

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

Debtor 1 Tahoe Joe`s Inc.  
Debtor 2 \_\_\_\_\_  
(Spouse, if filing)  
United States Bankruptcy Court for the: Northern District of Texas, Dallas Division  
Case number 21-30725-11

E-Filed on 08/27/2021  
Claim # 365

# 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?	<u>DS PROPERTIES 18 LP, a Delaware limited partnershi</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor <u>DONAHUE SCHRIBER REALTY GROUP, L.P.</u>	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? <small>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</small>	<b>Where should notices to the creditor be sent?</b> <u>c/o Law Office of Corey E. Taylor</u> Name <u>629 Camino de los Mares Suite 305</u> Number Street <u>San Clemente CA 92673</u> City State ZIP Code Contact phone <u>(949) 429-3485</u> Contact email <u>corey@taylorlawoc.com</u>	<b>Where should payments to the creditor be sent? (if different)</b> <u>Tom Schriber, Jr.</u> Name <u>200 Baker St E 100</u> Number Street <u>Costa Mesa CA 92626</u> City State ZIP Code Contact phone <u>(714) 545-1400</u> Contact email <u>TSchriberJr@dsrg.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): -----	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> 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?	<input checked="" type="checkbox"/> No <input type="checkbox"/> 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: \_\_\_\_\_

7. **How much is the claim?** \$\_\_\_\_\_ **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.  
Commercial Lease - Rent Due

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.** \$ 294,938.37

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 08/27/2021  
MM / DD / YYYY

Corey E. Taylor  
Signature

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

Name Corey E Taylor  
First name Middle name Last name

Title Attorney

Company Law Office of Corey E Taylor  
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 - Claim Attachments.pdf

Description - Lease excerpts, account aging, and claim summary

GROUND LEASE

BETWEEN CASTLE & COOKE COMMERCIAL-  
CA, INC., AS LANDLORD, AND TAHOE JOE'S  
FAMOUS STEAKHOUSE, AS TENANT, DATED  
DECEMBER 11, 1999 8

## GROUND LEASE

### Preamble and Recitals

This lease is entered into on December 11, 1998 by and between Castle & Cooke Commercial-CA, Inc., a California corporation, referred to in this lease as "Landlord", and Tahoe Joe's Famous Steakhouse, a California Corporation, referred to in this lease as "Tenant".

A. Landlord is the owner of certain real property in the City of Bakersfield, County of Kern, and State of California, described on Exhibit "A", which is attached and made a part of this lease (referred to in this lease as the "Premises").

B. Tenant desires to lease the Premises (together with certain appurtenant rights and easements) for the purpose of constructing a Tahoe Joe's Famous Steakhouse restaurant (the "Restaurant") within Landlord's commercial shopping center known as the Marketplace Shopping Center, (the "Center") located at 9000 Ming Avenue, Bakersfield, California 93311, appurtenant parking areas and other related improvements (the Restaurant and all other improvements now on, and/or to be hereafter constructed on the Premises, collectively referred to in this lease as the "Improvements") in accordance with the agreement of the parties as set forth in this lease.

### ARTICLE 1. LEASE OF PREMISES AND TERM OF LEASE

**Section 1.01. Agreement to Lease.** For and in consideration of the rents to be paid and covenants to be performed by Tenant under this lease, Landlord hereby agrees to lease the Premises to Tenant, and Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this lease. Except as expressly otherwise provided in this lease, the "Premises" includes the real property plus any appurtenances and easements described in Exhibit "B" of this lease, exclusive of any Improvements now or hereafter located on the Premises, notwithstanding that any such Improvements may or shall be construed as affixed to and as constituting part of the described Premises, and without regard to whether ownership of the Improvements is in the Landlord or in the Tenant.

**Section 1.02. Status of Title.** Title to the leasehold estate created by this lease is subject to all exceptions, easements, rights, rights-of-way, restrictive covenants, and other matters filed of record in the Official Records of the county of Kern. A Preliminary Title Report issued by American Title Company, dated October 9, 1998, a copy of which is attached as Exhibit "C" reflects the status of title to Parcels 4 and 9 of Parcel Map 10291, which encompass the Premises.

**Section 1.03. Term of Lease.** The term of this lease shall be for a period of fifteen (15) years commencing on January 1, 1999 and continuing fifteen (15) years thereafter, unless terminated earlier as provided in this lease, provided, however, that Tenant shall have two (2) options to renew this lease, each such option allowing Tenant to so renew this lease for a period of five (5) additional years on the terms and conditions as are contained in this lease, each such option being separately exercisable by Tenant's giving to Landlord written notice of Tenant's election to so renew this lease no later than ninety (90) days before the expiration of the lease or the first option term, as the case may be.

**Section 1.04. Possession/As Is Delivery.** Landlord shall deliver possession of the Premises immediately upon the execution of this lease by both Landlord and Tenant, which shall occur no later than January 1, 1999. The Premises shall be so delivered as vacant, rough graded, unimproved land, in AS IS condition, subject to existing zoning and entitlements, with utilities (as described in this lease) stubbed to the boundary line of the Premises.

**Section 1.05. Common Area Rights.** Subject to the limitations set forth above in this Section, Tenant, for the use and benefit of Tenant, its agents, employees, customers, licensees and subtenants shall have the nonexclusive right in common with Landlord, and other present and future owners, tenants and their agents, employees, customers, licensees and subtenants, to use the Common Area during the entire term of this lease, and any option periods, for ingress and egress and automobile parking (subject to the employee parking provisions of this lease).

**Section 1.06. Ownership of Improvements.** Title to all Improvements, including the Restaurant, to be constructed on the Premises by Tenant shall be owned by Tenant until expiration of the term or earlier termination of this lease or any applicable option period. All Improvements, including the Restaurant, on the Premises at the expiration of the term or earlier termination of this lease or any applicable option period shall, without compensation to Tenant, then automatically and without any act of Tenant or any third party become Landlord's property. Tenant shall surrender the Improvements to Landlord at the expiration of the term or earlier termination of this lease or any applicable option period, free and clear of all liens and encumbrances, other than those, if any, permitted under this lease or otherwise created or consented to by Landlord. Tenant agrees to execute, acknowledge, and deliver to Landlord any instrument requested by Landlord as necessary in Landlord's opinion to perfect Landlord's right, title, and interest to the Improvements and the Premises.

