

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Carl Karcher Enterprises, Inc.
Bank of America Tower, Suite 1200 100 N. Broadway
St. Louis, Missouri 63102
ATTN: Legal Department Paralegal

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
2/25/2009 12:45:00 PM
FEE \$23.00 Pgs: 7
DEP eCASH REC'D FOR BONNEVILLE SUPERIOR TITLE

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14-448-003

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") dated as of the 18th day of February 2009 is made and entered into by and between CLINTON CITY CENTER, LLC, a Utah limited liability company ("Landlord"), and CARL KARCHER ENTERPRISES, INC., a California corporation ("Tenant").

Landlord and Tenant entered into that certain Ground Lease dated as of the 7th day of July, 2008 ("Lease") for that certain real property located in the City of Clinton, County of Davis, State of Utah, as more particularly described on the attached Exhibit "A", (the "Premises"), which Premises are contained within the shopping center commonly known as The Park Plaza Shopping Center, as more particularly described on the attached Exhibit "B" (the "Center").

NOW, THEREFORE, for and in consideration of the foregoing, Landlord and Tenant hereby agrees as follows:

1. Agreement to Lease. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises pursuant to the Lease, and all rights, privileges and easements appurtenant thereto, at the rental and upon all of the terms and conditions set forth in the Lease, which Lease is incorporated herein by this reference. Terms use, but not defined, herein shall have the same meaning as set forth in the Lease.

2. Term. Subject to the terms and conditions contained in the Lease, the Premises is leased for an initial term of twenty (20) years, with four (4) five (5) year options to extend the initial terms. The term of the lease will commence as provided in the Lease.

3. Restriction on Use of Other Premises. The Lease contains the following provision:

4.3 Use Restrictions.

Landlord covenants and agrees that so long as Tenant leases, owns, or otherwise controls the Premises:

(a) Tenant and any permitted subtenant or assignee thereof shall have the exclusive right in the Center (collectively, the "**Restricted Property**") to operate a quick service restaurant featuring the sale of hamburgers, biscuits and/or biscuit sandwiches (by way of example and not limitation, uses that would violate Tenant's exclusive right include Burger King, Wendy's, In-N-Out Burger, Farmer Boys, Krystal, White Castle, A&W, Whataburger,

Checkers, Rallys, Sonic and similar "drive-in" concepts, Jack-in-the-Box, and McDonald's); and

(b) Any buildings or other improvements constructed on property adjacent or contiguous to the Premises shall be set back from 1800 North for a distance at least equal to the distance between Tenant's building on the Premises and 1800 North.

It is mutually agreed that the covenants set forth above shall run with the land, be binding upon third parties, and be incorporated into the Memorandum along with a legal description of the Restricted Property that shall be furnished by Landlord.

4. First Offer to Tenant; Right of First Refusal. The Lease contains the following provisions:

22.1 *First Offer to Tenant.*

If Landlord elects to offer to transfer the Premises by sale or exchange, Landlord shall notify Tenant of all terms of the proposed offer. Tenant shall have thirty (30) days after receiving the notice within which to accept the offer on all terms stated in the notice to Tenant or such other terms to which Landlord and Tenant agree. If Tenant fails to accept the offer within such thirty (30) day period, Landlord shall be free to make the same offer available to others and conclude a sale or exchange on the terms stated therein. If Landlord desires to change a material term of such offer, or if the transaction contemplated by such offer fails to close and a new transaction is proposed, Landlord must again notify Tenant and Tenant shall have thirty (30) days after receiving the notice within which to accept the changed offer or such other terms to which Landlord and Tenant agree. This section will not apply to the sale or exchange of the Premises as part of a sale or exchange of the entire Center.

22.2 *Right of First Refusal.*

If Landlord receives an offer to acquire the Premises which Landlord desires to accept, Landlord shall promptly notify Tenant of the name and address of the offeror and all terms of the offer. Tenant shall have thirty (30) days after receiving the notice within which to agree to become the offeror on all terms stated in the notice to Tenant or such other terms to which Landlord and Tenant agree. If Tenant fails within such thirty (30) day period to agree to become the offeror, Landlord shall be free to accept such offer and complete the transaction contemplated thereby on the terms stated therein. If Landlord desires to agree to a change in a material term of such offer, or if the transaction contemplated by such offer fails to close and a new transaction is proposed, then Landlord must again notify Tenant and Tenant shall have thirty (30) days after receiving the notice within which to agree to become the offeror as to the offer or such other terms to which Landlord and Tenant agree. This section will not apply to the sale or exchange of the Premises as part of a sale or exchange of the entire Center.

