

**Fill in this information to identify the case:**

Debtor 1 OCB Restaurant Company, LLC

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas, Dallas Division

Case number 21-30726-11

E-Filed on 05/28/2021  
Claim # 148

# Official Form 410

## Proof of Claim

04/19

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

### Part 1: Identify the Claim

1. **Who is the current creditor?** Realm Pennant Retail Partners, LLC  
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor \_\_\_\_\_

2. **Has this claim been acquired from someone else?**  No  
 Yes. From whom? \_\_\_\_\_

3. <b>Where should notices and payments to the creditor be sent?</b> Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>Gammage &amp; Burnham, P.L.C. c/o Brian Fullmer</u> Name <u>40 N. Central Ave 20th Floor</u> Number Street <u>Phoenix AZ 85004</u> City State ZIP Code Contact phone <u>(602) 256-4459</u> Contact email <u>bfullmer@gbllaw.com</u>  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	_____ Name _____ Number Street _____ City State ZIP Code Contact phone _____ Contact email _____

4. **Does this claim amend one already filed?**  No  
 Yes. Claim number on court claims registry (if known) \_\_\_\_\_ Filed on \_\_\_\_\_  
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**  No  
 Yes. Who made the earlier filing? \_\_\_\_\_

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?  No  Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 0 9 6 0

7. How much is the claim? \$ 256,279.00. Does this amount include interest or other charges?  No  Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  
Rejection of commercial lease, claim per 11 U.S.C. § 502(b)(6)

9. Is all or part of the claim secured?  No  Yes. The claim is secured by a lien on property.  
**Nature of property:**  
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  Yes. Amount necessary to cure any default as of the date of the petition. \$ 102,514.36

11. Is this claim subject to a right of setoff?  No  Yes. Identify the property: \_\_\_\_\_

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)(    ) that applies.

Amount entitled to priority

\$                      0.00

\$                      0.00

\$                      0.00

\$                      0.00

\$                      0.00

\$                      0.00

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/28/2021  
MM / DD / YYYY

Brian Fullmer

Signature

Print the name of the person who is completing and signing this claim:

Name Brian K. Fullmer  
First name Middle name Last name

Title Attorney

Company Gammage & Burnham, P.L.C.  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_  
Number Street

City State ZIP Code

Contact phone \_\_\_\_\_ Email \_\_\_\_\_


Attachment 1 - Proof of Claim - OCB Restaurant Company LLC.pdf

Description -

**Fill in this information to identify the case:**

Debtor 1 OCB RESTAURANT COMPANY, LLC

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas 

Case number 3:21-bk-30726

# Official Form 410

## Proof of Claim

04/19

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Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor \_\_\_\_\_

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 Yes. From whom? \_\_\_\_\_

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	<u>Brian K. Fullmer c/o Gammage &amp; Burnham PLC</u> Name <u>40 N Central Ave, 20th Floor</u> Number Street <u>Phoenix AZ 85004</u> City State ZIP Code Contact phone <u>(602) 256-4459</u> Contact email <u>bfullmer@gblaw.com</u>  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	_____ Name _____ Number Street _____ City State ZIP Code Contact phone _____ Contact email _____

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**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
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10. Is this claim based on a lease?  No  Yes. Amount necessary to cure any default as of the date of the petition. \$ 102,514.36

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Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)(    ) that applies.

Amount entitled to priority

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

\$ \_\_\_\_\_

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Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/23/2021  
MM / DD / YYYY

/s/ Brian K. Fullmer

Signature

Print the name of the person who is completing and signing this claim:

Name Brian Keith Fullmer  
First name Middle name Last name

Title Attorney

Company Gammage & Burnham, P.L.C.  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 40 N Central Ave., 20th Floor  
Number Street

Phoenix AZ 85004  
City State ZIP Code

Contact phone (602) 256-4459 Email bfullmer@gblaw.com

CALCULATION OF UNSECURED CLAIM UNDER 11 U.S.C. § 502(b)(6)

Realm Pennant Retail Partners LLC

*In re OCB Restaurant Company LLC, 3:21-bk-30726 (N.D. Tex. 2021)*

Unpaid Rent/Amount to Cure Pursuant to 11 U.S.C. § 502(b)(6)(B)	\$102,514.36
Reserved Rent for 12 Months (per 11 U.S.C. § 502(b)(6)(A)(i) & Lease)	
Base Rent (per Second Amendment to Lease dated 9-14-2020)	\$120,000.00
(12 months x \$10,000.00 = \$120,000.00)	
Sales Tax (per Section 6C and Section 8A of Lease)	\$3,480.00
(12 months x \$290.00)	
Common Area Maintenance fee (per Lease Section 6C and 9A)	\$16,356.84
(12 months x \$1,363.07)	
Sales Tax (per Section 6C and Section 8A of Lease)	\$474.36
(12 months x \$39.53)	
Insurance Fee (per Section 6C and Section 8A of Lease)	\$1,703.76
(12 months x \$141.98)	
Sales Tax (per Section 6C and Section 8A of Lease)	\$49.44
(12 months x \$4.12)	
Property Tax (per Section 6C and Section 8A of Lease)	\$9,606.48
(12 months x \$800.54)	
Sales Tax (per Section 6C and Section 8A of Lease)	\$278.64
(12 months x \$23.22)	
Trash (per Section 6C, 9A, and 11 of Lease)	\$1,764.00
(12 months x \$147.00)	
Sales Tax (per Section 6C and Section 8A of Lease)	\$51.12
(12 months x \$4.26)	
TOTAL CLAIM:	\$256,279.00





## Aging Detail

DB Caption: AMG - Live Property: chris Status: Current, Past, Future All Selected Accounts Age As Of: 05/31/2021 Post To: 05/2021

Property	Customer	Lease	Status	Tran#	Charge	Date	Month	Current	0-30	31-60	61-90	Over	Pre-	Total
					Code			Owed	Owed	Owed	Owed	90 Owed	payments	Owed
0960	OCB Restaurant Company, L.L.C.		Current	C-2579379	slstax	4/1/2021	04/2021	4.12	0.00	4.12	0.00	0.00	0.00	4.12
0960	OCB Restaurant Company, L.L.C.		Current	C-2579380	proptax	4/1/2021	04/2021	800.54	0.00	800.54	0.00	0.00	0.00	800.54
0960	OCB Restaurant Company, L.L.C.		Current	C-2579381	slstax	4/1/2021	04/2021	23.22	0.00	23.22	0.00	0.00	0.00	23.22
0960	OCB Restaurant Company, L.L.C.		Current	C-2579382	rent	4/1/2021	04/2021	10,000.00	0.00	10,000.00	0.00	0.00	0.00	10,000.00
0960	OCB Restaurant Company, L.L.C.		Current	C-2579383	slstax	4/1/2021	04/2021	290.00	0.00	290.00	0.00	0.00	0.00	290.00
0960	OCB Restaurant Company, L.L.C.		Current	C-2579384	trash	4/1/2021	04/2021	147.00	0.00	147.00	0.00	0.00	0.00	147.00
0960	OCB Restaurant Company, L.L.C.		Current	C-2579385	slstax	4/1/2021	04/2021	4.26	0.00	4.26	0.00	0.00	0.00	4.26
0960	OCB Restaurant Company, L.L.C.		Current	C-2610974	cam	5/1/2021	05/2021	1,363.07	1,363.07	0.00	0.00	0.00	0.00	1,363.07
0960	OCB Restaurant Company, L.L.C.		Current	C-2610975	slstax	5/1/2021	05/2021	39.53	39.53	0.00	0.00	0.00	0.00	39.53
0960	OCB Restaurant Company, L.L.C.		Current	C-2610976	ins-ret	5/1/2021	05/2021	141.98	141.98	0.00	0.00	0.00	0.00	141.98
0960	OCB Restaurant Company, L.L.C.		Current	C-2610977	slstax	5/1/2021	05/2021	4.12	4.12	0.00	0.00	0.00	0.00	4.12
0960	OCB Restaurant Company, L.L.C.		Current	C-2610978	proptax	5/1/2021	05/2021	800.54	800.54	0.00	0.00	0.00	0.00	800.54
0960	OCB Restaurant Company, L.L.C.		Current	C-2610979	slstax	5/1/2021	05/2021	23.22	23.22	0.00	0.00	0.00	0.00	23.22
0960	OCB Restaurant Company, L.L.C.		Current	C-2610980	rent	5/1/2021	05/2021	10,000.00	10,000.00	0.00	0.00	0.00	0.00	10,000.00
0960	OCB Restaurant Company, L.L.C.		Current	C-2610981	slstax	5/1/2021	05/2021	290.00	290.00	0.00	0.00	0.00	0.00	290.00
0960	OCB Restaurant Company, L.L.C.		Current	C-2610982	trash	5/1/2021	05/2021	147.00	147.00	0.00	0.00	0.00	0.00	147.00
0960	OCB Restaurant Company, L.L.C.		Current	C-2610983	slstax	5/1/2021	05/2021	4.26	4.26	0.00	0.00	0.00	0.00	4.26
<b>OCB Restaurant Company, L.L.C.</b>								<b>115,328.08</b>	<b>12,813.72</b>	<b>12,813.72</b>	<b>0.00</b>	<b>89,700.64</b>	<b>0.00</b>	<b>115,328.08</b>

**SECOND AMENDMENT TO LEASE**  
(OCB 149, Phoenix, AZ)

THIS SECOND AMENDMENT TO LEASE (this "Second Amendment") is made and entered into as of the 4th day of September 2020 (the "Effective Date") by and between REALM PENNANT RETAIL PARTNERS, LLC a Delaware limited liability company, successor-in-interest to The Westbar Limited Partnership ("Landlord") and OCB Restaurant Company, LLC, a Minnesota limited liability company ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to that certain lease dated October 14, 1999 (the "Original Lease") as amended by that certain Amendment to Lease dated February 1, 2012 (the "First Amendment", together with the Original Lease collectively "Lease") by which Landlord is leasing to Tenant certain premises described therein (the "Premises") identified by Tenant as Store # 149 with a street address at 9620 Metro Parkway, Phoenix, Arizona 85051.

WHEREAS, as a result of the 2020 COVID-19 pandemic, Tenant has suffered financial hardship and has requested certain accommodations which have been approved by Landlord and are detailed below; and

WHEREAS, Landlord and Tenant desire to amend the Lease in accordance with the terms and conditions set forth below.

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

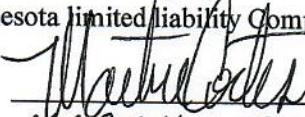
1. Third Extension Option. Notwithstanding anything to the contrary with respect to the timeline for Tenant to exercise the Third Extension Option set forth in the Lease, it is agreed by both parties that Third Extension Option is hereby deemed as exercised by Tenant and the Term of the Lease is extended for a period of sixty (60) months (the "Third Extension Option") commencing on January 1, 2021 and, unless sooner terminated, shall expire on December 31, 2025.
2. Renewal and/or Extension Option. Landlord hereby grants Tenant one (1) additional right to renew and extend the Term for an additional period of five (5) years (the "Fourth Extension Option"). The Fourth Extension Option shall be exercised by Tenant giving Landlord written notice at least one hundred twenty (120) days prior to the expiration of the end of the Third Extension Option.
3. Modification of Minimum Rent. Notwithstanding anything contained in the Lease to the contrary, as of the Effective Date, the Minimum Rent payable by Tenant to Landlord under the Lease shall be modified to the following amounts for the corresponding time periods:

03/01/2020 – 09/30/2020	all rent due and payable are hereby abated
10/01/2020 – 12/31/2020	\$121,000 per annum
01/01/2021 – 12/31/2025	\$120,000 per annum
Fourth Extension Option (if exercised)	
01/01/2026 – 12/31/2026	\$123,600 per annum
01/01/2027 – 12/31/2027	\$127,308 per annum

IN WITNESS WHEREOF, executed by each party hereto to be effective as of the Effective Date.

**“Tenant”**

OCB Restaurant Company  
a Minnesota limited liability company

By:   
Name: MARTIN CORTES  
Title: CEO

**“Landlord”**


REALM PENNANT RETAIL PARTNERS, LLC  
a Delaware limited liability company

By: see attached signatur page  
Name:  
Title:

**LANDLORD:**

REALM PENNANT RETAIL  
PARTNERS, LLC, a Delaware limited  
Liability company

By: REALM Manager LLC, a  
Delaware limited liability  
company, its Manager

By:   
Name: Travis King  
Title: President  
Date: 9/4/2020

L E A S E

This Lease, made and entered into this 3rd day of September, 1992, by and between The Westbar Limited Partnership, an Arizona limited partnership ("Landlord") and Buffets, Inc., a Minnesota corporation ("Tenant").

W I T N E S S E T H :

1. Premises and Shopping Center. Subject to the terms, covenants and conditions contained herein, Landlord leases to Tenant and Tenant leases from Landlord the end-cap premises consisting of <sup>(Mini Major #3)</sup> approximately ten thousand ~~(10,000)~~ square feet of leasable area ("Premises"), as cross-hatched on the site plan attached hereto as Exhibit A, which Premises is part of the shopping center development known as Metro Power Center located at Metro Parkway West and Cheryl Drive consisting of approximately one hundred sixty thousand (160,000) square feet of leasable area, inclusive of the Premises ("Shopping Center"), which includes Landlord's portion of the Shopping Center and those parcels generally depicted on Exhibit A as the "Sports Authority Parcel" and the "Phar-Mor Parcel", as generally outlined in red on the floor plan attached hereto as Exhibit A and as legally described in Exhibit B attached hereto. Tenant's enclosed garbage area shall be considered a portion of the Premises for all purposes except that the square footage of such area shall not be included in the leasable area of the Premises for purposes of Minimum Rent, Percentage Rent and Additional Rent.

2. Term. This Lease shall be for a term of ~~fifteen~~ (15) full Lease Years plus the First Partial Lease Year commencing either (i) one hundred twenty (120) days after: (a) Landlord completes Landlord's Work (as defined below); (b) Landlord approves Tenant's Plans (as defined below); (c) Landlord tenders possession of the Premises to Tenant; (d) Landlord provides Tenant with a nondisturbance agreement from any and all groundlessors, mortgagees or holders of deeds of trust with respect to Landlord's portion of the Shopping Center; and (e) Tenant obtains all necessary governmental permits and approvals concerning the construction and operation of the Premises, or (ii) the day Tenant opens the Premises <sup>7-27-93</sup> for business, whichever comes first ("Commencement Date"), and ending fifteen (15) Lease Years after the last day of the first Partial Lease Year of the Term ("Expiration Date"). In no event shall the Commencement Date occur until the parking area adjacent to the Premises and access to the Premises is paved. Promptly following the Commencement Date, Landlord and Tenant shall enter into an amendment of this Lease in the form attached hereto as Exhibit C setting forth the Commencement Date, Expiration Date, actual square footage of leasable area in the Premises and the Shopping Center, Minimum Rent, and the Percentage Rent Breakpoints. Following Landlord's approval of Tenant's Plans, Tenant shall promptly apply for and diligently pursue all necessary governmental permits and approvals concerning the construction and operation of the

Premises or Shopping Center or Landlord by reason of Tenant's Work or any alteration, addition or repair permitted or required to be made by Tenant pursuant to this Lease or the materials furnished in connection therewith; provided, however, that Tenant shall cause such lien to be bonded in accordance with the provisions of Section 33-1004, Arizona Revised Statutes within thirty (30) days and Tenant agrees to hold Landlord harmless from and against any and all claims and demands by contractors or other third parties against the Premises or Shopping Center or Landlord relating to or arising out of such work, alteration, addition or repair or the materials furnished in connection therewith.

Tenant's Work and any alteration, addition or improvement to the Premises, except stock in trade, movable furniture and trade fixtures, shall become part of the realty and belong to Landlord at the Expiration Date. Any damages caused by the removal of any trade fixture shall be immediately repaired by Tenant at its sole cost and expense.

6. Rent.

A. Minimum Rent. Tenant agrees to pay to Landlord, without demand, a guaranteed rental ("Minimum Rent") equal to the following amounts per annum (based on a Premises with ten thousand (10,000) square feet of leasable area):

First Partial Lease Year and Lease Years 1 through 15:	\$ 120,000
First Extension (Lease Years 16 through 20):	\$ 140,000
Second Extension (Lease Years 21 through 25):	\$ 150,000

payable in equal monthly installments of one-twelfth of the Minimum Rent each, on or before the first day of each month in advance to Landlord at 11411 North Tatum Boulevard, Phoenix, AZ 85028, or at such other place as Landlord may from time to time designate in writing, without demand, deduction, recoupment or setoff whatsoever, except as provided in this Lease. For Partial Lease Years or partial lease months, Minimum Rent shall be prorated as provided in Section 6D of this Lease.

B. Percentage Rent. In addition to the Minimum Rent provided for in Section 6A of this Lease, Tenant agrees to pay percentage rent ("Percentage Rent") to Landlord in an amount equal to three percent (3%) of Gross Sales (as defined below) for each particular Lease Year in excess of the following amounts (each such annual amount shall be referred to as a "Percentage Rent Breakpoint") based upon the Minimum Rent amounts set forth in Section 6(A):

First Partial Lease Year and Lease Years 1 through 15	\$ 2,400,000
First Extension (Lease Years 16 through 20)	\$ 2,800,000
Second Extension (Lease Years 21 through 25)	\$ 3,000,000

For Partial Lease Years or partial lease months, the Percentage Rent Breakpoint shall be prorated in the manner provided for prorations in Section 6D of this Lease. The Percentage Rent Breakpoint for any Lease Year shall be computed by dividing the Minimum Rent payable in any Lease Year by five percent (5%).

The term "Gross Sales" means the gross amount received by Tenant, its subtenants, licensees and concessionaires from all orders, and all sales and services made or rendered, in or from the Premises, whether for cash or credit and whether collected or uncollected. Notwithstanding anything in this Lease to the contrary, Gross Sales shall not include:

- (a) Receipts from vending machines used exclusively by Tenant's employees, coin-operated amusement devices permitted pursuant to this Lease and pay telephones.
- (b) Receipts from the sale of gift certificates until such are redeemed.
- (c) Any meal or discounted sale to an employee of Tenant; provided, however, that such meals or discounted sales shall not exceed two percent (2%) of Tenant's Gross Sales in any given Lease Year.
- (d) Any refund which is made to any customer.
- (e) Any sales tax or other similar tax required by governmental law or regulation.
- (f) Receipts from orders placed at the Premises, but filled elsewhere.
- (g) Bad debts and "nonsufficient funds" checks; provided, however, that such amounts shall not exceed two percent (2%) of Gross Sales in any given Lease Year.
- (h) Sales of fixtures or equipment not in the ordinary course of business.
- (i) Any charge paid by Tenant as a finance charge for credit card services; provided, however, that such charges shall not exceed one percent (1%) of Tenant's Gross Sales in any given Lease Year; and



further provided, however, that such charges shall not be excluded from Gross Sales following any assignment or transfer of this Lease other than an Affiliate Transfer (as defined below).

Percentage Rent shall be due and payable annually within forty-five (45) days after the end of the applicable Lease Year. Within twenty (20) days of the end of each month, Tenant shall deliver to Landlord an informal non-binding report of Tenant's Gross Sales for the immediately preceding month. Concurrently with the payment of Percentage Rent, Tenant shall deliver a report of its Gross Sales for the applicable Lease Year. Each annual report shall be certified by an authorized employee of Tenant and shall be based on Tenant's sales reports from sales records maintained separately for the Premises and kept in accordance with Generally Accepted Accounting Principals. All reports and other information that Tenant gives to Landlord regarding Tenant's Gross Sales, shall be confidential. Landlord shall not disclose said report or any other information regarding Tenant's Gross Sales except (i) to any of Landlord's partners or lenders, (ii) to Landlord's lender or potential purchasers of the Shopping Center, (iv) if Landlord is ordered to disclose such information in a judicial or administrative proceeding, or (v) in connection with verbal "puffing" of the Shopping Center so long as only general "ball park" dollar per square foot figures are given, without, in each instance, Tenant's prior written consent. Should Landlord require an audit of the sales records pertaining to the Premises, Tenant agrees to make available to Landlord, at Tenant's corporate offices, all of Tenant's books and records necessary to accomplish said audit. Landlord's right to audit such records shall be limited to the current Lease Year and the immediately preceding Lease Year and may be exercised only one time in any consecutive twelve (12) month period. In addition to promptly paying Landlord any deficiency discovered in an audit of Tenant's Gross Sales, Tenant shall pay Landlord the reasonable cost of any audit which discloses that Tenant's Gross Sales were understated by more than three percent (3%).

C. Additional Rent. In addition to Minimum Rent and Percentage Rent, Tenant shall pay to Landlord as "Additional Rent" during the Term of this Lease or any extension thereof, Tenant's Tax Expense (as defined below) and Tenant's Shopping Center Expense (as defined below), together with all other sums due Landlord hereunder. Tenant shall pay all sums required to be paid as Additional Rent directly to Landlord at the place where the Minimum Rent is payable, without deduction, demand, recoupment, or setoff except as provided in this Lease.

"Tenant's Proportionate Share" as referred to in this Lease shall be a fraction, the numerator of which is the number of square feet of leasable area in the Premises and the denominator of which is the gross leasable area of the Shopping

Center available for leasing from time to time, which at the time of the execution of this Lease is estimated at one hundred sixty thousand (160,000). Any changes in the gross leasable area of either the Premises or the Shopping Center shall be effective as of the first calendar month following the day of the change. Leasable area (as "leasable area" is used in this Lease) shall be computed by measuring from the outside face to the outside face of exterior walls and from the center line to center line of demising walls. Leasable area shall not include the second level of any multilevel stock area, truck tunnels, docks, areas for truck tunnels and docks, and areas for truck loading and unloading to the extent such facilities lie outside the exterior lines of premises demised to tenants of the Shopping Center. No deduction or exclusion shall be made in the computation of leasable area by reason of interior partitions or other interior construction or equipment. Minimum Rent, Additional Rent, Percentage Rent Breakpoints and all other charges based upon or influenced by a certain monetary amount per square foot shall be adjusted based on the actual square footage of the Premises, provided, however, that in no event shall the leasable area of the Premises be more than the approximate square footage set forth in paragraph 1 of this Lease.

D. Proration. Whenever in this Lease, payments of Minimum Rent, Percentage Rent or Additional Rent, or any limitation thereon are to be prorated (the "Prorated Sum") for a Partial Lease Year, the Prorated Sum shall be prorated at a rate of one-twelfth of the yearly sum scheduled for that Partial Lease Year for each month, and for a partial lease month, the Prorated Sum shall be prorated at a rate of ~~one thirtieth~~ of the monthly Prorated Sum, as defined above, for each day, and, except for Percentage Rent which is paid annually, shall be payable, in advance, on the first day of the partial lease month.

7. Failure to do Business. Subject to applicable laws and ordinances regulating the hours that Tenant can be open for business, Tenant agrees to conduct its business in and operate one hundred percent (100%) of the Premises during the entire Term and the Extension Terms, if any, on all days, except Christmas Eve and Christmas Day and those times when the Shopping Center is closed due to inclement weather, during at least the following hours: 11:00 A.M. to 3:30 P.M. and 4:00 P.M. to 8:00 P.M. Tenant shall use for office or clerical only such space in the Premises as is reasonably required for Tenant's business on the Premises. Tenant may extend such hours at its option and in such event shall not be responsible for the cost of any excess services during such extended hours except as through Tenant's Shopping Center Expense, except that, in the event that Tenant stays open for business later than 11:00 p.m., Tenant shall share the utility costs of lighting the parking lot after 11:00 p.m. with all other tenants of the Shopping Center open after 11:00 p.m. with such utility costs being divided on the basis of square footage and hours of operation.

8. Taxes.

A. Definition. The term "Taxes" as used herein shall include, among others, real estate taxes, assessments (special or otherwise), sewer and water charges, interest on installment payments of Taxes, and any other federal, state or local governmental tax or charge now or hereafter levied or assessed against the Shopping Center (but not including any franchise tax or any other taxes measured by Landlord's income or profits from the Shopping Center or the operation thereof, unless the same are imposed in lieu of real estate taxes or assessments, or any penalties for delinquent payments and not including any assessments levied in connection with the original construction of the Shopping Center). Taxes shall also mean any personal property taxes imposed upon the equipment of Landlord or machinery of Landlord located at the Shopping Center and all costs and fees, including reasonable attorneys' and appraisers' fees incurred by Landlord in reasonably contesting Taxes and reasonably negotiating with public authorities as to the same. In the event that any Taxes may, at the option of the taxpayer, be paid in installments, such Taxes shall be deemed paid in installments over the maximum period permitted by the taxing authority.

As provided in Section 6C of this Lease, Tenant agrees to pay to Landlord as Additional Rent Tenant's Tax Expense ("Tenant's Tax Expense"). Tenant's Tax Expense shall be Tenant's pro rata share of Taxes which are due and payable to any lawful authority during each calendar year during the Term or any extension thereof and shall be determined by multiplying the Taxes by Tenant's Proportionate Share.

Tenant agrees to pay before delinquency any taxes levied or assessed upon Tenant's personal property located in or attributable to Tenant's business at the Premises.

*Real Estate Tax*

B. Payment. Upon receipt of a Tax bill attributable to any calendar year or partial calendar year during the term hereof, Landlord shall promptly furnish to Tenant a copy of such Tax bill and a written statement of the actual amount of Tenant's Tax Expense concerning such bill and Tenant shall pay such amount to Landlord within thirty (30) days prior to required payment to the taxing authority. A copy of the Tax bills submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of Taxes assessed against the property to which such bill relates.

*or*

↓  
If required by a ground lessor or a holder of a mortgage on the Premises, and after prior written request by Landlord, Tenant shall pay Tenant's Tax Expense in monthly installments in advance on or before the first day of each calendar month in an amount reasonably estimated by Landlord at the commencement of each Lease Year ("Estimated Monthly Tax

Expense Payment"). Upon receipt of a Tax bill attributable to any calendar year during the term hereof, Landlord shall promptly furnish to Tenant a copy of such Tax bill and a written statement of the actual cost of Tenant's Tax Expense concerning such bill. Within thirty (30) days after the rendition of such Tax bill and statement, Tenant shall pay to Landlord any deficiency shown on the Tax bill for the prior Lease Year. If the statement indicates an overpayment by Tenant, then the amount so overpaid shall be paid to Tenant at the time of delivery to Tenant of the Tax bill. If the Tax bill is rendered after the commencement of the Lease Year and there has been an increase in the Estimated Monthly Tax Expense Payment for the current Lease Year, any deficiency in the payments already made by Tenant for the current Lease Year prior to the receipt of the Tax bill shall be paid by Tenant with the first Estimated Monthly Tax Expense Payment becoming due after the receipt of the Tax bill. If there is a decrease in the Estimated Monthly Tax Expense Payment for the current Lease Year, as shown on the Tax bill, then any overpayment made by the Tenant for the current year prior to the receipt of the Tax bill shall be credited to Tenant at the time of delivery of the Tax bill.

For Partial Lease Years or partial lease months, Tenant's Tax Expense shall be prorated as provided in Section 6D of this Lease.

In addition, Tenant agrees to pay, as further Additional Rent hereunder, any tax now or hereinafter imposed upon Landlord on account of or measured by the rent or other charges paid by Tenant pursuant to this Lease (but specifically excluding income tax), which further Additional Rent shall be paid by Tenant to Landlord along with the rent and other charges payable by Tenant hereunder.

9. Operating Expenses.

A. Definition. The term "Operating Expenses" as used herein shall mean all costs and expenses paid or incurred by Landlord in operating, cleaning, equipping, protecting, lighting, heating, air conditioning, insuring, repairing and maintaining the Shopping Center and other costs paid or incurred by Landlord reasonably related to the operation of the Shopping Center. Operating Expenses shall include, but not be limited to: illumination and maintenance of pylon or Shopping Center directional signs within the Shopping Center; utilities; supplies; janitorial services; the cost of security guards; total employee compensation and benefits, including worker's compensation insurance; garbage, snow and ice removal; insurance, including rent insurance and any other insurance required by Section 17B of this Lease or any mortgage or ground lease; maintenance and repairs, including those to any utility, security or lighting system located within or on the Shopping Center; landscaping; painting; lighting; amortization of equipment used

*Liability Hazard*

in operation and maintenance of the Shopping Center; amortization of capital expenditures which reduce the Operating Expenses of the Shopping Center; seal coating and striping of parking lots and other areas; installation and operation of loudspeaker system and music program services; maintenance and repair of sprinkler systems; and, an amount equal to fifteen percent (15%) of the aggregate of the above expenses, except insurance, to cover administration, management, bookkeeping and accounting.

*and taxes are  
not listed per  
Jim Muth*

Provided, however, notwithstanding anything to the contrary in this Lease, Operating Expenses shall not include the amortization of any capital improvements except for capital expenditures made to the Shopping Center intended to reduce Operating Expenses and then only to the extent of the reduction in Operating Expenses in any particular Lease Year and except for the cost of replacing the roof one time during the original Term and one time during the Extension Terms, and the cost of resurfacing the parking lot to a thickness of two inches (2") one time during the original Term and one time during the Extension Terms, provided that the costs of all such work shall be amortized over ten (10) years or the period of any warranty covering such work, whichever period is greater; costs incurred in connection with the original construction or expansion of the Shopping Center, including any interest or payments on any financing; cost of correcting defects in the initial design or construction of the Shopping Center or expansion; any expense resulting from the negligence of Landlord or as a direct result of Landlord's failure to use reasonable efforts to minimize expenses; cost of repairing any damage caused by other tenants in the Shopping Center; reserves for anticipated future expenses; legal and other fees; leasing commissions; advertising expenses; costs of seasonal decorations; any items for which Landlord is reimbursed by insurance; any bad debt loss, rent loss or reserves for bad debts or rent loss; the cost of providing improvements within the Shopping Center of any other tenants; all interest or penalties incurred as a result of Landlord's failure to pay any bill as it shall become due; the cost of leasing anything other than items whose purchase price would be included in reimbursable expenses hereunder; any cost related to the operation of Landlord as an entity rather than the operating of the Shopping Center, including the cost and formation of the entity, internal accounting, legal matters, preparation of tax returns, etc.; the cost of garbage removal and maintenance and repair of common garbage areas if Tenant has an exclusive and enclosed garbage area which it maintains and repairs pursuant to Section 15B; the cost of any utility, maintenance, service or repair provided to other premises if such utility, maintenance, service or repair is separately charged to the Premises.

As provided in Section 6C of this Lease, Tenant agrees to pay to Landlord as Additional Rent "Tenant's Shopping Center Expense". Tenant's Shopping Center Expense shall be Tenant's pro rata share of Operating Expenses for each Lease Year during the

Term or any extension thereof, and shall be determined by multiplying Operating Expenses by Tenant's Proportionate Share.