## ARTICLE 2. RENT

**Section 2.01. Minimum Rent.** Tenant agrees to pay to Landlord minimum annual rent ("Minimum Rent") for each year during the term of this lease and any option periods in the following amounts:

- (a) \$75,000.00 per year for each of the first three (3) years of this lease (January 1, 1999 through December 31, 2001);
- (b) \$81,750.00 per year for each of the next three (3) years of this lease (January 1, 2002 through December 31, 2004);
- (c) \$89,107.50 per year for each of the next three (3) years of this lease (January 1, 2005 through December 31, 2007);
- (d) \$97,127.17 per year for each of the next three (3) years of this lease (January 1, 2008 through December 31, 2010);
- (e) \$105,868.62 per year for each of the next three (3) years of this lease (January 1, 2011 through December 31, 2013);
- (f) In the event Tenant elects to renew the lease by exercising Tenant's first five (5) year renewal option, an annual amount, for the first three (3) years of the first renewal term, equal to the fair rental value of the Premises, assuming similar location, amenities, use and lease terms, or, in the alternative, in the amount of \$115,396.79, whichever is greater; and an annual amount for the last two (2) years of the first renewal term, equal to the fair rental value of the Premises, assuming similar location, amenities, use and lease terms, or, in the alternative, in the amount of \$125,782.50, whichever is greater;
- (g) In the event Tenant elects to renew the lease by exercising Tenant's last five (5) year renewal option, an annual amount, for the first (1<sup>st</sup>) year of the last renewal term, equal to the rent paid by Tenant for the immediately preceding year; and an annual amount for the next three (3) years of the last renewal term, equal to the fair rental value of the Premises,

assuming similar location, amenities, use and lease terms, or, in the alternative, in the amount of \$137,102.92, whichever is greater; and an annual amount for the last year of the last renewal term, equal to the fair rental value of the Premises, assuming similar location, amenities, use and lease terms, or, in the alternative, in the amount of \$149,442.18, whichever is greater;

- (h) In the event Landlord and Tenant are at any time unable to agree on the fair rental value of the Premises as contemplated in Sections 2.01(f) and (g) above, such fair rental value shall be determined by an impartial California certified appraiser selected by Landlord and Tenant. In the event Landlord and Tenant cannot agree on the selection of an impartial California certified appraiser, they shall, on each such occasion, each select an impartial California certified appraiser. The two impartial California certified appraisers so selected shall then select a third impartial California certified appraiser who shall then determine the fair rental value of the Premises for the purpose of setting Minimum Rent. Landlord and Tenant shall each bear one-half (½) of the fees and costs associated with the services of all of the appraisers herein referenced.

Notwithstanding anything to the contrary contained in this Section 2.01, Tenant shall not be required to pay Minimum Rent for the period from the date the term of this lease commences and continuing through: (i) the date Tenant commences the operation of business at the Restaurant, or (ii) 180 days after Landlord has approved Tenant's site plan and elevations, submitted pursuant to Section 5.03 (c) below, whichever is earlier.

**Section 2.02. Time and Place for Payment of Rent.** All Minimum Rent provided for in Section 2.01 of this lease shall be paid by Tenant, in advance, on a monthly basis, on the first day of each calendar month, and shall be paid to Landlord at Landlord's business address at 10000 Ming Avenue (93311), PO Box 11165 (93389) Bakersfield, California, or any other place or places that Landlord may designate by written notice to Tenant.

**Section 2.03. Security Deposit .** Tenant has, contemporaneously with the execution of this lease, deposited with Landlord a security deposit (the "Security Deposit") in the sum of \$6,250.00, receipt of which is hereby acknowledged by Landlord, to be held and applied by Landlord in the following manner:

(a) If, at any time prior to the thirteenth (13<sup>th</sup>) month of this lease, any of the rent payable by Tenant to Landlord pursuant to this lease should be overdue and unpaid, or if any other sums payable by Tenant to Landlord pursuant to the terms of this lease become overdue and unpaid, Landlord may, at Landlord's option, appropriate and apply any portion of the Security Deposit, up to the whole amount thereof, to the payment of the overdue rent or sums. In the event of any such appropriation and application by Landlord, Tenant shall promptly on receipt of written demand by Landlord, restore the amount so appropriated or applied to the Security Deposit. Tenant's failure to do so within three (3) days after receipt of the written demand by Landlord, shall constitute a breach of this lease by Tenant.

(b) Should Tenant, at any time prior to the thirteenth (13<sup>th</sup>) month of this lease, be in default in the performance of any of the terms, covenants, and conditions of this lease, Landlord may, after terminating this lease, appropriate and apply any portion of the Security Deposit, up to the whole amount of the Security Deposit, that may be required to compensate Landlord for damages caused by Tenant's breach, to the payment for those damages to Landlord.

(c) Should Tenant fully and faithfully perform all the terms, covenants, and conditions of this lease from the commencement thereof through the twelfth (12<sup>th</sup>) month thereof, Landlord shall apply the Security Deposit toward the Minimum Rent payable by Tenant for the thirteenth (13<sup>th</sup>) month of this lease.



**Section 2.04. Additional Rent - General.** Tenant shall pay as "Additional Rent" any and all other sums of money or charges required to be paid pursuant to the terms of this lease, whether or not the same is designated as "Additional Rent".

**Section 2.05. Late Charges.** Tenant acknowledges that late payment by Tenant to Landlord of rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any other sum due from Tenant is not received by Landlord or Landlord's designee within seven (7) days of the date on which it is due, Tenant shall pay to Landlord as additional rent a late charge equal to the maximum amount permitted by law and, in the absence of any governing law, the greater of four percent (4%) of such overdue amount or Two Hundred Fifty Dollars (\$250.00). IN ADDITION, TENANT SHALL PAY LANDLORD ANY ATTORNEYS' FEES OR NOTICE/PROCESS SERVICE FEES INCURRED BY LANDLORD BY REASON OF TENANT'S FAILURE TO PAY RENT AND OR OTHER CHARGES WHEN DUE HEREUNDER. The parties agree that such late charges represent a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of such late charges by the Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount nor shall it prevent Landlord from exercising any of the other rights and remedies granted hereunder.

**Section 2.06. Quarterly Rent.** Tenant agrees that if Tenant fails to open the Premises for business within the time period specified in Paragraph 4 of this lease or to pay Minimum Rent, Additional Rent or any other monetary obligation which Tenant is required to pay under this lease when due for any three (3) consecutive months, or for any three (3) months in a calendar year, Minimum Rent, real estate taxes and insurance premiums for the remaining term of the lease or applicable option period shall automatically be adjusted to be due and payable quarterly in advance, commencing upon the first day of the month following such second consecutive late month, or the second late month in a calendar year, and continuing thereafter for the remaining term of this lease or applicable option period on a quarterly basis in advance. Time is strictly of the essence with respect to the provisions of this Paragraph, and sums will only be considered to be timely paid when due if they are received by Landlord within seven (7) days of the due date.

**Section 2.07. Common Area.** All areas within the exterior boundaries of the Center which are not now or hereafter held for lease or occupation by Landlord or used by other persons entitled to occupy floor space in the Center shall be deemed "Common Area". Landlord may make changes at any time and from time to time in the size, shape, location and extent of the Common Area, and no such change shall entitle Tenant to any abatement of Rent. Landlord covenants that the Common Area, which includes automobile parking, shall be at all times available for the non-exclusive use of Tenant's customers and invitees during the full term of this lease and any option periods, provided that the condemnation or other taking by any public authority, damage or destruction, temporary closures, closures to prevent dedication, or sale in lieu of condemnation, of any or all of the Common Area shall not constitute a violation of this covenant; provided further, however, that Landlord reserves the right to change the entrances, exits, traffic lanes, configuration and number of parking spaces, the direction and flow of traffic, the nature, location and extent of improvements, and the boundaries and locations of the Common Area including automobile parking, and to construct buildings and other improvements thereon. The foregoing to the contrary notwithstanding, Landlord shall not, without Tenant's prior written consent, unreasonably materially alter the visibility of the front of Tenant's main building or signage, nor shall Landlord unreasonably materially restrict vehicular or pedestrian access to, or the parking immediately adjacent to, the Premises without Tenant's prior written consent.

