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# CITY OF DANBURY

OFFICE OF THE MAYOR  
155 DEER HILL AVENUE  
DANBURY, CONNECTICUT 06810

MARK D. BOUGHTON  
MAYOR

(203) 797-4511  
FAX (203) 796-1666  
m.boughton@danbury-ct.gov

November 21, 2012

Honorable Members of the City Council  
City of Danbury, Connecticut

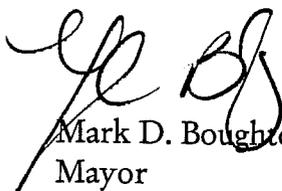
Members of the City Council:

For many months, we have interacted with both the owner of the 29-41 Main Street property, as well as their potential tenant, PriceRite Supermarkets, through a process culminating with a long term lease between the two parties.

The re-introduction of a new grocery store at this site, soon to be known as PriceRite Plaza, will be a positive addition to the southern end of Main Street. I am confident that you will agree that this is a much-needed retail outlet for residents of the area.

I ask that you approve the accompanying (or attached) lease between the City and PriceRite for use of the parking lot on city-owned property adjacent to the site, as of December 4, 2012, contingent upon approval by the Planning Commission at their next scheduled session.

Sincerely,

  
Mark D. Boughton  
Mayor

**PARKING LOT LEASE AGREEMENT**

THIS PARKING LOT LEASE AGREEMENT (this "**Agreement**") is entered into as of this \_\_\_\_\_ day of December, 2012, by and between CITY OF DANBURY, a municipal corporation ("**Landlord**"), having its principal place of business at 155 Deer Hill Avenue, Danbury, Connecticut 06810, and PRRC, INC., a Delaware corporation ("**Tenant**"), having its principal place of business at c/o Wakefern Food Corp., 5000 Riverside Drive, Keasbey, New Jersey 08832.

**RECITALS:**

WHEREAS, Tenant's parent company, Wakefern Food Corp. ("**Wakefern**"), is or will become the tenant under that certain Lease Agreement by and between Eton Centers Co., LLC, a New York limited liability company, as landlord ("**Eton**"), and Wakefern, whereby Wakefern now leases or will lease from Eton (the "**Supermarket Lease**") certain supermarket premises (the "**Supermarket**") in the shopping center known or to be known as PriceRite Plaza, located at 29-41 Main Street, Danbury, Connecticut 06810 (the "**Shopping Center**"); and

WHEREAS, Tenant subleases or will sublease the entire Supermarket from Wakefern for the operation of a "PriceRite" supermarket pursuant to a certain Sublease Agreement by and between Wakefern, as sublandlord, and Tenant, as subtenant; and

WHEREAS, Landlord is the owner of a parcel of land located adjacent to the Shopping Center, at 35 Main Street, Danbury, Connecticut 06810, as shown on the site plan attached hereto as **Exhibit A** and as legally described on **Exhibit B** hereto (the "**Demised Premises**"); and

WHEREAS, the parties hereto desire that, subject to the terms and conditions of this Agreement, that the Demised Premises be made available to Tenant, Tenant's employees, Tenant's customers, Tenant's agents, Tenant's representatives, Tenant's invitees, Tenant's permitted assignees, Tenant's permitted subtenants, Tenant's licensees and Tenant's contractors (collectively, the "**Tenant Parties**");

NOW, THEREFORE, in consideration of the Rent hereinafter reserved and in consideration of the mutual covenants and agreements hereinafter contained, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. **Grant.** Subject to the terms, covenants and conditions of this Agreement, and subject further to any event of casualty or condemnation which prevents Landlord from satisfying its obligations herein, Landlord leases to the Tenant Parties, for the duration of term of this Agreement, on an exclusive basis, the Demised Premises for the parking of the Tenant Parties' vehicles (including, without limitation, delivery vehicles and trucks) and ingress and egress to and from the loading docks serving the Supermarket on a seven (7) days per week, twenty-four (24) hours per day basis.

2. **Term.** The initial term of this Agreement shall commence upon the later to occur of (i) the date of full execution of the Supermarket Lease or (ii) the date of full execution of this Agreement (the "**Commencement Date**") and shall expire on the last day of the fifteenth (15<sup>th</sup>) full year following the "Rent Commencement Date" of the Supermarket Lease (the "**Supermarket Rent Commencement Date**"), unless sooner terminated or further extended as herein provided. Thereafter, the term of this Agreement shall automatically renew for three (3) consecutive terms of five (5) years each, unless Tenant provides Landlord with written notice of its election to allow the then-current term to expire as of then-current expiration date, which notice shall be delivered no later than nine (9) months prior to such then current expiration date. The parties shall acknowledge and confirm the Commencement Date of this Agreement, the Supermarket Rent Commencement Date and the initial expiration date of this Agreement in writing (in a commercially reasonable form of acknowledgment) within ten (10) days following the establishment of the Supermarket Rent Commencement Date.