CAM B. Payment. Tenant's Shopping Center Expense shall be paid in ~~monthly~~ installments in advance on or before the first day of each calendar month in an amount reasonably estimated by Landlord at the commencement of each Lease Year ("Estimated Monthly Shopping Center Expense Payment"). For Partial Lease Years or partial lease months, Tenant's Shopping Center Expense shall be prorated as provided in Section 6D of this Lease. Within one hundred twenty (120) days after the end of each Lease Year, Landlord shall furnish Tenant with a detailed statement prepared according to generally accepted commercial shopping center standards and which will itemize the various components and amounts of the Operating Expenses and specify the actual amount of Tenant's Shopping Center Expense for such period, the aggregate Estimated Monthly Shopping Center Expense Payments made by Tenant for such period, the deficiency or overage from such payments and the amount of Tenant's Estimated Monthly Shopping Center Expense Payment for the then current Lease Year. Within thirty (30) days after the rendition of such statement by Landlord, Tenant shall pay to Landlord any deficiency shown on the statement for the prior Lease Year. If the statement indicates an overpayment by Tenant, then the amount so overpaid shall be paid to Tenant at the time of delivery to Tenant of the written statement of actual Operating Expenses. If the statement is rendered after the commencement of the Lease Year and there has been an increase in the Estimated Monthly Shopping Center Expense Payment for the current Lease Year, any deficiency in the payments already made by Tenant for the current Lease Year prior to the receipt of the statement shall be paid by Tenant with the first Estimated Monthly Shopping Center Expense Payment becoming due after the receipt of the statement. If there is a decrease in the Estimated Monthly Shopping Center Expense Payment for the current Lease Year, as shown on the statement, then any overpayment made by the Tenant for the current year prior to the receipt of the statement shall be credited to Tenant at the time of delivery of the written statement of actual Operating Expenses. Landlord shall use reasonable efforts to minimize Operating Expenses while at all times operating the Shopping Center in a first class manner.

*Cap on CAM Expense*

C. Limitation. Notwithstanding anything herein to the contrary, beginning with Lease Year following the first full Lease Year, Tenant's Shopping Center Expense in any Lease Year shall not exceed one hundred seven percent (107%) of Tenant's Shopping Center Expense for the immediately preceding Lease Year.

10. Disputes. Any annual statement rendered by Landlord to Tenant for Tenant's Tax Expense and Tenant's Shopping Center Expense as respectively described in Sections 8 and 9 herein shall be conclusive and binding on Tenant and deemed accepted by Tenant unless within one year after the receipt of

such statement Tenant shall notify Landlord in writing of the items it disputes ("Notice of Dispute"). Pending the determination of such dispute, Tenant shall pay all amounts due as indicated on the statement and such payment shall be without prejudice to Tenant. In connection with determining and resolving such dispute, Tenant may after ten (10) days prior written notice to Landlord audit and review the books of Landlord kept in connection with the Taxes and Operating Expenses subject to the following restrictions: (i) Tenant shall not perform any such audit or review during the months of December, January, February or March; (ii) Tenant shall only be entitled to audit Landlord's books for any particular Lease Year one-time; (iii) Tenant shall not perform more than one audit in any one Lease Year; and (iv) Tenant shall perform any such audit at Landlord's business office. If the dispute is not amicably settled between Landlord and Tenant within thirty (30) days after Landlord's receipt of the Notice of Dispute, either party may refer the disputed items to a reputable firm of independent certified public accountants, selected by Landlord and approved by Tenant, for a decision, and the decision of such firm shall be conclusive and binding upon Landlord and Tenant. The expenses involved in such determination shall be borne by the party against whom a decision is rendered by such accountants, provided that if more than one item is disputed and the decision shall be against both parties, then the expenses shall be apportioned according to the monetary value of the items decided against each party. If the dispute on any items shall be determined in Tenant's favor the amount of Tenant's overpayment shall be immediately refunded to Tenant. If the dispute on any items shall be determined in Landlord's favor, the amount of Tenant's underpayment shall immediately be paid by Tenant to Landlord.

11. Utilities. All utilities, including without limitation, gas, water, telephone, and electricity shall be provided to the Premises by either Landlord or the direct third party providers of such services. The cost of utilities which are not separately metered to the Premises shall constitute Operating Expenses. The cost of utilities which are separately metered to the Premises shall be paid by Tenant directly to the provider of such services on or before their due date, and Tenant agrees to protect and save Landlord harmless against any claim therefor. Tenant shall make arrangements to dispose of all trash generated by Tenant's operations in the Premises on a regular basis in compliance with all local health requirements and at such intervals as is customary for the operator of a restaurant and Tenant shall pay all expenses associated with such removal.

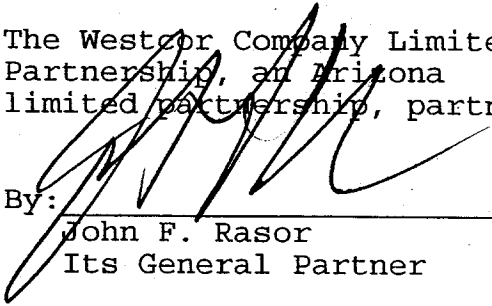
Tenant shall make all appropriate applications to the providers of all utilities at such times as shall be necessary to insure utilities being available at the Premises no later than the Commencement Date of this Lease and by such date shall pay all required deposits and connection fees. Tenant shall operate its heating and/or air conditioning in the Premises in accordance

IN WITNESS WHEREOF, Landlord and Tenant have signed and sealed this Lease as of the day, month and year first above written.

LANDLORD:

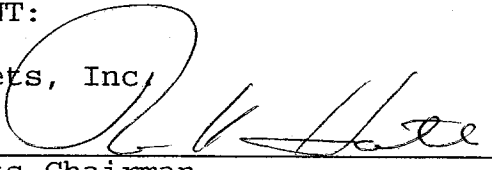
Westbar Limited Partnership, an  
Arizona limited partnership

By: The Westbar Company Limited  
Partnership, an Arizona  
limited partnership, partner

By:   
\_\_\_\_\_  
John F. Rasor  
Its General Partner

TENANT:

Buffets, Inc.

By:   
\_\_\_\_\_  
Its Chairman

MRRO072E.WP5



**AMENDMENT TO LEASE**  
(Store #0149 - Phoenix, AZ)

THIS AMENDMENT TO LEASE (this "**Amendment**") made and entered into effective as of February 1, 2012 (the "**Effective Date**"), by and between PDG AMERICA SHOPPING CENTERS, L.L.C., a Delaware limited liability company ("**Landlord**"), and OCB RESTAURANT COMPANY, LLC, a Minnesota limited liability ("**Tenant**").

**RECITALS:**

WHEREAS, Landlord and Tenant are the current parties to that certain lease dated as of September 3, 1992 (as modified, amended, transferred and/or supplemented to date, together with any and all exhibits and addenda thereto, collectively, the "**Lease**") by which Landlord is leasing to Tenant certain premises described therein (the "**Demised Premises**") identified by Tenant as Store #0149 with a street address at 9620 Metro Parkway West, County of Maricopa, City of Phoenix and State of Arizona; and

WHEREAS, Tenant and certain of its affiliates (each, a "**Debtor**," and collectively with Tenant, the "**Company**" or the "**Debtors**") filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (the "**Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") on January 18, 2012 (the "**Petition Date**"); and

WHEREAS, Landlord asserts that as of the Petition Date, Tenant owed arrearages under the Lease in the amount of \$9,336.96 ("**Arrearage**"), as set forth in the proof of claim filed by Landlord ("**Claim**"); and

WHEREAS, it is the desire of the parties hereto to amend the Lease as hereinafter provided:

**OPERATIVE PROVISIONS:**

NOW THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, and of One Dollar (\$1.00) the receipt and sufficiency of which are hereby acknowledged, it is agreed by and between the parties as follows:

1. Defined Terms. All capitalized terms used in this Amendment not otherwise defined herein shall have the meanings ascribed to such terms in the Lease.

2. Incorporation of Recitals. All of the foregoing Recitals are incorporated into these Operative Provisions without any difference or distinction between the two segments of this Amendment.

3. Modification of Lease Term. Notwithstanding anything contained in the Lease to the contrary, the current term of the Lease (the "**Amended Term**") shall expire on December 31, 2015 (the "**Amended Expiration Date**"). All provisions in the Lease that provide for or refer to an expiration date are hereby amended to reflect the Amended Expiration Date as the expiration date of the Lease.

4. Modification of Minimum Rent. Notwithstanding any provision of the Lease to the contrary, as of the Effective Date, the Minimum Rent payable by Tenant to Landlord under the Lease shall be modified to the following amounts for the corresponding time periods:

2/1/2012 to 12/31/2015

\$110,000.00 per annum

demands and suits brought against Tenant and arising out of this Amendment, related to Landlord's failure to obtain any lender consent necessary to modify the Lease in accordance with this Amendment.

13. No Other Modifications. Except as expressly modified hereby, all other terms and provisions of the Lease (a) shall remain in full force and effect; (b) are incorporated herein by this reference; and (c) shall govern the conduct of the parties hereto; provided, however, that if there exists any inconsistency between the provisions of the Lease and the provisions of this Amendment, the provisions of this Amendment shall control.

14. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. Each counterpart may be delivered by facsimile transmission. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto.

15. Governing Law. This Amendment shall be governed by and construed in accordance with the law of the state identified in the Lease as the governing law thereof, notwithstanding conflicts of law or other principles that would apply the law of a different state.

16. Entire Agreement; No Waiver. This Amendment contains all of the agreements of the parties hereto with respect to the matters contained herein, and no prior agreement, arrangement or understanding pertaining to any such matters shall be effective for any purpose. Nothing in this Amendment shall be deemed to waive or modify any of the provisions of the Lease, except as expressly stated herein.

IN WITNESS WHEREOF, this Amendment is entered into by the parties hereto effective as of the Effective Date.

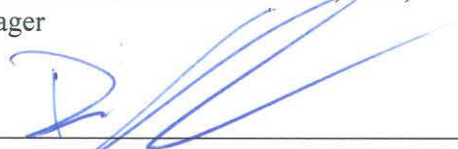
LANDLORD:

PDG AMERICA SHOPPING CENTERS, L.L.C.,  
a Delaware limited liability company

By: PDG AMERICA PROPERTIES, LLC,  
Its manager

By: PHOENIX SC MEZZ OWNER, LLC,  
Its manager

By: NRFC PHOENIX HOLDINGS, LLC,  
Its manager

By:   
\_\_\_\_\_

Print: **Dan Raffe**  
**Executive Vice President**  
\_\_\_\_\_

Its: \_\_\_\_\_

TENANT:

OCB RESTAURANT COMPANY, LLC,  
a Minnesota limited liability company

By: Paul Holowick

Print: Paul Holowick

Its: Manager Assistant Secretary