**Section 2.08. Additional Rent - Center/Common Areas.** In addition to Minimum Rent and commencing at the same time as any rent commences under this lease, Tenant shall pay to Landlord concurrently with Minimum Rent one-twelfth (1/12) of Tenant's Percentage of the anticipated annual costs of the following items,

including an administrative fee to Landlord and/or a third party manager designated by Landlord in an amount equal to fifteen percent (15%) of all such costs, herein collectively called "Additional Rent".

(a) All real estate taxes for the Center including land, building and improvements thereon. As used herein, "real estate taxes" shall include, without limitation, general real estate or property and improvement taxes, any form of assessment, reassessment, license fee, license tax, business license tax, commercial rental tax, in lieu tax, levy, charge, penalty or similar imposition, whatsoever or at all imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, or any agency or public body as against any legal or equitable interest of Landlord in the Center including, but not limited to, the following: (A) Any tax on Landlord's rent, right to rent or other income from the Premises or as against Landlord's business of leasing the Premises including, without limitation, any gross income tax with respect to the receipt of such rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use or occupancy by Tenant of the Center, or any portion thereof; (B) Any assessment, reassessment, tax, fee, levy or charge for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants; (C) Any assessment, tax, fee, levy or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; and (D) Any assessment or reassessment related to any change of ownership of any interest in the Center or portion thereof held by Landlord or any addition or improvement to the Center or a portion thereof. Landlord may elect to separately assess the land and improvements constituting the Premises for purposes of determining Tenant's tax liability. In such event, Tenant shall pay to Landlord each month one-twelfth (1/12th) of such estimated costs, in addition to Tenant's share of Common Area taxes. Notwithstanding the foregoing, real estate taxes shall not include Landlord's federal or state income, franchise, inheritance or estate taxes. Real estate taxes shall include only installments of assessments which are payable in installments, whether or not Landlord elects to pay such assessments in installments or in a lump sum.

(b) All costs for insurance for the Common Areas within the Center including, without limitation, insurance for fire, extended coverage, liability together with insurance against sprinkler damage, vandalism and malicious mischief, and any other insurance that Landlord deems necessary on the Premises or Center required by Landlord's mortgagee including, but not limited to, earthquake, flood, rent abatement and lessors liability insurance.

(c) All Common Area costs; All parking charges, utilities surcharges or any other costs levied, assessed or imposed by or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by any governmental authority in connection with the use or occupancy of the Premises, the parking facilities serving the Premises and/or the Center; and All rentals or any other payments made by Landlord to lease additional parking areas for the Center.

(d) All costs of maintaining and repairing the exterior and structural portions of the buildings owned by Landlord within the Center which Landlord is responsible to maintain and repair, including the maintenance, repair, or rehabilitation of building canopies and/or storefronts, the exterior walls and roof.

Landlord reserves the right to cause its supervision and administration duties to be performed by an affiliate of Landlord or other entity selected by Landlord ("Managing Party"), in which case Landlord's administrative fee or the portion thereof attributable to such third party management shall be payable to the Managing Party. For the purposes of this Section, "Tenant's Percentage" shall mean that percent, subject to adjustment, based upon the ratio that the total Premises floor area bears to the total leasable floor area of all buildings in the Center, whether or not leased, which are owned by Landlord.

implements any program related to parking, parking facilities or transportation facilities including, but not limited to, any program of parking validation, employee shuttle transportation or other program to limit, control, enhance, regulate or assist parking by customers of the Center, Tenant agrees to participate in the program and to pay (as Additional Rent) a share of the costs of the program under rules and regulations from time to time established by Landlord.

**Section 3.10. Nondiscrimination.** Tenant hereby covenants and agrees by and for itself, its heirs, executors, representatives, successors, administrators and assigns and all persons claiming under or through Tenant, that there shall be no discrimination against or segregation of any person or group of persons on account of sex, marital status, race, age, handicaps, color, religion, creed, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased, nor shall Tenant itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, guests, invitees or vendees in the Premises herein leased. This lease is made and accepted upon and is subject to the conditions set forth in this Section.

**Section 3.11. Rules and Regulations - Center.** Tenant and its employees shall comply with the rules and regulations ("Rules and Regulations") for the Premises and the Center which are attached hereto as Exhibit "D". Landlord may, at Landlord's discretion, add to, delete from, change and/or modify the Rules and Regulations, and Tenant shall comply with such additions, deletions, changes and/or modifications.

**Section 3.12. Partial Exclusivity.** Landlord shall not, at any time during the term of this Lease, lease or permit any third party to lease any portion of the Center, to any of the following restaurants: Black Angus; Outback Steakhouse; Logan's Roadhouse; Lone Star Steakhouse; Texas Roadhouse; Hungry Hunter; Wood Ranch Barbecue; Love's Barbecue; and/or any other restaurant which uses the terms "Steakhouse" or "Roadhouse" in its trade name, provided, however, that the restrictions contained in this Section 3.12 shall only preclude Landlord from leasing space in the Center to such named restaurants which remain as of the time proposed for commencement of such a prospective lease, as restaurants which specialize in steaks and seafood.

#### ARTICLE 4. TAXES AND UTILITIES

**Section 4.01. Tenant to Pay Taxes.** Tenant shall pay directly, at all times during the term of this lease and any option periods, without abatement, deduction, or offset, any and all real and personal property taxes, general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description, levied or assessed during the term of this lease and such option periods by any governmental agency or entity on or against the Premises, the Improvements located on the Premises, personal property located in, on or about the Premises or Improvements, and the leasehold estate created by this lease.

**Section 4.02. Proration of First and Last Year Taxes.** Notwithstanding the provisions of Section 4.01 of this lease, all taxes, assessments, or other charges levied or assessed during the tax years in which the term of this lease commences and ends shall be prorated between Landlord and Tenant as of 12:01 A.M. on the date the term commences and on the date the term ends, respectively, on the basis of tax years that commence on July 1 and end on June 30 of each year. At Landlord's election Landlord may pay the taxes, assessments, or other charges for the year in which the term of this lease commences and Tenant shall immediately, on service of written request by Landlord, reimburse Landlord for Tenant's share of those taxes, assessments, or other charges. Tenant shall pay the taxes, assessments, and other charges for the year in which this lease is to end; and Landlord shall promptly, on service of written request by Tenant, reimburse Tenant for Landlord's share of those taxes, assessments, and other charges.

**Section 4.03. Separate Assessment of Leased Premises.** Should the Premises be assessed and taxed with or as part of other property owned by Landlord or others prior to commencement of the term of this lease, Landlord shall use its reasonable best efforts to arrange with the taxing authorities to thereafter have the Premises taxed and assessed as a separate parcel distinct from any other real or personal property owned by Landlord or third party . Should the Premises be assessed and taxed for any year during the lease term or any option periods, with or as part of other property owned by Landlord or another, the share of the taxes, assessments, or other charges for which Tenant is liable to pay pursuant to Section 4.02 shall be determined as follows: Tenant shall pay an amount equal to that portion of the taxes, assessments, and other charges that bears the same ratio to the total of the taxes, assessments, and other charges as the gross ground area of the Premises bears to the gross ground area of the total taxed property.

**Section 4.04. Payment Before Delinquency.** Any and all taxes and assessments and installments of taxes and assessments required to be paid by Tenant under this lease shall be paid by Tenant directly to the taxing authority at least ten days before each such tax, assessment, or installment of tax or assessment becomes delinquent. On the written request of Landlord, Tenant shall deliver to Landlord the official and original receipt evidencing the payment of any taxes, assessments, and other charges required under this Article.

