 00/100 Dollars toward Tenant’s actual costs to remodel the Premises (“Construction Allowance”). The Construction Allowance shall be paid to Tenant pursuant to the following schedule:

- a. Fifty Thousand and 00/100 Dollars (\$50,000.00) shall be paid to Tenant within five (5) days following the date Landlord receives notification from Tenant that Tenant has commenced construction of Tenant’s Work and Landlord has verified construction start with its Property Management Department;
- b. Up to Fifty Thousand and 00/100 Dollars (\$50,000.00) shall be paid to Tenant within twenty (20) days following the date Landlord receives copies of relevant invoices and a certificate from Tenant that Tenant has completed fifty percent (50%) of Tenant’s Work;
- c. Up to Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) shall be paid to Tenant within twenty (20) days following the date Landlord receives copies of relevant invoices and a certificate from Tenant that Tenant has completed seventy-five percent (75%) of Tenant’s Work;
- d. Up to Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) shall be paid to Tenant within twenty (20) days following the date Landlord receives an affidavit from Tenant that Tenant has completed one hundred

percent (100%) of Tenant's Work and further stating that (a) (i) Tenant's Work has been completed in strict compliance with Tenant's approved plans and specifications, including a breakdown of Tenant's final and total construction costs, together with copies of invoices for such work and proof, satisfactory to Landlord, of payment thereof; and (ii) no security interests under the Uniform Commercial Code are outstanding or have been filed (such affidavit may be relied upon by Landlord, it being understood that any deliberate misrepresentation or misstatement by Tenant therein shall constitute an event of default under the Lease); (b) an affidavit of the contractor(s) performing Tenant's Work stating that Tenant's Work has been fully completed in strict compliance with Tenant's approved plans and specifications and that all subcontractors, laborers and materials suppliers who supplied materials and/or labor for Tenant's Work (whose names and addresses shall be recited in the affidavit) have been paid in full, and that all liens therefor that have been or might be filed have been discharged of record or waived; (c) a complete release and waivers of lien executed by said contractor(s), and releases and waivers of lien executed by every subcontractor supplying labor and/or materials for Tenant's Work; or in lieu thereof, an attorney's certification that the lien period for the Tenant's Work performed by Tenant in the Premises has expired and no liens in connection therewith have been filed.

6. **Address for Payment of Rent:** For all payments properly due and payable under the Lease, Tenant shall use the following payment address or such other address as Landlord shall designate by giving written notice thereof to Tenant:

Morgantown Mall Associates Limited Partnership  
L-1853  
Columbus, OH 43260

7. As a material inducement to Landlord entering into this Agreement, Tenant certifies to Landlord that as of the date hereof: (i) the Lease, as modified hereby, contains the entire agreement between the parties hereto relating to the Premises and that there are no other agreements between the parties relating to the Premises, the Lease or the Shopping Center which are not contained herein or in the Lease; (ii) Landlord is not in default in any respect in any of the terms, covenants and conditions of the Lease; and (iii) Tenant has no setoffs, counterclaims or defenses against Landlord under the Lease.

8. Tenant and its predecessors, successors, parent, subsidiaries, affiliates and any related entity or person, hereby release Landlord and its parent, subsidiaries, or affiliated entities, and their agents, partners, officers, directors, and employees, and the respective heirs, executors, administrators, successors and assigns of any of the foregoing, from any and all liability, claims, damages, causes of action or any other form of relief, legal or equitable, that are, have been, or could have been or in the future might be asserted in any way relating to the Lease, the Landlord's performance thereunder, or the Premises, from the beginning of time to the date of signature of this Agreement.

9. Landlord and Tenant each mutually covenants, represents and warrants to the other that it has had no dealings or communications with any broker or agent in connection with this Agreement and each covenants and agrees to pay, hold harmless and indemnify the other from and against any and all cost, expense (including reasonable attorneys' fees) or liability for any compensation, commission or charges to any broker or agent claiming through the indemnifying party with respect hereto.

10. Landlord and Tenant each represent and warrant to the other that it has taken all corporate, partnership or other action necessary to execute and deliver this Agreement, and that this Agreement constitutes the legally binding obligation of Landlord and Tenant enforceable in accordance with its terms. Landlord and Tenant shall each save and hold the other harmless from any claims or damages including reasonable attorneys' fees arising from Landlord's or Tenant's misrepresentation of its authority to enter into and execute this Agreement.

11. Capitalized terms not defined herein shall have the definitions given such terms in the Lease.

12. In the event of a conflict between the provisions set forth in this Agreement and the provisions set forth in the Lease the provisions set forth in this Agreement shall govern and control. As modified and amended hereby, Landlord and Tenant each ratifies and affirms the terms of the Lease.

[Signature and acknowledgment page follows immediately]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement as of the date first above written.

**LANDLORD:**

MORGANTOWN MALL ASSOCIATES LIMITED PARTNERSHIP, an Ohio limited partnership

By: GLIMCHER MORGANTOWN MALL, INC., a Delaware corporation, its sole General Partner

By: [Signature]  
Michael P. Glimcher  
Its: Chief Executive Officer

**[Two Witnesses]**

**TENANT:**

EATERIES, INC., an Oklahoma corporation

By: [Signature]  
Sandy Bernabei  
[Print Name] Preston Stocker  
Title: President

[Signature]  
Phd O. Brackelsberg  
[Print Name]

(Acknowledgment of Landlord)

STATE OF OHIO )  
 )ss.:  
COUNTY OF FRANKLIN )

This instrument was acknowledged before me this 19th day of April, 2010, by Michael P. Glimcher as Chief Executive Officer of Glimcher Morgantown Mall, Inc., a Delaware corporation, on behalf of said corporation in its capacity as sole general partner of Morgantown Mall Associates Limited Partnership, an Ohio limited partnership, for and on behalf of said entity.



[Signature]  
Notary Public  
My commission expires!