5. Center Access. The Lease contains the following provision:

5.1 *Common Area*

Landlord grants Tenant and its agents, employees, contractors, subtenants, customers, invitees, guests and licensees (collectively, the "**Tenant Parties**") all easements, rights and privileges held by the owner of the Premises and/or appurtenant to the Premises, including the nonexclusive right to use the Common Area and Common Area Improvements for the purposes

of vehicular parking and vehicular and pedestrian ingress and egress to and from the Premises over and across the Center's parking areas, driveways and accessways, sidewalks and walkways, exits and entrances, and other common areas, as those areas are shown on the Center Site Plan attached hereto as Exhibit D(1), subject to reasonable regulation by Landlord applied uniformly to all occupants of the Center (collectively, the "**Common Area**"). The Common Area shall not include any portion of the Premises. It is expressly understood and agreed that the Center Site Plan sets forth only the general layout and proposed manner of development of the Center, and is not and shall not be deemed to be a warranty, representation, agreement or undertaking on the part of Landlord that the Center will be exactly as shown thereon, or that the area thereof will be or remain the same, or be more or less. The "**Tenant Protection Area**" is that portion of the Common Area designated on the Center Site Plan which shall be available for the Tenant Parties' non-exclusive use at all times during the Term, and within which Landlord shall not permit any change or improvement concerning the parking, access, methods of ingress and egress, direction and circulation of traffic, curbing, building heights or any other improvements or change that could materially, adversely affect the business operations on the Premises, without obtaining Tenant's prior written consent. The Tenant Protection Area is generally comprised of: (a) Access Drive A west of Access Drive B (as such areas are shown on the Center Site Plan), (b) Access Drive B south of Access Drive A, and (c) the intersection of Access Drive A and Access Drive B. Except for temporary periods of reasonable duration as necessary to maintain and repair the Common Area or to comply with applicable governmental requirements (which work shall be scheduled, if possible, upon at least seventy-two (72) hours' prior notice to Tenant and at times other than Tenant's peak business hours), Landlord shall not permit the use of the Common Area to be closed, restricted, interfered with, or interrupted in any manner that could adversely affect the business operations on the Premises; and Landlord shall use its best efforts to minimize the adverse impact on such business operations of any such permitted closing, restriction, interference or interruption. If Landlord breaches any covenant under this section with respect to the Tenant Protection Area, then Tenant, in addition to any other lawful remedy, shall have the right to terminate this Lease and, within thirty (30) days thereafter, be reimbursed by Landlord in the amount of the unamortized book value of the Improvements as reasonably determined by Tenant, or receive an abatement of all Rent during the duration of such breach.

6. Center Signage. The Lease contains the following provision:

4.2 Sign Rights.

Notwithstanding any provision herein to the contrary, Landlord agrees that Tenant may install, maintain, repair and replace on the Premises any and all of Tenant's prototypical identification, advertising and directional signs and media and standard "trade dress", so long as they comply with all applicable governmental requirements and CC&R's. Tenant shall have the right to participate in the Center monument sign designated on the Center Site Plan and as depicted on Exhibit 4.2.1 hereto, provided that (i) Tenant shall pay its pro rata share of the cost to erect each Center monument sign on which Tenant installs its sign panel and (ii) Tenant shall install its sign panel on the Center monument sign at its sole cost and expense. Landlord shall maintain such off-Premises signs in good order and repair in accordance with good standards and practices typical of comparable first-class shopping centers in the general area of the Center, and in accordance with all applicable governmental requirements. Landlord shall ensure that Tenant's sign panels on such off Premises signs are fully-illuminated at all times during Tenant's hours of operation.

7. Utility Easement. Landlord, as the fee owner of the Center ("Grantor") hereby grants to Tenant and its successors, assigns and subtenants (collectively, "Grantee"), for the benefit of and appurtenant to the Premises, for a period commencing upon delivery of the Premises to Tenant pursuant to the Lease and expiring at the end of the Term, an easement (the "Basement") on, over, above and under the property (the "Easement Premises") upon which are located from time to time during the Term, the mains, liens, pipes, conduits and facilities concerning all utilities serving the Premises and located outside the boundaries of the Premises, unless located within a public utility easement (the "Off-Site Utilities"). Grantee's use of the Easement Premises shall be for all purposes reasonably necessary and/or appropriate to utilize the Off Site Utilities at full capacity for the business operations on the Premises. Grantor, at its expense, shall promptly perform all necessary and/or appropriate installation, operation, maintenance, repair, replacement, and renewal work concerning the Off-Site Utilities so that the same are at all times during the Term in good working condition and repair for the purposes contemplated hereby.