**Section 4.05. Taxes Payable in Installments.** Should any special tax or assessment be levied on or assessed against the Premises that may be either paid in full prior to a delinquency date within the term of this lease or any option periods or paid in installments over a period either within or extending beyond this lease or any option periods, Tenant shall have the option of paying the special tax or assessment in installments. Should Tenant exercise the option to pay any such tax or assessment in installments, Tenant shall be liable to pay only those installments becoming due during the term of this lease and any applicable option periods. Landlord shall cooperate with Tenant and on written request of Tenant shall execute or join with Tenant in executing any instruments required to permit any such special tax or assessment to be paid in installments.

**Section 4.06. Contest of Tax.** Tenant shall have the right to contest, oppose, or object to the amount or validity of any tax, assessment, or other charge levied on or assessed against the Premises or any part of the Premises; provided, however, that the contest, opposition, or objection shall be filed before the tax, assessment, or other charge at which it is directed becomes delinquent, and further provided that written notice of the contest, opposition, or objection shall be given to Landlord at least 10 days before the date the tax, assessment, or other charge becomes delinquent. Landlord shall, on written request of Tenant, join in any such contest, opposition, or objection if Tenant determines that joinder is necessary or convenient for the proper prosecution of the proceedings. Tenant shall be responsible for and shall pay all costs and expenses in any contest or legal proceeding instituted by Tenant. In no event shall Landlord be subjected to any liability for costs or expenses connected to any contest by Tenant, and Tenant agrees to indemnify and hold Landlord harmless from any such costs and expenses (including reasonable attorneys' fees). Furthermore, no such contest, opposition, or objection shall be continued or maintained after the date the tax, assessment, or other charge at which it is directed becomes delinquent unless Tenant has either:

- (a) Paid the tax, assessment, or other charge under protest prior to its becoming delinquent; or
- (b) Obtained and maintained a stay of all proceedings for enforcement and collection of the tax, assessment, or other charge by posting a bond or other security required by law for such a stay.

**Section 4.07. Tax Returns and Statements.** Tenant shall, as between Landlord and Tenant, have the duty of attending to, preparing, making, and filing any statement, return, report, or other instrument required or permitted by law in connection with the determination, equalization, reduction, or payment of any taxes, assessments, or other charges that are or may be levied on or assessed against the Premises, the

Improvements located on the Premises, personal property located on or in the Premises or Improvements, and the leasehold estate created by this lease.

**Section 4.08. Tax Hold-Harmless Clause.** Tenant shall indemnify and hold Landlord and the property of Landlord, including the Premises and any Improvements now or hereafter located on the Premises, free and harmless from any liability, loss, damage, cost or expense (including reasonable attorneys' fees) resulting from any taxes, assessments, or other charges required by this Article to be paid by Tenant and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

**Section 4.09. Utilities.** Tenant shall directly pay or cause to be directly paid, and hold Landlord and the property of Landlord including the Premises free and harmless from, all charges for the furnishing of gas, water, electricity, telephone service, and other public utilities to or for the Premises during the term of this lease and any option periods, and for the removal of garbage and rubbish from the Premises during the term of this lease and any option periods.

**Section 4.10. Payment by Landlord.** Should Tenant fail to pay within the time specified in this Article any taxes, assessments, or other charges required by this Article to be paid by Tenant, Landlord may, without notice to or demand on Tenant, pay, discharge, or adjust that tax, assessment, or other charge for the benefit of Tenant. In that event, Tenant shall promptly on written demand of Landlord reimburse Landlord for the full amount paid by Landlord in paying, discharging, or adjusting that tax, assessment, or other charge together with interest thereon at the then-maximum legal rate from the date of payment by Landlord until the date of repayment by Tenant. If this Article does not specify the time within which Tenant must pay any charge required by this Article, Tenant shall pay that charge before it becomes delinquent. In the event of Tenant's failure to pay within the time specified in this Article any taxes, assessments, or other charges required by this Article to be paid by Tenant, Landlord may, at Landlord's election, upon the giving of written notice by Landlord to Tenant, arrange for any and all taxing or assessment authorities and/or utility companies to forward all invoices and/or statements to Landlord, and to pay, on behalf of Tenant, all such invoices or statements, and to invoice Tenant for all amounts so paid by Landlord together with a reasonable administrative fee to Landlord, and Tenant shall pay to Landlord any and all such amounts immediately upon Tenant's receipt of such invoices from Landlord. In the event of Landlord's demand pursuant to the immediately preceding sentence, Tenant shall execute any documents and/or take any actions reasonably required in order to effect such direct invoicing to Landlord.

## ARTICLE 5. CONSTRUCTION BY TENANT

**Section 5.01. Duty to Construct.** Tenant shall, at Tenant's sole cost and expense, construct or cause to be constructed on the Premises, a Tahoe Joe's Famous Steakhouse Restaurant in the manner and according to the terms and conditions specified in this Article.

**Section 5.02. Requirement of Landlord's Written Approval.** No structure or other improvement of any kind shall be constructed on the Premises unless and until the plans, elevations, specifications, and proposed location of that structure or improvement have been approved in writing by Landlord. Furthermore, no structure or other improvement shall be constructed on the Premises that does not comply with plans, elevations, specifications, and locations approved in writing by Landlord.

**Section 5.03. Preparation and Submission of Plans.** Tenant shall, at Tenant's own cost and expense, engage a licensed architect or engineer to prepare plans and specifications for the Restaurant and shall submit to Landlord for approval:

Materials in, on, under or about the Premises by Tenant, its employees, agents or representatives, during Tenant's occupancy of the Premises.

#### ARTICLE 14. MISCELLANEOUS

**Section 14.01. Force Majeure.** Except as otherwise expressly provided in this lease, if the performance of any act required by this lease to be performed by either Landlord or Tenant is prevented or delayed by reason of any act of God, strike, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused. However, nothing contained in this section shall excuse the prompt payment of rent by Tenant as required by this lease, or the performance of any act rendered difficult or impossible solely because of the financial condition of the party required to perform the act.

**Section 14.02. Attorneys' Fees.** Should any litigation be commenced between the parties to this lease concerning the Premises, this lease, or the rights and duties of either in relation thereto, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum as and for such party's attorneys' fees in such litigation as shall be determined by the court in such litigation or in a separate action brought for such purpose.

**Section 14.03. Notices to Landlord.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to Landlord by Tenant or any Lender described in Article 6 of this lease shall be in writing and shall be deemed duly served and given when personally delivered to Landlord, to any managing employee of Landlord, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed to **Landlord at 10000 Ming Avenue, Bakersfield, California, 93311**. Landlord may change Landlord's address for the purpose of this section by giving written notice of that change to Tenant in the manner provided in Section 14.04; Tenant shall then transmit a copy of that notice to any Lender described in Article 6 of this lease.

**Section 14.04. Notices to Tenant.** Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this lease or by law to be served on or given to Tenant by Landlord shall be in writing and shall be deemed duly served and given when personally delivered to Tenant, any managing employee of Tenant, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed to **Tenant at 2718 W. Shaw Avenue, Fresno, California, 93711**. Tenant may change its address for the purpose of this section by giving written notice of that change to Landlord in the manner provided in Section 14.03 of this lease.