3. **Rent.**

Commencing on the earlier to occur of (i) the Supermarket Rent Commencement Date or (ii) the date on which Tenant first makes beneficial use of the Demised Premises for the parking of automobiles by any of the Tenant Parties (the "**Parking Lot Rent Commencement Date**"), Tenant shall pay to Landlord rent for the Demised Premises in accordance with the terms and conditions of this Section 3 (the "**Rent**"), at the address for Landlord set forth herein, with the first installment of the Rent being due and payable upon Tenant's execution of this Agreement. Rent for the first Lease Year (as hereinafter defined) shall be \$1,000.00. Thereafter, Rent shall increase by \$1,000.00 each Lease Year until Rent is equal to \$11,000.00, after which Rent shall increase by five percent (5%) every five (5) Lease Years for the remainder of term of this Agreement. Rent shall be paid within thirty (30) days following the first day of the Lease Year in question. If, prior to the expiration of the term, this Agreement shall be terminated as provided herein, Tenant shall be entitled to a pro-rated refund of any Rent paid in advance. In addition, any Rent for any partial year during the term of this Agreement shall be pro-rated accordingly. As used herein, the term "**Lease Year**" shall mean each twelve (12) month period following the Parking Lot Rent Commencement Date, provided, however, that if the Parking Lot Rent Commencement Date should fall on a day other than the first day of a calendar month, then the first Lease Year shall be deemed to end on the last day of the twelfth (12<sup>th</sup>) full calendar month following the calendar month in which the Parking Lot Rent Commencement Date falls.

4. **Improvements; Maintenance and Repairs.**

- (a) On the Commencement Date, Landlord shall deliver, and Tenant shall accept, the Demised Premises in their then "as is," "where is" condition, with all faults.
- (b) During the term of this Agreement (as the same may be extended), Tenant, in its sole discretion, shall have the right, at any time and from time to time, to improve any or all of the Demised Premises for use as a parking lot and a means of ingress and egress. Such improvements may include, without limitation, lighting, directional signage, curbing, landscaping, signage, cart corrals, cart containment systems, striping and the like. Any such

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improvements shall be performed in accordance with zoning, building and related codes and applicable law. The plans and specifications for such improvements shall be submitted to Landlord for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided, however, that Landlord approval shall not be required for customary signage, striping and other markings.

(c) During the term of this Agreement, Landlord shall have no obligation to make repairs to or maintain the Demised Premises, the parties acknowledging and agreeing that Tenant shall be solely responsible for such repairs and maintenance, at Tenant's sole cost and expense. Tenant agrees to use commercially reasonable efforts to keep the Demised Premises in a clean and orderly condition.

(d) Upon the expiration or earlier termination of the term of this Agreement, any improvements made by Tenant in and to the Demised Premises shall become the property of the Landlord, other than Tenant's removable trade fixtures and personal property, which items may be removed by Tenant from time to time during the term of this Agreement shall be removed upon the expiration or earlier termination of this Agreement, at Tenant's sole cost and expense, with Tenant being responsible for promptly repairing, at Tenant's expense, any damage caused by such removal.

5. **Insurance.** Tenant shall, at its own expense, maintain a policy of commercial general liability insurance (occurrence coverage) with respect to its activities and the activities of the Tenant Parties on the Demised Premises, with the premium thereon fully paid on or before the due date, issued by and binding upon an insurance company authorized to conduct such business in the State of Connecticut. Such commercial general liability insurance to be maintained by Tenant under this Paragraph 5 shall afford minimum protection of not less than \$2,000,000.00 combined single limit coverage of bodily injury, property damage, or combination thereof, and shall name Landlord as an additional insured. If Landlord's risk manager should determine, on a commercially reasonable basis, that the minimum coverage amount provided for in the preceding sentence shall be increased by a commercially reasonable amount at any point during the term of this Lease, then Landlord shall advise Tenant of such increase in writing as soon as practicable prior to the effective date of such increase, and Tenant shall thereafter provide written evidence of such additional insurance coverage within thirty (30) days following Tenant's receipt of such written notice. All policies required to be maintained by Tenant under this Paragraph 5 shall contain a provision whereby the insurer is not allowed to cancel, fail to renew or change materially the coverage without first giving thirty (30) days prior written notice to Landlord.

