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201109170

STATE OF NEBRASKA )  
COUNTY OF HALL ) SS

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*Mitchell Clark*

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Prepared By and After Recording Return to:

Brian M. Fox, Senior Associate Counsel  
DARDEN  
1000 Darden Center Drive  
Orlando, DL 32837

Memorandum of Lease



201109170

This instrument prepared by  
 And after recording return to:  
 Brian M. Fox, Senior Associate Counsel  
 DARDEN  
 1000 Darden Center Drive  
 Orlando, FL 32837

### MEMORANDUM OF LEASE

This Memorandum of Lease, dated this 23<sup>rd</sup> day of ~~September~~ November, 2011, is by and between Batis Development Company, a Kansas corporation ("Landlord") and GMRI, Inc., a Florida corporation, ("Tenant").

#### RECITALS:

A. On August 5, 2011, Landlord and Tenant entered into a written Lease agreement ("Lease") for a certain space containing approximately 7,596 square feet, located in a building (the "Building") located on the parcel described on Exhibit "A" (the "Parcel") and depicted on Exhibit "A-1", and certain exterior areas of the Building up to and including the curb surrounding the Building including sidewalks and landscaping, as identified on Exhibit "A-1", situated in the City of Grand Island, Nebraska (the "Premises"); and

B. The parties desire to place their interests in the Lease as a matter of record.

**NOW, THEREFORE**, the parties represent as follows:

1. The Term of the Lease will be ten (10) Lease Years, as defined in the Lease, commencing on the Commencement Date as determined in accordance with its Terms. Tenant has certain rights to terminate the Lease as further described therein.

2. In conjunction with such leasing, Landlord has granted to Tenant the following easement rights for the benefit of the Premises: an exclusive easement for the placement of dumpsters to serve the Premises in the location shown on Exhibit "A-2"; nonexclusive easements for the installation, use, maintenance and repair of utilities serving the Premises, to be located in and/or on the Premises portion of the Building; a non-exclusive easement for installation, use, maintenance and repair of a monument sign in the location shown on Exhibit "A-2" and certain easement rights over the properties described on the attached Exhibit "B" (the "Center"), which rights include vehicular ingress, egress, parking and utilities.

3. Tenant has the option to renew the Lease for four (4) additional period(s) of five (5) Lease Years each.

4. Restrictive Covenants.

A. **Restaurant Exclusive.** During the Term of the Lease, and so long as Tenant is not in default of the Lease beyond any applicable cure period and is open and operating in the Premises as an Olive Garden Italian restaurant, no portion of the Parcel will be used as a restaurant that features Italian food. "Features" means that those food items comprise more than 25% of the menu offerings. This restriction will not be applicable to the sale of unprepared foods intended for off-premises consumption. This restriction shall also not be applicable to any tenant or owner in the Parcel as of the Effective Date of the Lease except to the extent Landlord has the right to approve any change in use in such tenant's or owner's use. This restriction will run with the land during the Term of the Lease. Temporary closures for casualty, condemnation or remodeling shall not be deemed Tenant not being open and operating.

B. **Protected Area.** Landlord and Tenant agree that the area labeled "Olive Garden Staging Area & Protected Area" on Exhibit "A-1" ("Protected Area"), which includes parking areas and access drives, is restricted as follows:

(i) The Protected Area shall at all times remain and be used as parking area, drive aisles and sidewalks, as shown on Exhibit "A-1", for the non-exclusive benefit of the Premises. No temporary or permanent structures are permitted within the Protected Area other than light poles, curbing, appurtenant landscaping islands, traffic signs and the existing pylon sign. No staging of materials or vehicles is permitted in the Protected Area except by Landlord or Tenant or their respective contractors during initial construction. No portion of the Protected Area shall be used for any promotional, public, quasi-public, philanthropic, carnival, festival or any similar activities.

(ii) The Protected Area shall not be modified or reduced without Tenant's prior written consent, except as set forth in subsection (iv) below.