**Section 14.05. Governing Law.** This lease, and all matters relating to this lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this lease or any decision or holding concerning this lease arises.

**Section 14.06. Binding on Heirs and Successors.** This lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this section shall be construed as a consent by Landlord to any assignment of this lease or any interest in the lease by Tenant except as provided in Article 10 of this lease.

**Section 14.07. Partial Invalidity.** If any provision of this lease is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this lease shall remain in full force and effect unimpaired by the holding.


**Section 14.08. Sole and Only Agreement.** This instrument constitutes the sole and only agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to Tenant, the construction of the Restaurant described in this lease on the Premises, and the lease terms set forth in this lease, and correctly sets forth the obligations of Landlord and Tenant to each other as of its date. Any agreements or representations respecting the Premises, their leasing to Tenant by Landlord, or any other matter discussed in this lease not expressly set forth in this instrument are null and void.


**Section 14.09. Time of Essence.** Time is expressly declared to be of the essence of this lease.

**Section 14.10. Confidentiality of Lease Terms.** Landlord and Tenant have agreed upon certain terms in this lease including, but not limited to, the rental obligation of Tenant as provided herein. Tenant understands and acknowledges that Landlord has agreed to the terms set forth in this lease based upon negotiations with Tenant and that the agreements of Landlord as provided herein are for the benefit of Tenant. Tenant further understands and agrees that (i) the terms of this lease may be different from the terms of other leases in the Center, (ii) the terms of this lease may be more favorable to Tenant than the terms of other leases in the Center, (iii) Landlord will be materially damaged if Tenant discloses the terms of this lease to other tenants in the Center or any other parties except as permitted in this Section, and (iv) if Tenant breaches the agreement as to confidentiality set forth herein, such breach shall be a material noncurable default under this lease and entitle Landlord to immediately pursue its remedies under this lease. Notwithstanding the foregoing, Landlord agrees that Tenant may provide a copy of this lease on a confidential basis only to any of Tenants partners, directors, shareholders, employees, accountants or attorneys or to a third party if Tenant is otherwise required by law to provide a copy to such party. A condition to the delivery by Tenant shall be that Tenant require any such party to agree in writing to not disclose the terms or provide a copy of this lease to any other party. Landlord may disclose the terms of this lease to third parties.


EXECUTED on this 11 day of December, at Bakersfield, California.

LANDLORD: CASTLE & COOKE  
COMMERCIAL-CA, INC., a California  
corporation

By:   
Name: LAURA Whitaker  
Title: VP

By:   
Name: ROBERT F. BOON  
Title: ASSISTANT SECRETARY

TENANT: TAHOE JOE'S FAMOUS  
STEAKHOUSE, a ~~CALIFORNIA~~ CORPORATION

By:   
Name: DAVID FAUSTER  
Title: PRESIDENT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT "A"**

### **DESCRIPTION OF PREMISES**

Parcel "E" of Parcel Map Waiver Number P98-0411 (to be recorded) consisting of approximately 1.1 acres of gross real property within the Marketplace Shopping Center at 9000 Ming Avenue, Bakersfield, California, 93311, as depicted on the attached map, for Tenant's construction of a Tahoe Joe's Famous Steakhouse restaurant which shall contain approximately 6500 square feet of gross floor area.



FIRST AMENDMENT TO GROUND LEASE

THIS FIRST AMENDMENT TO GROUND LEASE ("Amendment") dated this 17<sup>th</sup> day of MARCH, 2014 is made and entered into by and between DONAHUE SCHRIBER REALTY GROUP, L.P., a Delaware limited partnership ("Landlord") and TAHOE JOE'S, INC., a Minnesota corporation ("Tenant").

WITNESSETH

WHEREAS, CASTLE & COOKE COMMERCIAL-CA, INC., a California corporation ("Castle & Cooke"), as landlord, and TAHOE JOE'S FAMOUS STEAKHOUSE, a California corporation, as tenant ("Original Tenant"), entered into that certain ground lease dated December 11, 1998 (the "Lease") for premises more particularly described therein and located at 9000 Ming Avenue, Pad P ("Premises") within the retail shopping center known as The Marketplace, located in the City of Bakersfield, State of California ("Center");

WHEREAS, Landlord is successor in interest to Castle & Cooke with respect to the Lease and the Center;

WHEREAS, Tenant is successor in interest to the Original Tenant pursuant to that certain letter dated October 13, 2010;

WHEREAS, the parties acknowledge that the term of the Lease expired on December 31, 2013; and

WHEREAS, the initial term of the Lease was for one hundred eighty (180) months, with two (2) successive options to extend the term of the Lease for sixty (60) months each ("Options"). The parties hereby acknowledge that Tenant is exercising the first of such Options ("First Option") under the terms and conditions provided below; and that Tenant has one remaining Option to extend the Lease term following the expiration of the First Option.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the Lease is hereby amended as follows:

TERMS

1. Effective Date: The effective date of this Amendment shall be the date this Amendment is fully executed by Landlord and Tenant ("Effective Date").

2. Amendment to Lease: The Lease is hereby amended as follows:

A. Term: Notwithstanding anything to the contrary contained in the Lease, the term of the Lease is hereby extended for sixty (60) months commencing on January 1, 2014 and expiring on December 31, 2018 (the "Extended Term"), unless sooner terminated in accordance with the provisions of the Lease.

B. Minimum Rent: Notwithstanding anything to the contrary contained in the Lease, and in addition to and without limiting Tenant's other rental and monetary obligations under the Lease, commencing upon January 1, 2014 and continuing through December 31, 2018, the Minimum Rent shall be as follows:

<u>For the Period</u>	<u>Dollars Per Square Foot</u>		<u>Dollars Per Month</u>
	<u>Per Annum</u>	<u>Dollars Per Annum</u>	
01/01/14 – 12/31/16	\$36.00	\$249,840.00	\$20,820.00
01/01/16 – 12/31/18	\$39.24	\$272,325.60	\$22,693.80

Minimum Rent shall be paid by Tenant to Landlord in accordance with the terms and provisions for payment of Minimum Rent as set forth in the Lease.

C. Insurance Limit: Notwithstanding anything to the contrary contained in Article 8 of the Lease, Tenant shall be required to procure and keep in full force and effect commercial general liability insurance with coverage limits of no less than Two Million Dollars (\$2,000,000.00) in a combined single limit policy.

D. Notices to Landlord: Notwithstanding anything contained in Section 14.03 of the Lease to the contrary, Landlord's address for notices shall be: Donahue Schriber, 200 E. Baker Street, Suite 100 Costa Mesa, California 92626, Attention: Property Manager – The Marketplace, with a copy to: Donahue Schriber, 5082 N. Palm Avenue, Suite A, Fresno, California 93704, Attention: Property Manager – The Marketplace.

E. Other Terms: Except as modified by this Amendment, Tenant shall comply with all the covenants, terms and conditions set forth in the Lease during the Extended Term.

3. Entire Agreement: 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. If Tenant or Landlord is a corporation, partnership or limited liability company, each individual executing this Amendment on behalf of the corporation, partnership or limited liability company (in his/her representative capacity only) represents and warrants that he or she is duly authorized to execute and deliver this Amendment on behalf of the corporation, partnership or limited liability company and that this Amendment is binding upon the corporation, partnership or limited liability company. Furthermore, Tenant and its authorized officer(s) represent that the corporation or limited liability company (as the case may be) is in good standing with the Secretary of State where the Project is located.

