

THIRD AMENDMENT AND EXTENSION OF LEASE

THIS THIRD AMENDMENT AND EXTENSION OF LEASE ("Amendment") is made this ___ day of July, 2013, to be effective July 1, 2013 (the "Effective Date"), by and between **JASPER MALL RETAIL GROUP, LLC**, an Alabama limited liability company ("Landlord") and **EATERIES, INC.**, a Delaware corporation, d/b/a "Garfield's Restaurant and Pub" ("Tenant").

BACKGROUND

Under that certain lease dated September 23, 1997 between Landlord and Tenant (which with any and all amendments and letter agreements is the "Lease"), Landlord leased to Tenant those premises numbered **C-IO** and containing a total area of approximately 4,750 square feet ("Leased Premises") in the JASPER MALL ("Shopping Center").

In consideration of the mutual covenants exchanged herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant now agree to amend the Lease in the manner and to the extent provided below:

THE AGREEMENT

1. Modified Term.

The Term of the Lease is hereby modified and shall be for a period of ten (10) years and two months, beginning on July 1, 2013 and ending on August 31, 2023 ("Modified Term") subject to the payment by Tenant of the Annual Basic Rental and Annual Percentage Rental set forth below.

2. Renewal Option.

Provided Tenant is not in default under the terms of the Lease and is open and operating, Tenant shall have the right and option to extend the Term of this Lease Agreement for one (1) additional period of five (5) years ("Option Term") following the expiration of the Modified Term of the Lease, upon the same terms and conditions as set forth herein except there shall be no further renewal options and Tenant's Annual Basic Rental and Annual Percentage Rental during the Option Term shall be as set forth below. Tenant must give Landlord written notice of its intention to exercise said Option Term at least ninety (90) days prior to the expiration of the Modified Term. Failure to provide such notice shall be deemed a waiver of Tenant's right to extend the Modified Term of this Lease.

3. Basic Annual Rental -Modified Term. During the Modified Term, Tenant's Basic Annual Rental shall be as follows:

(a) During the period July 1, 2013 and ending on August 31, 2014, the amount of \$80,750.00, payable in equal monthly installments of \$6,729.17.

(b) During the period September 1, 2014 and ending on August 31, 2019, the amount of \$92,625.00, payable in equal monthly installments of \$7,718.75.

(c) During the period September 1, 2019 and ending on August 31, 2023, the amount of \$101,887.50, payable in equal monthly installments of \$8,490.63.

4. **Basic Annual Rental - Option Term.** If the option is exercised, during the Option Term beginning September 1, 2023 and ending on August 31, 2028, Tenant's Basic Annual Rental shall be \$112,076.25, payable in equal monthly installments of \$9,339.69.

5. **Percentage Rental - Modified Term.** During the Modified Term, Tenant's Percentage Rental shall be as follows:

(a) During the period July 1, 2013 and ending on August 31, 2014, the Tenant's Percentage Rental shall be Five Percent (5%) of Gross Sales in excess of One Million Six Hundred Fifteen Thousand and no/100 Dollars (\$1,615,000.00) as set out in the Lease.

(b) During the period September 1, 2014 and ending on August 31, 2019 the Tenant's Percentage Rental shall be Five Percent (5%) of Gross Sales in excess of One Million Eight Hundred Fifty Two Thousand Five Hundred and no/100 Dollars (\$1,852,500.00) as set out in the Lease.

(c) During the period September 1, 2019 and ending on August 31, 2023, the Tenant's Percentage Rental shall be Five Percent (5%) of Gross Sales in excess of Two Million Thirty Seven Thousand Seven Hundred and Fifty and no/100 Dollars (\$2,037,750.00) as set out in the Lease.

6. **Percentage Rental - Option Term.** If the option is exercised, during the Option Term beginning September 1, 2023 and ending on August 31, 2028, Tenant's Percentage Rental shall be Five Percent (5%) of Gross Sales in excess of Two Million Two Hundred Forty One Thousand Five Hundred and Twenty Five and no/100 Dollars (\$2,241,525.00) as set out in the Lease.

7. **Remodeling Allowance** – In consideration of Tenant making Cosmetic Remodeling to the Premises, including new or newly refurbished fixtures in the Premises, to be completed on or before November 15, 2014, and provided that Tenant is not in default under the Lease, Landlord will pay Tenant a remodeling allowance of One Hundred Thousand and No/100 Dollars (\$100,000.00), to be used solely for remodeling of the Leased Premises, payable as described below within 10 business days of receipt of an invoice from Tenant upon the occurrence of the following events:

(a) Thirty Three Thousand Three Hundred Thirty Three and No/100 Dollars (\$33,333.00) upon (i) Tenant's "Commencement of Remodeling" (defined as the

commencement of the remodeling of the Premises with workers in the Premises actually doing physical labor) and (ii) and Tenant's delivery to Landlord of Tenant's building permit, plans and specifications and construction contract; and other materials and documents required by the Lease including under Section 9.4.