6. **Indemnification.** Except for claims, demands and actions that arise as a result of the negligence or willful misconduct of the Landlord, Tenant hereby agrees to indemnify and save harmless Landlord from and against any and all claims, demands and actions arising from this Agreement and the use of Demised Premises (or, as the case may be, Landlord's Parcel) by the Tenant Parties for the purpose contemplated hereby, and from and against any and every suit, action or proceeding to enforce any such demand, claim and action, and from any and all loss, costs, damages and attorneys' fees and expenses which it may at any time suffer or incur as a result thereof. Except for claims, demands and actions that arise as a result of the negligence or

willful misconduct of Tenant, Landlord hereby agrees to indemnify and save harmless Tenant from and against any and all claims, demands and actions arising from any breach of this Agreement by Landlord, or any negligence or willful misconduct of Landlord or its agents, representatives or contractors. The terms of this Paragraph 6 shall survive the termination of this Agreement. In no event shall either party be liable to the other for any consequential damages incurred or suffered in connection with this Agreement.

7. **Notices.** All notices, communications, requests, approvals, consents and demands herein required to be given or made ("**Notices**") shall be in writing and shall be deemed to be served when deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or deposited with a national overnight delivery service, addressed as follows:

Landlord:

City of Danbury  
155 Deer Hill Avenue  
Danbury, Connecticut 06810  
Attention: Office of the Mayor

With a copy to:

City of Danbury  
155 Deer Hill Avenue  
Danbury, Connecticut 06810  
Attention: Corporation Counsel

Tenant:

PRRC, Inc.  
c/o Wakefern Food Corp.  
5000 Riverside Drive  
Keasbey, New Jersey 08832  
Attention: Corporate Counsel

With a copy to:

Kroll, McNamara, Evans & Delehanty, LLP  
65 Memorial Road, Suite 300  
West Hartford, Connecticut 06107  
Attention: Richard R. Rendeiro, Esq.

8. **Headings.** The headings herein are for convenience and reference only and in no way define and limit the scope and content of this Agreement or in any way affect its provisions.

9. **Successors and Assigns.** This Agreement shall run with the land and shall be binding on the parties hereto and their heirs, successors and assigns.

10. **No Waiver.** The failure of any party to this Agreement in any one or more instances to insist upon compliance with any provision or covenant herein or to exercise any right or privilege herein shall not constitute or be construed as a waiver of such or any similar provision or covenant, including the right to cure a breach or default, but the same shall continue and remain in full force and effect, as if no such forbearance has occurred.

11. **Applicable Law.** This Agreement shall be governed by Connecticut law without regard to principles of conflict of laws.

12. **Remedies.** In the event of a breach or default by either Landlord or Tenant under this Agreement, the other party shall be entitled to seek and obtain any and all remedies available at law or in equity as a result of such breach or default.

13. **Laws and Regulations.** The Tenant Parties shall comply with all applicable laws, ordinances, rules and regulations of any governmental entity or agency having jurisdiction over the Demised Premises, including, without limitation, applicable environmental laws, rules and regulations.

14. **Assignment and Subletting.** Upon the prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed), Tenant shall have the right to assign its rights under this Agreement or sublet all or any portion of the Demised Premises at any time. Notwithstanding the foregoing, Landlord's consent shall not be required with respect to any assignment of this Agreement or subletting of all or any portion of the Demised Premises by Tenant to Wakefern or a member, affiliate, subsidiary or parent of Wakefern (an "**Affiliated Transfer**"), provided, however, that Tenant shall provide Landlord with reasonable written notice of any such Affiliated Transfer. No such assignment or subletting shall relieve Tenant from primary liability under this Agreement, unless Landlord shall release Tenant from such liability.

15. **Survival.** Notwithstanding any term or provision in this Agreement to the contrary, any liability or obligation of Landlord or Tenant arising during or accruing with respect to the term of this Agreement shall survive the expiration or earlier termination of this Agreement, including, without limitation, obligations and liabilities relating to (a) Rent payments, and (b) indemnity and hold harmless provisions in this Agreement.

16. **Brokers.** Landlord and Tenant represent and warrant one to the other that they have not had any dealing with any real estate brokers or agents in connection with the negotiation of this Agreement. Landlord and Tenant indemnify and hold each other harmless from and against any and all liability and cost which Landlord or Tenant may suffer in connection with any other real estate brokers claiming by, through, or under either party seeking any commission, fee or payment in connection with this Agreement.

17. **Authority; No Consents Needed.** Landlord represents and warrants to Tenant that (a) Landlord has the right and lawful authority to enter into this Agreement for the term hereof, (b) Landlord is the owner in fee simple of the Demised Premises, and (c) the Demised Premises are not subject to any restrictions which would preclude Landlord from entering into

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this Agreement with Tenant, (d) the Demised Premises can be used, under current zoning and buildings codes (and all other applicable laws, rules, ordinances and regulations), for the purpose contemplated by this Agreement, and (e) no consents or approvals from third parties are required in order for this Agreement to take effect.

