

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") is made and entered into this 25th day of January, 2013 2012, by and between FG RETAIL GROUP, L.L.C., a Maryland limited liability company ("Landlord") and MONTGOMERY COUNTY, MARYLAND, through the Department of Liquor Control, Montgomery County, Maryland ("County") trading as Department of Liquor Control for Montgomery County.

WITNESSETH:

WHEREAS, pursuant to that certain Lease Agreement dated May 1, 2003, and all exhibits and addenda attached thereto (the "Lease") Landlord is leasing to County approximately Three Thousand Eight Hundred Sixty-Five (3,865) rentable square feet of space designated as Store Nos. C-2-5 and C-2-3 (the "Premises") in the shopping center known as Fallsgrove Village Center, Montgomery County, Maryland (the "Shopping Center") for a Term expiring July 31, 2013;

WHEREAS, Landlord and County desire to extend the Term of the Lease and modify the Lease pursuant to the terms and conditions hereinafter set forth; and

WHEREAS, unless otherwise provided herein, all terms used in this Amendment that are defined in the Lease shall have the meanings provided for in the Lease.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. **Recitals.** The above-mentioned recitals are incorporated herein by this reference.
2. **Term.** The Term of the Lease shall be extended for a period of one hundred twenty-three (123) full calendar months (unless earlier terminated in accordance with the terms of the Lease) beginning on August 1, 2013 ("Renewal Date") and ending on October 31, 2023 ("Extension Term"). The Extension Term shall be upon all of the terms, covenants and conditions of the Lease, except as expressly amended or modified by this Amendment. References in this Amendment and the Lease to the "Term" or the "Lease Term" shall be understood to refer to and include the Lease Term and the Extension Term, unless such interpretation is expressly negated. County shall have no right to extend the Lease Term beyond the expiration of the Extension Term.
3. **Minimum Rent and Additional Rent.** (a) Modifying the applicable provisions of the Lease, from and after the Renewal Date, the Minimum Rent payable by County under the Lease shall be as set forth in the following schedule:

<u>Time period:</u>	<u>Annually:</u>	<u>Monthly:</u>	<u>PSF:</u>
08/01/2013 – 07/31/2018	\$162,330.00	\$13,527.50	\$42.00
08/01/2018 – 10/31/2023	\$175,857.50	\$14,654.79	\$45.50

(b) Notwithstanding the provisions of Paragraph 3(a) above, provided no Default exists at the time any Minimum Rent is to be abated, in consideration of the Punchlist Work to be performed by County pursuant to Paragraph 4 below and Exhibit A, the monthly installments of Minimum Rent due and owing during the first three (3) months of the Extension Term shall be abated, for a total amount not to exceed \$40,583.50. Except as otherwise provided herein, no other amounts due to Landlord under the Lease (as amended hereby) shall be

abated. If County commits a Default, County shall not be entitled to any further abatement of Minimum Rent until such Default has been cured and at such time, County shall be entitled to any abatement that County has not received pursuant to this paragraph.

(c) Throughout the Extension Term, County shall continue to pay additional Rent in accordance with the terms of the Lease. All Rent shall continue to be paid in the intervals and manner required under the Lease.

4. **Condition of Premises; Punchlist.** County hereby accepts the Premises as of the Renewal Date in their then-current "as-is" condition, and agrees that Landlord has no obligation to perform or construct any improvements or alterations in or to the Premises. Within sixty (60) days of full execution of this Amendment, County covenants and agrees to complete all items on the punchlist attached hereto and made a part hereof as Exhibit "A" (the "Punchlist Work"). Such Punchlist Work shall be done at County's sole cost and expense in a first-class manner consistent with the nature of County's retail business operations and in accordance with all applicable statutes, ordinances, regulations, laws and codes of any kind, including without limitation those of: the National Electric Code; the National Board of Fire Underwriters; requirements of Landlord's Fire Insurance Underwriter; the State of Maryland; Potomac Electric and Power Company; and all applicable county building and O.S.H.A. Codes, orders and ordinances. Such Punchlist Work shall be in accordance with Exhibit A. If County does not fully complete such Punchlist Work by the date aforesaid for any reason, then Landlord, at its sole option (and in addition to any other remedies available under the Lease or this Amendment or at law or equity), may elect, but shall not be required, to perform such Punchlist Work on County's behalf and on County's account. In such event, County shall reimburse Landlord for all of Landlord's expenses incurred in connection with the same, plus an administrative fee equal to five percent (5%) of the total cost of such Work, within thirty (30) days after Landlord delivers to County an invoice for such expenses. County agrees that only new, first-class materials shall be used in the Punchlist Work. Except to the extent provided in Paragraph 3(b) above, County understands that there shall be no abatement of any Rent payable by County pursuant to the Lease, as modified by this Amendment, during the completion of any such Punchlist Work. County's general contractor shall be licensed and bonded, and approved in advance by Landlord, which approval shall not be unreasonably withheld.