(iii) Subject to the terms and conditions of the Declaration of Restrictions and Grant of Easements dated March 11, 1999 and recorded on June 24, 1999 as Document No. 99-106376, as amended, and that certain Declaration of Reciprocal Easements, Covenants and Restrictions dated \_\_\_\_\_ and recorded on \_\_\_\_\_ as Document No. \_\_\_\_\_, no portion of the Protected Area shall be designated or reserved for the exclusive use of any occupant of the Parcel or Center or any other person, nor shall the Protected Area be the designated "employee parking area" for occupants of the Center; the foregoing is not intended to prohibit employees from parking in the Protected Area, but to assure that the area is also/primarily available for customers.

(iv) Landlord shall have the right to temporarily close portions of the Protected Area for a reasonable period of time as needed to (a) perform repairs and/or maintenance, or (b) avoid a public dedication. To the extent such closures affect access to or parking for the Premises, then Landlord will provide an alternative means of access or parking so that there shall at all times be reasonable access between the Premises, the balance of the Parcel and public roads, and accessible parking within a reasonable proximity of the Premises.

(v) The Protected Area shall be maintained in good condition and repair at all times. If Landlord fails to properly maintain and repair the Protected Area and such failure continues for 30 days following Landlord's receipt of written notice or if the time to cure requires greater than 30 days and Landlord has not commenced or is not otherwise diligently pursuing such repairs, then Tenant will have the right, but not the obligation, to perform such maintenance and/or repair at Landlord's expense, and Tenant shall have the right to pursue Landlord for collection of the reimbursement and if Landlord fails to pay such amounts after 30 days notice, then deduct such reasonable costs from any amounts owed by Tenant to Landlord. Said deduction/offset not to exceed more than 25% of any monthly payment of Annual Rent; provided such time remains in the Term at the time of offset as to permit full recovery by Tenant.

(vi) Tenant and its employees shall park their motor vehicles only within the parking area designated for employee parking, provided such areas are reasonably proximate to the Premises and are kept well-lit during the periods the Protected Areas must be kept lit as set forth in the Lease. Upon request and subject to any rights of privacy of Tenant's employees Tenant shall endeavor to provide Landlord the state automobile license numbers assigned to the vehicles of Tenant's employees within five (5) days following Tenant's opening for business in the Premises. Landlord may enforce any such parking rights against said employees and may attach violation stickers or notices to the vehicles and have the vehicles removed at the vehicle owner's expense.

C. **Prohibited Uses.** No portion of the Parcel may be used for any use listed on Exhibit "C" attached hereto and incorporated herein by reference.

These covenants will run with the land and shall automatically terminate upon expiration or earlier termination of the Lease.

Landlord and Tenant have signed this Memorandum of Lease as of the day and year first above written.

Witnesses:

[Signature]  
Rita P. Stollan

Printed Name:  
Maureen Brak  
Maureen Brak

Printed Name:

Batis Development Company, a Kansas corporation  
(LANDLORD)

By: [Signature]  
Printed Name: J. Mark Wittenburg  
Title: President

GMRI, Inc., a Florida corporation  
(TENANT)

By: [Signature]  
Printed Name: Brian M. Fox  
Title: Senior Assoc. Counsel

[Signature]

Printed Name:  
Carolyn Hanselman  
Margie Camp

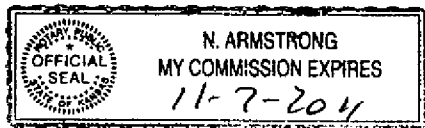
Printed Name:  
Margie Camp

STATE OF KANSAS  
COUNTY OF SHAWNEE

I hereby certify that before me personally appeared JAMES MARK WITTENBURG, to me well known and known to me to be the PRESIDENT of BATIS DEVELOPMENT who has produced \_\_\_\_\_ (type of identification) as identification and he did acknowledge before me that the instrument is the free act and deed by him for the purposes therein expressed.

Witness my hand and official seal this 4th day of OCTOBER, 2011.