(b) Thirty Three Thousand Three Hundred Thirty Three and No/100 Dollars (\$33,333.00) upon (i) 50% completion of construction as certified by Tenant's contractor and/or architect and (ii) receipt by Landlord of partial lien waivers executed by Tenant's contractor and/or major subcontractors on amounts over \$2,500.00 for work performed and materials supplied to that date in the performance of Tenant's remodeling of the Premises; and

(c) Thirty Three Thousand Three Hundred Thirty Four and No/100 Dollars (\$33,334.00) upon (i) completion of construction, (ii) receipt by Landlord of final lien waivers executed by Tenant's contractor and/or major subcontractors on amounts over \$2,500.00 for work performed and materials supplied, and (iii) receipt by Landlord of an affidavit from Tenant's general contractor that remodeling construction is completed.

8. Tenant's Termination Right. In the event that Tenant's Gross Sales do not meet or exceed One million and 00/100 Dollars (\$1,000,000.00) (hereinafter "Sales Threshold") during the period of September 1, 2018 to August 31, 2019, Tenant shall have the right to terminate and cancel this Lease by sending written notice to Landlord no later than October 31, 2019 (hereinafter "Tenant's Termination Notice"). The Lease shall terminate on a date, which shall be sixty (60) days after the date of Tenant's Termination Notice (such date hereinafter "Termination Date"). If Tenant so elects to terminate and cancel, Tenant shall vacate and surrender the Leased Premises in the condition required by the terms of the Lease no later than the Termination Date and shall will repay to Landlord the unamortized portion of the Remodeling Allowance based on a 10 year amortization. Tenant agrees to pay all rent and other sums due under this Lease in accordance with its terms until the later to occur of (i) Tenant vacating and surrendering the Leased Premises, or (ii) the Termination Date. Landlord and Tenant hereby agree that in the event Tenant fails to vacate and surrender the Leased Premises on the Termination Date, Tenant shall be deemed to be trespassing or, at Landlord's election, holding over and Landlord shall have the right to invoke any remedy allowed by law and/or in equity and/or the Lease. Nothing contained herein shall be deemed as consent by Landlord to Tenant remaining in possession of the Leased Premises beyond the Termination Date.

9. Miscellaneous.

(a) Except as expressly modified in this Amendment, the Lease is not otherwise modified and remains in full force and effect.

(b) This Amendment and the Lease shall be considered, for all intents and purposes, one instrument. In the event of any conflict between the terms and provisions of this

Amendment and the terms and provisions of the Lease, the terms and provisions of this Amendment shall, in all instances, prevail. If any provision of this Amendment or the application thereof to any person or circumstance is or becomes illegal, invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect and this Amendment shall be interpreted as if such illegal, invalid or unenforceable provision did not exist herein.

(c) Each provision of the Lease and this Amendment shall extend to and shall bind and inure to the benefit of Landlord and Tenant, their respective heirs, legal representatives, successors and assigns. Tenant hereby warrants and certifies to Landlord that: (i) Tenant is a corporation duly organized and in good standing under the laws of the State of Delaware; (ii) Tenant is authorized to do business in the State of Alabama and to execute and deliver this Amendment; and (iii) the person executing this Amendment is authorized and empowered to bind the corporation to the terms of this Amendment by his or her signature hereto.


(d) Tenant warrants and represents to Landlord that (i) Tenant is not subject to any action seeking reorganization, liquidation or similar relief pursuant to federal or state law, including Title 11 of the United States Code (the "Bankruptcy Code"), (ii) Tenant's leasehold interest in the Leased Premises is not subject to the Bankruptcy Code, (iii) if Tenant has been a party to a petition for bankruptcy within the past seven (7) years, Tenant has been discharged under the Bankruptcy Code from said bankruptcy case, and (iv) Tenant has the right and authority to execute this Amendment without first obtaining authority from the Bankruptcy Court, any trustee, receiver or liquidator. Tenant acknowledges and agrees that Landlord has relied on Tenant's assurances of its financial solvency as a material inducement to enter into this Amendment.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed, and to be effective as of the Effective Date above written.

TENANT:

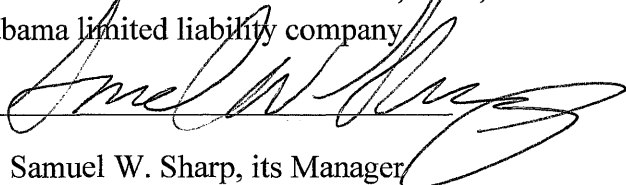
EATERIES, INC.,
a Delaware corporation

By: 
Preston Stockton, President

Attested: 
William C. Liedtke III, Secretary

LANDLORD:

JASPER MALL RETAIL GROUP, LLC,
an Alabama limited liability company

By: 
Name: Samuel W. Sharp, its Manager