4. Attorney's Fees: If any party(s) to this Amendment commences an action against another party(s) hereto arising out of or in connection with this Amendment, the prevailing party(s) shall be entitled to recover from the losing party(s) reasonable attorneys' fees and costs of suit as part of its judgment.

5. Administrative Fees: ~~Concurrently with the delivery of this Amendment, Tenant shall submit the total amount of Two Hundred Fifty and 00/100 Dollars (\$250.00) in a cashier's check, made payable to Landlord, which amount represents the Landlord's fee for administration and processing of this Amendment.~~

6. Ratification: Except as hereby amended, the Lease shall remain unmodified and, as hereby amended, is ratified and confirmed.

7. Successors: The provisions of this Amendment shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

8. Confidentiality: Tenant hereby represents and warrants that it and its representatives, servants, agents and employees ("Agents") shall make a good faith effort to keep the terms and provisions of this Amendment strictly confidential throughout the Term, except to the extent necessary: (a) to carry out the purpose of the Lease; (b) in connection with any administrative or judicial proceeding in which Tenant is involved and required to divulge such information; (c) to disclose information to Tenant's attorneys, accountants, and advisors; (d) in connection with any SEC or other similar filings by Tenant; or (e) if required in good faith for financing or accounting reasons. If Tenant or any of its Agents violate this provision, Tenant shall indemnify Landlord for all of Landlord's costs, expenses, liabilities, and damages related thereto including without limitation, the reasonable costs of legal counsel, investigation costs and court costs.

9. Definition: Except as provided otherwise in this Amendment, the terms used in this Amendment which are defined in the Lease shall have the same meaning as set forth in the Lease.

10. Conflict: In the event of any conflict between the original terms of the Lease and this Amendment, this Amendment shall prevail.

11. Counterparts: This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

12. Brokers: Tenant and Landlord each warrant that it has had no dealing with any broker or agent in connection with this Amendment. Tenant and Landlord hereby indemnify, defend and hold the other harmless from and against any and all costs, expenses or liability for commissions or other compensation or charges claimed by any broker or agent based on dealings with the indemnifying party with respect to this Amendment.

13. Notification: This provision is intended to comply with the terms of California Civil Code Section 1938 which provides that a commercial property owner or lessor shall state on every lease form or rental agreement executed on or after July 1, 2013, whether the premises being leased or rented has undergone inspection by a Certified Access Specialist ("CASp"), and, if so, whether the premises has or has not been determined to meet all applicable construction-related accessibility standards pursuant to California Civil Code Section 55.53. Pursuant to California Civil Code Section 1938, Landlord hereby advises Tenant that the Premises has not undergone an inspection by a CASp.

(Signatures on next page)

IN WITNESS WHEREOF, this Amendment is entered into by the parties as of the day and year first above written.

"LANDLORD"

DONAHUE SCHRIBER REALTY GROUP, L.P.,  
a Delaware limited partnership

By: DONAHUE SCHRIBER REALTY GROUP,  
INC., a Maryland corporation, as General Partner

By: Mark L. Whitfield

Name: Mark L. Whitfield

Title: Executive Vice President

"TENANT"

TAHOE JOE'S, INC., a Minnesota corporation

By: Jason S. Smith

Name: Jason S. Smith

Title: VP Finance, Controller + Asst. Sec.

By: Keith Kravcik

Name: Keith Kravcik

Title: EVP, CFO + Asst. Sec.

SECOND AMENDMENT TO GROUND LEASE

THIS SECOND AMENDMENT TO GROUND LEASE ("Amendment") dated SEPT 13 2017 is made and entered into by and between DONAHUE SCHRIBER REALTY GROUP, L.P., a Delaware limited partnership ("Landlord") and TAHOE JOE'S, INC., a Minnesota corporation, dba Tahoe Joe's Famous Steakhouse ("Tenant").

WITNESSETH

WHEREAS, CASTLE & COOKE COMMERCIAL-CA, INC., a California corporation ("Castle & Cooke"), as landlord, and TAHOE JOE'S FAMOUS STEAKHOUSE, a California corporation ("Original Tenant"), as tenant, entered into that certain ground lease dated December 11, 1998, as amended by that certain First Amendment to Ground Lease dated March 4, 2014 ("First Amendment"), and that certain Letter Agreement dated January 29, 2016 (collectively, the "Lease") for premises more particularly described therein and located at 9000 Ming Avenue, Pad P ("Premises") within the retail shopping center known as The Marketplace, located in the City of Bakersfield, State of California ("Center");

WHEREAS, Landlord is successor in interest to Castle & Cooke with respect to the Lease and the Center;

WHEREAS, Tenant is successor in interest to the Original Tenant pursuant to that certain letter dated October 13, 2010;

WHEREAS, the initial Lease term was for one hundred eighty (180) months, with two (2) options to extend the Lease term for sixty (60) months each ("First Option" and "Second Option" respectively). Tenant exercised its First Option pursuant to the First Amendment; and

WHEREAS, Tenant now desires to, and Landlord agrees to, among other things, (i) provide for one (1) additional option period of sixty (60) months following the expiration of the Second Option, if exercised ("Third Option"), and (ii) further amend, modify, and supplement the Lease as set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the Lease is hereby amended as follows:

TERMS

1. Effective Date: The effective date of this Amendment shall be the date this Amendment is fully executed by Landlord and Tenant ("Effective Date").

2. Amendment to Lease: The Lease is hereby amended as follows:

A. Third Option: Notwithstanding anything contained in the Lease to the contrary, and provided that Tenant is not in default, beyond the applicable notice and cure period expressly set forth in the Lease, of any monetary or material non-monetary provision of the Lease at the time of exercise of the option to extend provided herein or at any time thereafter prior to the commencement of the "Third Option" (as hereinafter defined), Tenant shall have the option to extend the term following the expiration of the Second Option (if exercised) for one (1) additional period of sixty (60) months (such period being referred to herein as the "Third Option") only by giving Landlord written notice by October 1, 2023. All of the terms, covenants, conditions, provisions and agreements applicable to the term immediately prior to the commencement of the Third Option shall be applicable to the Third Option, except that the Minimum Rent payable during the Third Option shall be as set forth hereinbelow, and except that there shall be no remaining option to extend the term as Tenant would have exercised its single option. ~~The option to extend the term pursuant hereto by the Third Option shall be personal to Tenant as defined herein and shall not be exercisable by or for the benefit of any assignee or subtenant of Tenant other than an assignee in connection with a transfer pursuant to Section 10.03 of the Lease.~~ All references in the Lease to the "term" shall be deemed to mean the term as extended by the Third Option, if exercised.

B. Minimum Rent Payable During Third Option: If exercised, the Minimum Rent payable during the Third Option shall be determined as follows.

(a) Effective on the first day of the Third Option, Minimum Rent shall be increased (but not decreased) to an amount equal to the greater of (i) the fair market rent of the Premises as of the commencement of the Third Option, as determined by Landlord, the amount of which Landlord shall notify Tenant of prior to the commencement of the Third Option, or (ii) rent equal to the Minimum Rent in effect immediately prior to the commencement of such Third Option, as increased by twelve and one-half percent (12.5%). In no event shall the Minimum Rent as determined pursuant to this subparagraph (a) be less than that in effect on the last day of the immediately preceding term.