[Signature] (Signature of Person Taking Acknowledgment)  
N. ARMSTRONG (Name of Acknowledger Typed, Printed or Stamped)  
OPERATIONS SPECIALIST (Title or Rank)  
\_\_\_\_\_  
(Serial Number, if any) (NOTARY'S SEAL)



STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing was acknowledged before me this 30 day of September, 2011 by Brian M. Fox, the Senior Associate Counsel of GMRI, Inc., a Florida corporation, on behalf of the corporation and he is personally known to me.

[Signature] (Signature of Person Taking Acknowledgment)  
Carolyn Hanselman (Name of Acknowledger Typed, Printed or Stamped)  
\_\_\_\_\_  
(Title or Rank)  
\_\_\_\_\_  
(Serial Number, if any) (NOTARY'S SEAL)



Exhibit "A"

PARCEL LEGAL DESCRIPTION

Lots 1 and 2, Meadowlark West Ninth Subdivision on the Replat recorded as Instrument No. 0201106470, Hall County, Nebraska.

Exhibit "A-1"

SITE PLAN SHOWING THE BUILDING AND PARCEL  
(including location of Premises, Protected Area and Staging Area)

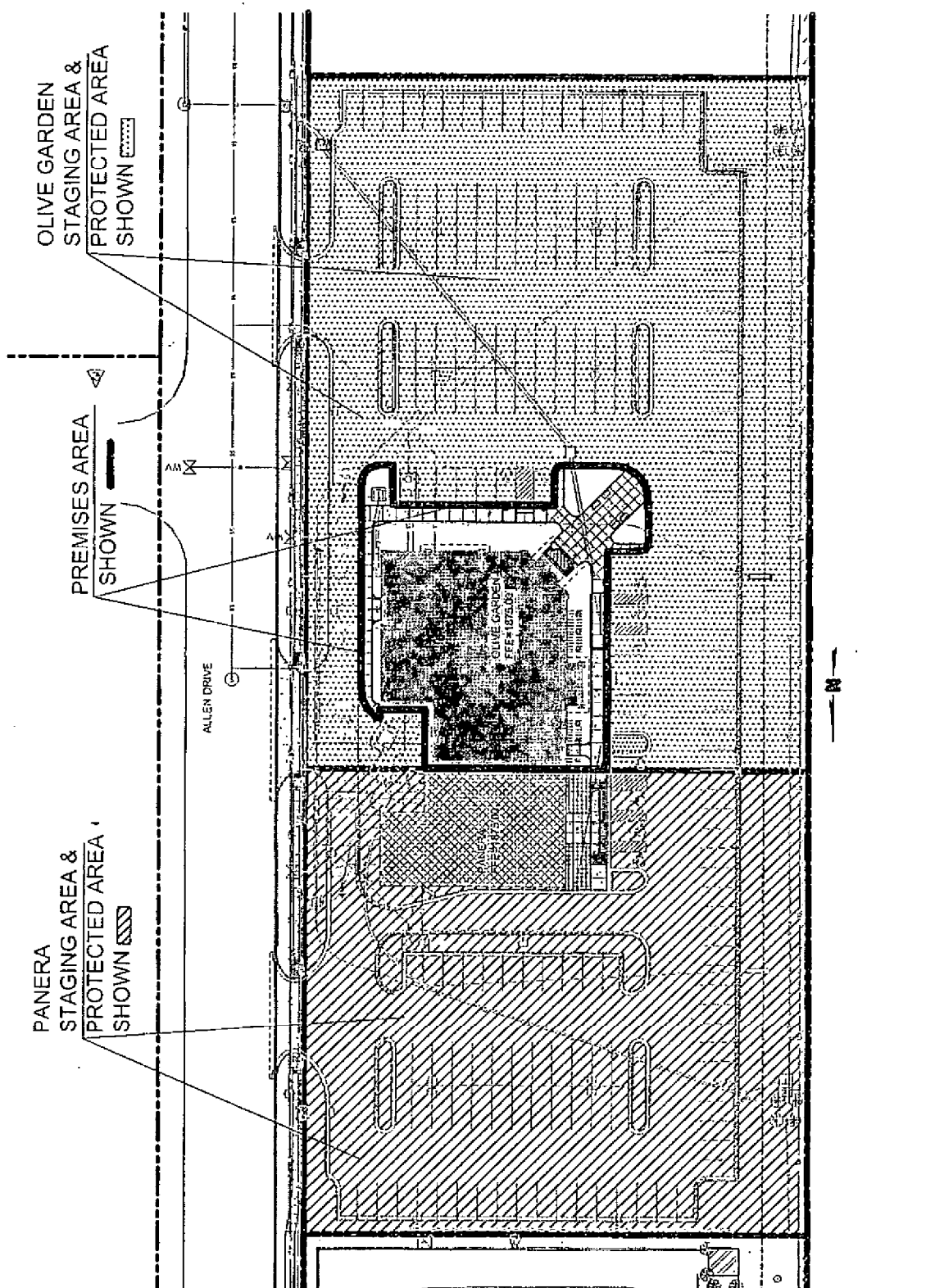


EXHIBIT "A-2"

SITE PLAN  
(showing monument sign and dumpster easement areas)