Grantor warrants that Grantor has good and indefeasible fee simple title to the Easement Premises; that Grantor has the full right and lawful authority to grant the Easement; that Grantor will defend and indemnify Grantee against all lawful claims to the contrary; that Grantee shall and may peaceably have, hold and enjoy the Easement; and that any and all holders of an interest in the Easement Premises, including any holder of a lien of any mortgage or deed of trust encumbering the Easement Premises, as of the date this Memorandum is recorded, has duly consented to the provisions hereof and has subordinated any and all such interests in the Easement Premises to the easement granted hereby by signing below.

If there is a failure by Grantor to perform its obligations concerning the Easement, continuing for thirty (30) days, or in situations involving potential danger to the health or safety of persons or substantial deterioration of Off Site Utilities, in each case after written notice, Grantee may, at its election, cure such failure or breach on behalf of Grantor. Any amount which Grantee shall expend for such purpose shall be paid to Grantee on demand, without contest, upon delivery of its invoice, together with interest at the lower of the rate of ten percent (10%) per annum or the maximum rate permissible from time to time under applicable law, from the date of the expenditure to the date of payment in full, which amount due shall be secured by a lien on Grantor's parcel that may be perfected in accordance with the laws of the State in which the parcel is located, without necessity of further filing. All notices and other communications given hereunder shall be in writing and delivered by U.S. Certified Mail, postage prepaid, return receipt requested, addressed to the last known address of Grantor or Grantee, respectively.

8. Miscellaneous. This Memorandum does not amend, alter or otherwise change the provisions of the Lease. In the event of any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall govern and control. All provisions of this Memorandum, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, assigns, licensees, invitees, successors, tenants and subtenants of the parties.

IN WITNESS WHEREOF, each of the parties hereto has executed this instrument

as of the date first above written.

LANDLORD:

TENANT:

CLINTON CITY CENTER, LLC,
a Utah limited liability company

CARL KARCHER ENTERPRISES, INC.,
a California corporation

By: [Signature]
Name: SPENCER H. WRIGHT
Title: MANAGER
Date: FEBRUARY 5, 2009

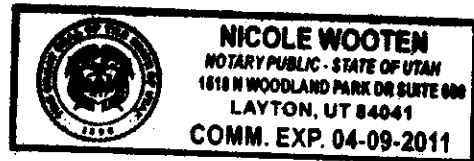
By: [Signature]
Name: William R. Werner
Title: Senior Vice President
Date: February, 2009

STATE OF UT))ss.
County of DAVIS)

On Feb. 5, 2009, before me, the undersigned Notary Public, personally appeared Spencer H. Wright, Manager of Clinton City Center, L.L.C., a Utah Limited Liability Company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that(/she/they) executed the same in (his her/their) authorized capacity(ies) and that by(/her/their) signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
My Commission Expires: 4/9/2011

[Signature]
Notary Public



MO
STATE OF MO))ss.
County of St. Louis)
City

On February 8, 2009, before me, the undersigned Notary Public, personally appeared William R. Werner, the Senior Vice President of Carl Karcher Enterprises, Inc., a California corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that(/she/they) executed the same in (his her/their) authorized capacity(ies) and that by(/her/their) signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
My Commission Expires: 6-26-2010

[Signature]
Notary Public

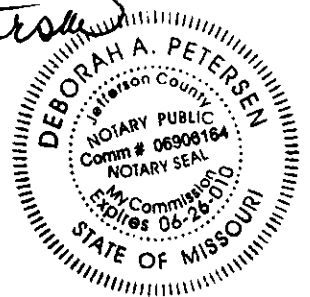


EXHIBIT "A"

A part of Lot 3, PARK PLAZA SUBDIVISION, in Clinton City, according to the Official Plat thereof as recorded in the Office of the Davis County Recorder, State of Utah: Beginning at a point 736.21 feet North 89°59'21" East along the Quarter Section line and 79.81 feet North 0°00'39" West from the Southwest corner of the Northwest Quarter of Section 27, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey and running thence West 83.86 feet, thence South 0°00'39" East 13.83 feet, thence South 89°59'21" West 81.00 feet, thence North 253.18 feet, thence East 57.19 feet, thence South 40°00'00" East 111.27 feet, thence Southeasterly along the arc of a 154.50 foot radius curve to the right a distance of 107.85 feet (Long Chord Bears South 20°00'10" East 105.67 feet), thence South 0°00'20" East 54.81 feet to the point of beginning.

EXHIBIT B
TO MEMORANDUM OF LEASE
LEGAL DESCRIPTION OF CENTER

All of the Park Plaza Subdivision, Clinton City, Davis County, Utah being a part of the Northwest Quarter of Section 27, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey.