



**ARTICLE XII
RIGHT OF FIRST REFUSAL**

Section 12.1 Right of First Refusal. If Landlord receives an acceptable bona fide offer to purchase the Demised Premises as a separate tract, Landlord shall submit a written copy of such offer to Tenant, giving Tenant fifteen (15) days within which to elect to purchase the Demised Premises on the same terms. If Tenant so elects, it shall give Landlord written notice thereof and Landlord and Tenant will execute a new contract embodying the terms of the offer. Landlord shall convey title subject to and in accordance with the terms of said offer. The provision of this Section shall cease and terminate upon the expiration or termination of this Lease, as herein provided, or in the event that Tenant shall be in default as defined in Article XI of this Agreement. Notwithstanding the foregoing, this Right of First Refusal shall not apply to (a) any transfers under any deed, testamentary or trust document to any family member or family trust of Landlord's principals or to an entity owned or controlled by Landlord, or (b) to any merger, acquisition or consolidation of Landlord to which Landlord is a party, whether or not Landlord is the surviving entity, (c) any offer for the purchase of the entirety of Landlord's Project.

**ARTICLE XIII
USES; RESTRICTIVE COVENANTS**

Section 13.1 Tenant's Permitted Use. During the Initial Term of this Lease, Tenant shall not use or occupy, or permit or suffer to be used or occupied, the Demised Premises or any part thereof, other than for the Permitted Use, without Landlord's prior written consent which may not be unreasonably withheld or denied. The "Permitted Use" is defined as a retail prototypical Sheetz Convenience Store with the retail sale of gasoline and kerosene, dispensing pumps, and limited outside seating. During the Initial Term of this Lease, Landlord will not unreasonably withhold or

delay its consent to the proposed change of use provided the proposed use: (a) is retail in nature; (b) does not conflict with any then-existing exclusive use clause in favor of another tenant in Landlord's Project; or (c) does not conflict with the then-principal use of another tenant in Landlord's Project. Subsequent to the Initial Term, Tenant may change the Permitted Use to any lawful retail use allowed by zoning and not contrary to the foregoing requirements in clauses (a) through (c) above, without Landlord's prior consent.

Section 13.2 Use Restrictions in Favor of Tenant. During the Initial Term of this Lease and any Renewal Term, Landlord covenants that Landlord will not permit any portion of Landlord's Project (excluding the Demised Premises) or any other property owned or controlled by Landlord and located within two miles of the Demised Premises, to be occupied or used, in whole or in part, for:

- (a) the retail sale of gasoline and other motor fuels; or,
- (b) a "Convenience Store" as hereinafter defined. For the purpose of this Section 13.1, a Convenience Store is defined as a retail business with primary emphasis on providing the public a convenient location to quickly purchase a wide variety of products (predominantly food, gasoline or tobacco products) and services, such as the following retail operators, by way of example only, GetGo, BP Express, WAWA, 7-Eleven, Royal Farms, Kangaroo, or similar retail operators; or,
- (c) Any Subway, Jersey Mike's, Quiznos, or similar retail business which derives fifty percent (50%) or more of retail sales from the sale of hoagie or submarine-style sandwiches; or,
- (d) a McDonald's, Burger King, Wendy's, Sonic or similar fast food restaurant which derives 35% or more of its income from the sale of burgers; or,
- (e) a store which derives 50% or more of its income from the sale of tobacco products; or,
- (f) a Starbucks, or Caribou, Daily Grind or similar retail operation which derives fifty percent (50%) or more of retail sales from the sale of coffee products; or,
- (g) a Krispy Kreme, Dunkin Donuts or similar retail operation which derives fifty percent (50%) or more of retail sales from the sale of donuts and coffee products.

Section 13.3 Use Restrictions in Favor of Landlord. During the Initial Term of this Lease and any Renewal Term, no portion of the Demised Premises shall be used for the following uses: a bank (provided, that this restriction shall not prohibit Tenant from having an ATM so long as the ATM is located inside of Tenant's convenience store building). Tenant acknowledges that Landlord may be requested to grant an exclusive in the course of developing the balance of Landlord's Project. Any exclusive granted shall not conflict with any use restriction in favor of Tenant under Section 13.2 hereof.

Section 13.4 Applicability of Covenants. During the Initial Term of this Lease and any Renewal Term, the restrictions in Sections 13.2 and 13.3 above shall