5. **Notices.** All notices shall be addressed to the parties hereto at their respective addresses as set forth below or at such other addresses as they may hereafter specify by written notice, delivered in accordance with Section 17.1 of the Lease, as modified hereby.

LANDLORD: (Legal Notices)

FG Retail Group, L.L.C.
c/o Lerner Corporation
2000 Tower Oaks Boulevard
Eighth Floor
Rockville, Maryland 20852
Attn: Legal Department

(Payments / Billing Notices / Inquiries)
Same as above
Attn: Commercial Accounts Receivable

COUNTY: (Legal Notices)

Montgomery County, Maryland
Department of Liquor Control
16650 Crabbs Branch Way
Rockville, Maryland 20855
Attn: Director

And
Montgomery County, Maryland
Department of General Services
Office of Real Estate
101 Monroe Street, 9th Floor
Rockville, Maryland 20850
Attn: Director of Real Estate

With a courtesy copy to:

Montgomery County, Maryland
Office of the County Attorney
101 Monroe Street, 3rd Floor
Rockville, Maryland 20850
Attn: County Attorney

6. **Non-Appropriation.** From and after the Renewal Date, Section 17.32 shall be deleted and replaced with the following:

Landlord acknowledges that County has appropriated funds only for payment of rent for the first year of the Extension Term. Landlord further acknowledges and agrees that County's obligations under this Amendment and the Lease to pay rent in future years are subject to the appropriate of funding for such purpose in future years by County. County makes no warranty, guarantee, or representation and undertakes no obligation to request or obtain an appropriation of funds in future years for payment of rent. Landlord acknowledges and agrees that County's budget constitutes an executive and legislative function that cannot be contracted away.

County's fiscal year begins July 1 and ends June 30. It is anticipated that the final action on County's budget will take place each May, for the upcoming fiscal year, between the 15th and 31st of the month. If County elects to not appropriate sufficient funds to fully cover County's rental obligations hereunder for any fiscal year during the Term, County shall give Landlord notice, in writing, five (5) business days after County makes a final decision not to appropriate funds sufficient for County to pay rent for a full fiscal year under this Amendment and the Lease. Such notice: (i) will clearly state the number of months, if any, in the upcoming fiscal year, for which County has appropriated funds sufficient to pay rent, and (ii) will state the date by which County will vacate the Premises. Upon Tenant's vacating the Premises on such date specified in its notice, this Lease shall terminate as if such date was the date specified for expiration of the Term.

Landlord irrevocably waives any claim against County for rent which would otherwise accrue hereunder following the effective date of the termination of the Lease if not for such termination of the Lease pursuant to this Paragraph 6. If funds are not appropriated in future years for payment of rent, Landlord waives any claim in connection therewith, including any claim that the failure to appropriate such funds constitutes a breach of any express or implied covenant of good faith and fair dealing or any other implied obligation on the part of County to appropriate funds. Landlord does not waive any claims which arise from County's performance or non-performance of its obligations under the Lease with respect to the period prior to the effective date of the termination of this Lease pursuant to this Paragraph 6.

7. **Representations.** County represents that, to the best of its knowledge, Landlord has fully and faithfully performed all of its obligations under the Lease through the date of the execution of this Amendment. County and Landlord represent to one another that they have not incurred any liability for commissions or similar compensation to third parties in connection with this Amendment, except for the commissions due to County's broker, Jones Lang LaSalle Brokerage, Inc. (the "Broker"), which Broker will be paid by Landlord pursuant to the terms of a separate written agreement. County hereby agrees to indemnify and hold Landlord harmless from and against any liability arising from any claims for such compensation by any third parties alleging such a liability, other than the aforesaid Broker, including costs and reasonable attorneys' fees.

8. **Ratification.** Except as expressly set forth in this Amendment, County shall lease the Premises from Landlord for the Term (as extended herein to include the Extension Term) subject to and in accordance with the terms of the Lease. Unless a term or condition of the Lease is expressly contradicted by the terms of this Amendment or modified hereby, all terms and conditions of the Lease shall remain in full force and effect and continue to bind Landlord and County. In the event that a term of this Amendment is

inconsistent with a term of the Lease, the terms of this Amendment shall control. The terms of the Lease, as modified hereby, are ratified and affirmed by the parties.