(b) If Tenant objects to Landlord's determination of the fair market rent of the Premises for the Third Option, Tenant shall notify Landlord in writing, within fifteen (15) days after receipt of



Landlord's notice of the fair market rent determination, that Tenant disagrees with Landlord's determination of fair market rent. In the event that Landlord and Tenant are unable to agree upon the fair market rent of the Premises, then the fair market rent shall be determined by appraisal in the manner provided below. Until the appraisal procedures are finalized, Tenant shall continue to pay to Landlord the amount of Minimum Rent due immediately preceding the expiration of the Lease term. After the determination of the appraisers is final, Tenant shall promptly make payment to Landlord for any underpayment of Minimum Rent owing for prior months.

(c) The fair market rent of the Premises shall be determined as follows: The Premises shall be appraised by an MAI appraiser chosen by Landlord ("First Appraisal") and the appraisal report forwarded to Tenant. If the First Appraisal is deemed unacceptable by Tenant, then Tenant shall so advise Landlord in writing within ten (10) working days after receipt of the First Appraisal and Tenant shall have the right to engage an MAI appraiser to appraise the Premises ("Second Appraisal") and the appraisal report forwarded to Landlord. In the event Landlord shall deem the Second Appraisal to be unacceptable, then Landlord shall advise Tenant within ten (10) working days after receipt of the Second Appraisal, and the first appraiser and second appraiser shall together choose a third MAI appraiser who shall appraise the Premises ("Third Appraisal") and forward the appraisal report to Landlord and Tenant. The cost of the First Appraisal shall be borne by Landlord, and the cost of the Second Appraisal shall be borne by Tenant. The cost of the Third Appraisal shall be shared equally between Landlord and Tenant. The fair market rent for the Premises shall be the average of the two (2) closest appraisals. Each of the appraisers shall appraise the Premises for its highest and best retail use.

C. Other Terms: Except as modified by this Amendment, Tenant shall comply with all the covenants, terms and conditions set forth in the Lease during the term.

3. Entire Agreement: 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. If Tenant or Landlord is a corporation, partnership or limited liability company, each individual executing this Amendment on behalf of the corporation, partnership or limited liability company (in his/her representative capacity only) represents and warrants that he or she is duly authorized to execute and deliver this Amendment on behalf of the corporation, partnership or limited liability company and that this Amendment is binding upon the corporation, partnership or limited liability company. Furthermore, Tenant and its authorized officer(s) represent that the corporation or limited liability company (as the case may be) is in good standing with the Secretary of State where the Center is located.

4. Attorney's Fees: If any party(s) to this Amendment commences an action against another party(s) hereto arising out of or in connection with this Amendment, the prevailing party(s) shall be entitled to recover from the losing party(s) reasonable attorneys' fees and costs of suit as part of its judgment.

5. Ratification: Except as hereby amended, the Lease shall remain unmodified and, as hereby amended, is ratified and confirmed.

6. Successors: The provisions of this Amendment shall bind and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

7. Definition: Except as provided otherwise in this Amendment, the terms used in this Amendment which are defined in the Lease shall have the same meaning as set forth in the Lease.

8. Conflict: In the event of any conflict between the original terms of the Lease and this Amendment, this Amendment shall prevail.

9. Counterparts: This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

10. Brokers: Tenant and Landlord each warrant that it has had no dealing with any broker or agent in connection with this Amendment. Tenant and Landlord hereby indemnify, defend and hold the other harmless from and against any and all costs, expenses or liability for commissions or other compensation or charges claimed by any broker or agent based on dealings with the indemnifying party with respect to this Amendment.

(the remainder of this page left intentionally blank/signatures on next page)

IN WITNESS WHEREOF, this Amendment is entered into by the parties as of the day and year first above written.

"LANDLORD"

DONAHUE SCHRIBER REALTY GROUP, L.P.,  
a Delaware limited partnership

By: DONAHUE SCHRIBER REALTY GROUP,  
INC., a Maryland corporation, as General Partner

By: *Mark L. Whitfield*

Name: Mark L. Whitfield  
Executive Vice President

Title: \_\_\_\_\_

"TENANT"

TAHOE JOE'S, INC., a Minnesota corporation

By: *Peter Donbavand*

Name: Peter Donbavand

Title: Vice President  
Real Estate & Business Development

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IF TENANT IS A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP OR OTHER ENTITY, OR IS COMPRISED OF ANY OF THEM, EACH INDIVIDUAL EXECUTING THIS AMENDMENT FOR SUCH ENTITY REPRESENTS THAT HE OR SHE IS DULY AUTHORIZED TO EXECUTE AND DELIVER THIS AMENDMENT ON BEHALF OF SUCH ENTITY AND THAT THIS AMENDMENT IS BINDING UPON SUCH ENTITY IN ACCORDANCE WITH ITS TERMS.

## **NOTICE OF MINIMUM RENT FOR SECOND OPTION PERIOD OF GROUND LEASE**

**TO: TAHOE JOE'S, INC., a Minnesota corporation, dba TAHOE JOE'S FAMOUS STEAKHOUSE, together with all other tenants, subtenants or occupants in possession of the premises (collectively, "Tenant") located at 9000 Ming Avenue, Pad P ("Premises") within the retail shopping center known as The Marketplace, located in the City of Bakersfield, State of California ("Premises"):**

You are Tenant under that certain ground lease agreement entered into between CASTLE & COOKE COMMERCIAL-CA, INC., a California corporation ("Original Landlord"), as landlord, and TAHOE JOE'S FAMOUS STEAKHOUSE, a California corporation ("Original Tenant"), as tenant, dated December 11, 1998, as modified by that certain First Amendment to Ground Lease dated March 4, 2014 ("First Amendment"), that certain Letter Agreement dated January 29, 2016, that certain Second Amendment to Ground Lease dated September 13, 2017 ("Second Amendment"), and that certain Exercise of Option Letter Agreement dated April 4, 2018 ("Option Letter") (collectively, the "Lease") with DONAHUE SCHRIBER REALTY GROUP, L.P., a Delaware limited partnership ("Landlord").

WHEREAS, the initial Lease term was for one hundred eighty (180) months, with two (2) options to extend the Lease term for sixty (60) months each (each an "Option Term").

WHEREAS, Tenant exercised the option for the first Option Term, and on or about April 4, 2018 in the Option Letter exercised the option for the second Option Term ("Second Option Term"); and

WHEREAS, pursuant to Section 2.01(g), the Minimum Rent for the first year of the Second Option was to be equal to the rent paid by Tenant for the immediately preceding year, and for the next three years equal to the fair rental value of the Premises or \$137,102.92, and the for the final year equal to the fair rental value or \$149,442.18, whichever is greater; and

WHEREAS, pursuant to Section 2.01(h), "In the event Landlord and Tenant are at any time unable to agree on the fair rental value of the Premises as contemplated in Sections 2.01(f) and(g) above, such fair rental value shall be determined by an impartial California certified appraiser selected by Landlord and Tenant. ..."

WHEREAS, on June 15, 2018, Landlord proposed to Tenant three impartial certified appraisers to determine the fair rental value of the Premises, and on July 11, 2018, Tenant approved and the Parties selected Kyle Estle to serve as the impartial certified appraiser to determine the fair rental value of the Premises, who was retained to perform and provide such appraisal.