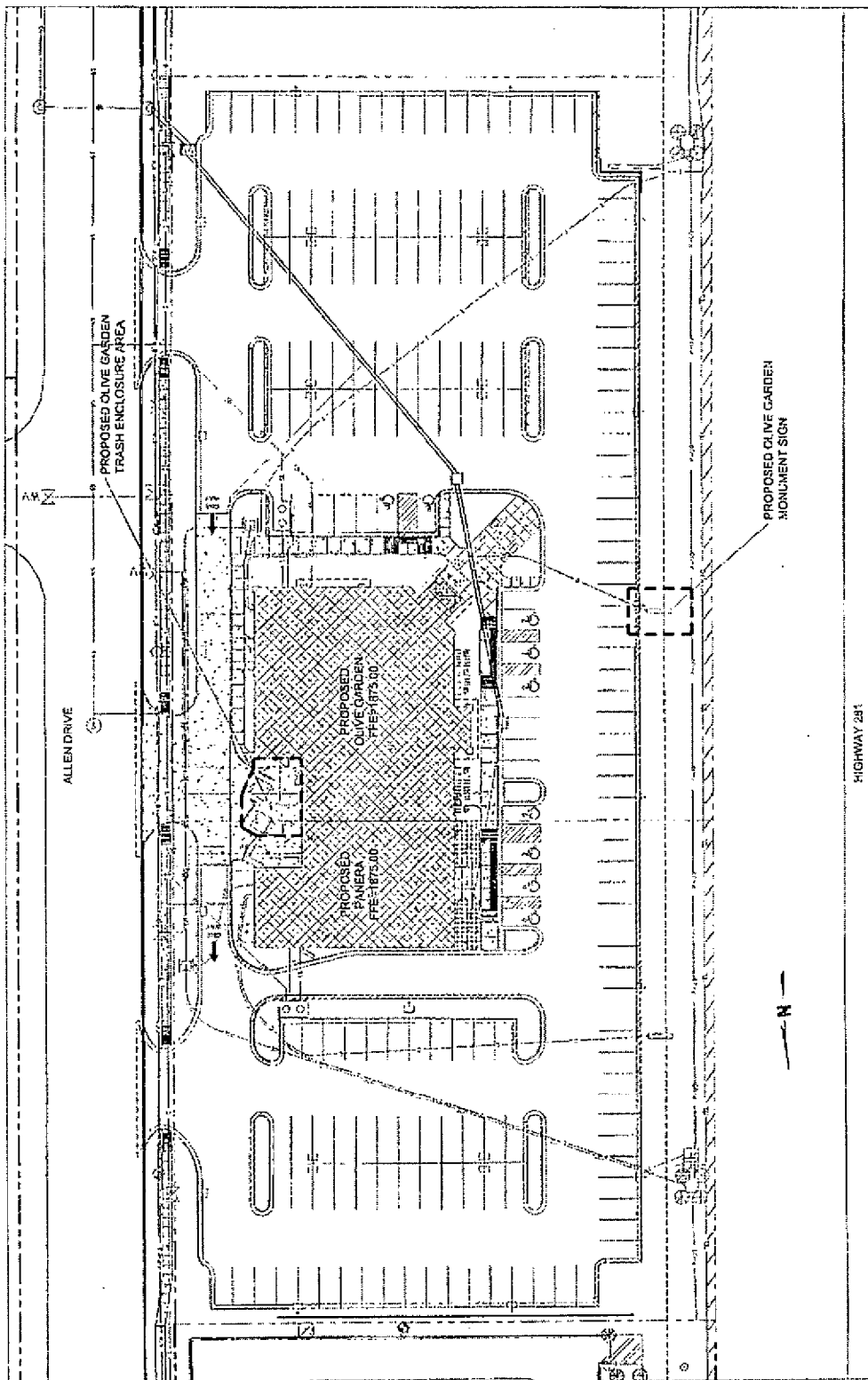


Exhibit "B"

CENTER LEGAL DESCRIPTION

Parcels 1 through 5 and 14 through 29, collectively, Meadowlark West Third Subdivision, as recorded in Instrument No. 99-105984, Hall County, Nebraska.



## Exhibit "C"

## PROHIBITED USES

1. Any use involving the sale of gasoline or diesel fuel or other petroleum products, or use as an automobile or truck service station or repair establishment, including tire sale establishments.
2. Any trailer or truck rental establishment.
3. Any warehouse, assembly, manufacture, distillation (other than in connection with the operation of a so called "microbrewery" manufacturing limited quantities of beer or other spirits for on site sale and consumption on its restaurant/bar operation) or similar use.
4. Any dumping, incineration or disposing of trash; the foregoing is not intended to prohibit the placement of trash in dumpsters from which such trash is regularly removed).
5. Any "second hand" store, army, navy, or government surplus or unclaimed merchandise store, pawn shop, flea market, thrift shop, or stores specializing in the sale of deeply discounted items.
6. Any living quarters, sleeping apartments, lodging rooms or residential use of any kind.
7. Any mortuary or funeral home.
8. Any church, temple, chapel or other place of religious worship; any auditorium, library, meeting hall, bingo hall or other place of assembly.
9. Any massage parlor; any psychic, fortune teller, card reader or similar establishment; or any so-called "strip-club" or "gentlemen's club" or other similar operation.
10. Any casino, gambling hall, off track betting facility or gambling operation (provided this restriction shall not prohibit incidental sales of lottery tickets).
11. Any adult bookstore, pornography shop or other facility specializing in or exhibiting pornographic material (defined as stores with five percent (5%) or more of their inventory that is not available for sale or rental to children under 16 years of age where such inventory explicitly deals with or depicts human sexuality).