9. **Entire Agreement.** The terms of this Amendment and the Lease contain the entire agreement of the parties as to the matters covered hereby and County's leasing of the Premises for the Extension Term. No terms, conditions, representations, warranties, promises, or understandings, of any nature whatsoever, express or implied, have been made or relied upon by either of the parties hereto. Neither this Amendment nor any other provision of the Lease may be modified, waived, discharged or terminated other than by a writing executed by the parties hereto.

10. **Severability.** Each and every covenant, agreement, obligation, or other provision contained in this Amendment is, and shall be construed to be, a separate and independent covenant and agreement of the party bound thereby, and shall not be construed to be dependent on any other provision of this Amendment or the Lease (unless this Amendment or the Lease specifically provides otherwise). If any term or provision of this Amendment shall, to any extent, be declared invalid or unenforceable, the remainder of this Amendment and the application of any term or provision, to persons or circumstances other than those as to which the application is declared invalid or unenforceable, shall not be affected.

11. **Captions.** The Paragraph captions are for convenience of reference only and shall not be deemed to limit, affect or have any effect on the interpretation of the provisions of this Amendment or the Lease.

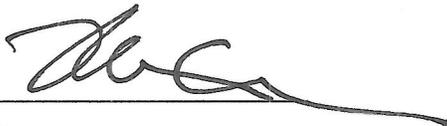
12. **Binding Effect.** This Amendment and the covenants and conditions herein contained shall be binding upon Landlord and County and their respective successors and permitted assigns from and after the date on which each such party executes and delivers this Amendment. This Amendment and the covenants and conditions herein contained shall inure to the benefit of Landlord and County and their respective successors and permitted assigns from and after the date on which both parties have executed and delivered this Amendment.

13. **Governing Law.** The terms of this Amendment and the Lease shall be construed and enforced in accordance with the laws of the State of Maryland.

Signature Page to Follow

WITNESS, the following signatures and seals are as of the day and year first above written.

WITNESS:


_____ *mb*

LANDLORD:

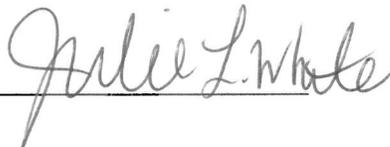
FG RETAIL GROUP, L.L.C.

By: Lerner Enterprises, LLC
Its sole Manager

By: 

Mark D. Lerner
Manager

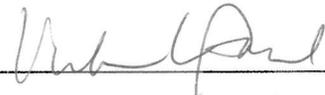
ATTEST: WITNESS:



COUNTY:
MONTGOMERY COUNTY, MARYLAND,

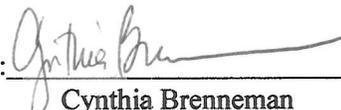
By: 
_____ *for*
Name: Ramona Bell-Pearson
Title: Assistant Chief Administrative Officer

Approved as to Form and Legality
Office of the County Attorney - *as modified on page 3*

By: 

Date: 12-27-12

Recommended:
Office of Real Estate:

By: 

Cynthia Brenneman
Director of Real Estate
Date: 12/21/12

Exhibit A
FALLSGROVE VILLAGE CENTER
PUNCHLIST
Montgomery County Liquors

In consideration for Landlord agreeing to enter into that certain First Amendment to Lease Agreement (the "Amendment") to which this Exhibit A is attached, County hereby agrees to undertake the following Punchlist Work which shall be completed within the time frame stated in the Amendment.

Storefront Exterior:

- Clean storefront windows, doors and metal frames.
- Clean store sign above entrance.

Store Interior (Customer Area):

- Clean all light fixtures.
- Clean HVAC diffusers.

Rear Area:

- Paint scuffed walls in rear area – paint color to match existing.
- Paint all doors and frame – paint color to match existing.
- Clean HVAC diffusers.
- Clean all light fixtures.

Bathrooms:

- Touch up paint as needed – paint color to match existing.
- Clean exhaust fan.
- Clean light fixtures.

If the punchlist items listed above are to be completed by anyone other than County's own personnel (i.e., contractor(s)), then the contractor(s) must contact the Landlord's Property Manager, Tony Fultz, at (240) 393-2104 prior to the start of all work for liability insurance stipulations and the Shopping Center's Rules and Regulations for Tenant Contractors.

In addition, County must notify the Landlord's Tenant Services Department at (301) 692-2392, in order to schedule a final inspection of the work at least 72 hours prior to the expiration of the time frame stated in the subject Amendment for completion of this Punchlist Work.