18. **Counterparts.** This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument.

19. **Real Estate Taxes.** During the term of this Agreement, Tenant shall pay all real estate taxes and assessments levied against the Demised Premises, provided the Demised Premises are separately assessed from all other property of the Landlord. Tenant shall have the right to contest any such charges levied against the Demised Premises as may be authorized by Connecticut law. In such event Landlord shall cooperate in every reasonable manner with Tenant, and Tenant shall adequately bond or otherwise secure payment of such charges during the period which same are contested.

20. **Notice of Lease.** Tenant, at its sole cost and expense, shall be permitted to record on the City of Danbury Land Records a commercially reasonable form of Notice or Memorandum of Lease, which Notice or Memorandum shall be removed of record by Tenant, at Tenant's sole cost and expense, promptly following the expiration or earlier termination of the term of this Agreement.

21. **Quiet Enjoyment.** So long as Tenant is not in default hereunder, Tenant shall quietly enjoy the Demised Premises for the full term herein granted.

[No further text on this page. The signature page follows.]

**IN WITNESS WHEREOF**, the parties hereto have set their hands as of the date and year first above written.

**LANDLORD:**

**CITY OF DANBURY,**  
a municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**TENANT:**

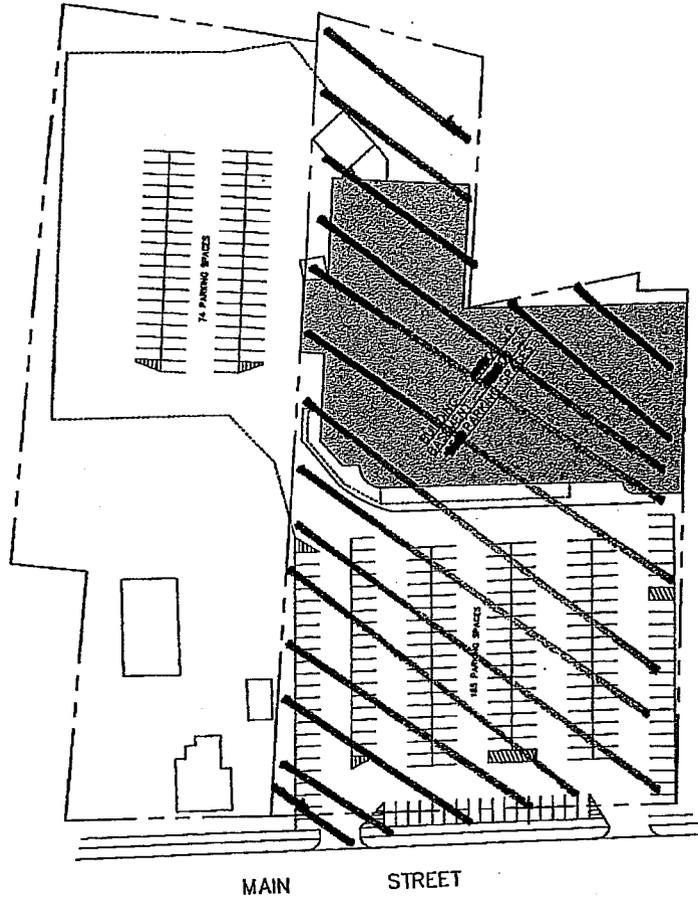
**PRRC, INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name: Neil Duffy  
Its: President  
Date: \_\_\_\_\_

EXHIBIT A

SITE PLAN OF SHOPPING CENTER

**NOTE:** This is a schematic plan and is intended to only show the proposed Site Plan of the Shopping Center. All measures, distances and dimensions are approximate and not to scale. The depictions hereon do not constitute a warranty or representation of any kind.



NOTICE: THIS PLAN IS A CONCEPT PLAN DESIGNED FROM THE FOLLOWING DATA AND SHOULD BE USED AS A GUIDE ONLY. THE DESIGNER MAKES NO WARRANTY OR REPRESENTATION AS TO THE ACCURACY OF THE INFORMATION PROVIDED HEREON. THE DESIGNER SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS PLAN. THE USER OF THIS PLAN SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF DANBURY OR ANY OTHER AGENCIES. THE USER OF THIS PLAN SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF DANBURY OR ANY OTHER AGENCIES. THE USER OF THIS PLAN SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF DANBURY OR ANY OTHER AGENCIES.

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<b>SITE PLAN</b>	Planning Engineering Landscape Architecture 20 Water Street Danbury, CT 06810 Tel: 860-792-1234 Fax: 860-792-1235 www.tpa-design.com																			

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**EXHIBIT B**

**LEGAL DESCRIPTION OF THE DEMISED PREMISES**

**[to be ATTACHED]**