12. Any training or educational facility, including, without limitation, a beauty school, barber college, reading room or other facility catering primarily to students or trainees rather than customers.
13. Any food depository, food pantry, half-way house, homeless shelter or other similar use.
14. Any offices for: political parties or candidates, groups or person(s) espousing political causes and/or social causes, or "advocacy" groups.
15. Any veterinarian office, animal hospital, kennel or animal shelter or other establishment that sells, keeps or boards animals;
16. Any jail, penal, detention or correctional institution.
17. A bar or nightclub, unless it is an incidental part of a restaurant.
18. Any so called "head shop" or similar facility selling or otherwise providing drug paraphernalia.

19. Any place where tattoos and/or body piercings are performed or displayed.
20. A facility whose primary business is check cashing and or providing so-called "pay day" loans.
21. A facility whose primary business is the sale of tobacco and tobacco related products.
22. Any circus, carnival, amusement rides, video game arcade, skating rink, bowling alley, or other entertainment venue;
23. A grocery store or convenience store.
24. Any medical, dental, or chiropractic offices or clinics of any kind.
25. Gun shop or shooting range, however, the foregoing is not intended to prohibit national sporting goods stores containing at least 30,000 square feet selling a wide range of sporting goods that include the foregoing as part of their standard retail format, such as Bass Pro Shops, Cabelas and Gander Mountain.
26. A store selling alcoholic beverages for off-premises consumption.
27. Any drive-through restaurant or other drive-through operations
28. Governmental offices, including but not limited offices for motor vehicle registration and/or inspection, unemployment, and license/tag renewals.