

referred to as the "Second Renewal Term" and the First Renewal Term and the Second Renewal Term are collectively hereinafter referred to as the "Renewal Terms"), on the terms and provisions of this Article XXVIII, provided:

A. That no Event of Default exists on the date Tenant exercises its right or on the date the Renewal Term; and

B. That the Renewal Terms shall be upon the same terms, covenants and conditions as provided in this Lease; provided, however, annual Minimum Rent for the Renewal Terms shall be as follows:

<u>Period</u>	<u>Annual Minimum Rent per square foot of Floor Area of the Building</u>
First Renewal Term	\$72.60
Second Renewal Term	\$79.86

C. That Tenant shall exercise its right to the Renewal Terms provided herein, if at all, by notifying Landlord in writing of its election to exercise the right to renew the Term at least twelve (12) months prior to the expiration of the then current Term.

28.2 The rights granted under this Article XXVIII are personal to Flowerchild Holding Company LLC, an Arizona limited liability company (and any Permitted Transferee) and shall not be assigned to nor inure to the benefit of any other party.

28.3 Time is of the essence with respect to the rights granted by this Article XXVIII.

#### **ARTICLE XXIX.Exclusive**

29.1 Subsequent to the Effective Date, and so long as Tenant is operating for the Permitted Use, Landlord shall not enter into a lease or other occupancy agreement for any portion of the Shopping Center and that certain area outside of the Shopping Center (together the "Exclusive Area") as shown on attached Exhibit H attached hereto and made a part hereof a tenant that permits such tenant to operate a fast casual restaurant "serving primarily healthy wraps, bowls and salads" (hereafter, the "Restricted Use"). "Serving primarily healthy wraps, bowls and salads" means 30% or more of such restaurant's food menu items (including any offered specials which may not be preprinted on the menu) are healthy wraps, bowls and salads. This agreement of Landlord shall operate only to the extent Landlord's covenants and agreements contained in this Section 29.1 are not found to be contrary to public policy or contrary to law by a court of competent jurisdiction and, in the event such covenants and agreements are found to be contrary to public policy or contrary to law by a court of competent jurisdiction, such covenants and agreements shall become automatically and immediately null and void and shall be deemed revoked. In the event Landlord or its successors or assigns are made subject to any action, proceeding or penalty with respect to the provisions of this Article, Landlord and Tenant shall cooperate fully on the defense of such claim and Landlord shall be responsible for all attorneys' fees and costs of defense. Nothing in the provisions of the preceding sentence shall obligate Tenant to indemnify Landlord for the cost of enforcing the provisions of this Section 29.1 in accordance with the remaining provisions of this Section 29.1. This Section 29.1 shall not apply to any leases entered into by Landlord prior to the Effective Date, nor to any amendments or renewals of such leases (provided the use provisions are not modified in a manner that would violate the rights granted to Tenant herein). In the event Landlord receives written notice from Tenant notifying Landlord of a violation of the Restricted Use by Landlord, Landlord shall, during the thirty (30) day period following its receipt of Tenant's notice (such 30-day period is sometimes hereinafter referred to as the "Cure Period") use reasonable efforts to attempt to cause such tenant to cease violating the Restricted Use. If such breach is not cured within the Cure Period, then, Tenant shall pay, in lieu of Minimum Rent,

Percentage Rent, Tenant's Proportionate Share of Landlord's Insurance, an amount ("Alternative Rent") equal to the greater of (i) fifty percent (50%) of Minimum Rent or (ii) three percent (3%) of Gross Sales from the Premises for each calendar month, during the period of such violation (the amount described in this clause (ii) shall be paid, if at all, monthly in arrears on or before the 20th day of the month following the end of the month to which such payment applies), which payment of Alternative Rent shall commence from and after the expiration of the Cure Period and shall end on the earlier to occur of (x) the date such breach is cured, and (y) the date ("Exclusive Termination Date") twenty-four (24) calendar months following expiration of the Cure Period. Subject to Permitted Closures, during any period that Alternative Rent is payable, Tenant shall continuously operate its business in the entire Premises during said period. In the event such breach is not cured on or before the Exclusive Termination Date, Tenant, as Tenant's sole and exclusive remedy, shall have the right to terminate this Lease, provided (a) Tenant has given Landlord thirty (30) days prior written notice of such termination, and (b) such termination notice is given within thirty (30) days of the Exclusive Termination Date and prior to the date such breach is cured. Failure of Tenant to exercise its termination right under this Section 29.1 within the 30-day period prescribed above shall constitute a waiver of such right with respect to the violation in question. If Tenant waives, or is deemed to have waived, its termination right set forth in this Section 29.1, Tenant shall immediately resume paying full Rent.

### **ARTICLE XXX. Miscellaneous**

30.1 Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rental, nor any other provisions contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

30.2 All obligations of each party constituting Tenant hereunder shall be the joint and several obligations of each such party.

30.3 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

30.4 One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. Acceptance of Minimum Rent, Percentage Rent or Additional Rent by Landlord after any Event of Default by Tenant shall not be a waiver of such Event of Default; and acceptance of a lesser amount than is due from Tenant shall in all cases constitute a payment on account, and not an accord and satisfaction, notwithstanding any statement to the contrary on any check or other notation. No receipt of money by Landlord from Tenant or any other person after termination of this Lease or after the service of any notice or after the commencement of any suit, or after final judgment for possession of the Project, shall reinstate, continue or extend the Term or affect any such notice, demand or suit, or imply consent for any action for which Landlord's consent is required, unless specifically agreed to in writing by Landlord. Any amounts received by Landlord may be allocated to any specific amounts due from Tenant to Landlord as Landlord determines.

30.5 In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lockouts, labor troubles, acts of God, inclement weather, including periods of rain, inability to procure materials, failure of power, restrictive governmental law or regulations, the inability to attain permits (for reasons other than failure to timely apply), riots, insurrections, war or other reason beyond the parties' control and not the fault of the party delayed in performing work or doing acts required under the terms of this Lease ("Force Majeure"), then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. No delay under this Section shall be

**EXHIBIT H**

**Exclusive Area**