WHEREAS, the appraisal report prepared by Kyle Estle, MAI, of Estle Appraisal and Consulting ("Appraisal") setting forth the determination of the fair rental value of the Premises by the impartial California certified appraiser selected by Landlord and Tenant was sent to Tenant and Landlord on September 27, 2018 via email.

WHEREAS, Tenant expressed reservations concerning the determination of the fair rental value by impartial California certified appraiser selected by Landlord and Tenant on October 4 and October 25, 2018, but the impartial California certified appraiser selected by Landlord and Tenant notified Tenant and Landlord on October 29, 2018 that he would not change his determination of the fair rental value of the Premises.

WHEREAS, more than 100 days have expired since the determination of the fair rental value of the Premises by the impartial California certified appraiser selected by Landlord and Tenant was issued and the Landlord and Tenant were notified that the determination would not be changed (cf. Cal. Code Civ. Proc. §1288) and the determination by the impartial California certified appraiser selected by Landlord and Tenant has become final and binding (cf. *Lambert v. Carneghi* (2008) 158 Cal.App.4th 1120, 1131; *Helzel v. Superior Court* (1981) 123 Cal.App.3d 652, 659; *San Luis Obispo Bay Properties, Inc. v. Pacific Gas & Electric Co.* (1972) 28 Cal.App.3d 556, 562; *Saeta v. Superior Court* (2004) 117 Cal.App.4th 261, 268; see also *Wasyf, Inc. v. First Boston Corp.* (9th Cir.1987) 813 F.2d 1579, 1582).

PLEASE TAKE NOTICE THAT, as a result of the foregoing "Minimum Rent" under the Lease for the period beginning January 1, 2020 and ending on December 31, 2022, shall be \$277,600 per year.

Dated: April 26, 2019

Stuart Kane LLP

By: 

Donald J. Hamman,  
Attorney for Landlord

**Contact:**

**Donald J. Hamman**  
**STUART KANE LLP**  
620 Newport Center Drive, Suite 200  
Newport Beach, California 92660  
Direct Office Phone Number: (949) 791-5130  
Email: dhamman@stuartkane.com



## PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the within action. My business address is 620 Newport Center Drive, Suite 200, Newport Beach, California 92660. On April 26, 2019, I served the foregoing document described as follows:

### NOTICE OF MINIMUM RENT FOR THIRD OPTION PERIOD OF GROUND LEASE

- By United States Mail and by Certified Mail/Return Receipt Requested:** I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Newport Beach, California, in the ordinary course of business. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices above I placed the package for collection and mailing the date and at the place of business set forth below.

Tahoe Joe's Inc., a Minnesota corporation  
dba Tahoe Joe's Famous Steakhouse  
9000 Ming Avenue, Pad P  
Bakersfield, CA 93311

Tahoe Joe's Inc., a Minnesota corporation  
dba Tahoe Joe's Famous Steakhouse  
2718 W. Shaw Avenue  
Fresno, CA 93711

- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 26, 2019, at Newport Beach, California.

  
\_\_\_\_\_  
Nicole Buttis

## PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the within action. My business address is 620 Newport Center Drive, Suite 200, Newport Beach, California 92660. On **April 29, 2019**, I served the foregoing document described as follows:

### NOTICE OF MINIMUM RENT FOR THIRD OPTION PERIOD OF GROUND LEASE

- By United States Mail and by Certified Mail/Return Receipt Requested:** I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Newport Beach, California, in the ordinary course of business. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices above I placed the package for collection and mailing the date and at the place of business set forth below.

Ovation Brands  
Attn: Real Estate – Str #0823  
120 Chula Vista  
San Antonio, TX 78232

- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 29, 2019, at Newport Beach, California.

  
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Nicole Buttis

Invoice Date	Category	Source	Amount	Current	30	60	90	120
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100255-010966	<b>TAHOE JOE'S #823</b> SANDRA L. MORRISSEY (210) 403-3725 ext. 279	Master Occupant Id: HO002240-3 PADP Current SQ FT 6,940	Day Due: 1	Delq Day:	Last Payment: 3/31/2021	14,832.24	Current Security Deposit: 0.00
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7/19/2021	MCOLLI	RES \$364,829.58. BALANCE FROM 4/20 - 7/21 CHARGES. TT FILED BK. LEASING WORKING DEAL W/ TT FOR APPRAISAL AMOUNTS.							
3/1/2020	PYC	Recovery Reconciliation 12/1/	NC	-8.67	0.00	0.00	0.00	0.00	-8.67
4/1/2020	BR	AUTOCHRG @T4/30/2020	CH	23,133.33	0.00	0.00	0.00	0.00	23,133.33
4/1/2020	CM	AUTOCHRG @T4/30/2020	CH	3,407.00	0.00	0.00	0.00	0.00	3,407.00
5/1/2020	BR	AUTOCHRG @T5/31/2020	CH	23,133.33	0.00	0.00	0.00	0.00	23,133.33
5/1/2020	CM	AUTOCHRG @T5/31/2020	CH	3,407.00	0.00	0.00	0.00	0.00	3,407.00
6/1/2020	BR	AUTOCHRG @T6/30/2020	CH	23,133.33	0.00	0.00	0.00	0.00	23,133.33
6/1/2020	CM	AUTOCHRG @T6/30/2020	CH	3,407.00	0.00	0.00	0.00	0.00	3,407.00
7/1/2020	BR	AUTOCHRG @T7/31/2020	CH	23,133.33	0.00	0.00	0.00	0.00	23,133.33
7/1/2020	CM	AUTOCHRG @T7/31/2020	CH	3,407.00	0.00	0.00	0.00	0.00	3,407.00
8/1/2020	BR	AUTOCHRG @T8/31/2020	CH	23,133.33	0.00	0.00	0.00	0.00	23,133.33
8/1/2020	CM	AUTOCHRG @T8/31/2020	CH	3,407.00	0.00	0.00	0.00	0.00	3,407.00
9/1/2020	BR	AUTOCHRG @T9/30/2020	CH	23,133.33	0.00	0.00	0.00	0.00	23,133.33
9/1/2020	CM	AUTOCHRG @T9/30/2020	CH	3,407.00	0.00	0.00	0.00	0.00	3,407.00
10/1/2020	BR	AUTOCHRG @T10/31/2020	CH	23,133.33	0.00	0.00	0.00	0.00	23,133.33
10/1/2020	CM	AUTOCHRG @T10/31/2020	CH	3,407.00	0.00	0.00	0.00	0.00	3,407.00
11/1/2020	BR	AUTOCHRG @T11/30/2020	CH	23,133.33	0.00	0.00	0.00	0.00	23,133.33
11/1/2020	CM	AUTOCHRG @T11/30/2020	CH	3,407.00	0.00	0.00	0.00	0.00	3,407.00
12/1/2020	BR	AUTOCHRG @T12/31/2020	CH	23,133.33	0.00	0.00	0.00	0.00	23,133.33
12/1/2020	CM	AUTOCHRG @T12/31/2020	CH	3,407.00	0.00	0.00	0.00	0.00	3,407.00
1/1/2021	BR	AUTOCHRG @T1/31/2021 @	CH	538.00	0.00	0.00	0.00	0.00	538.00
2/1/2021	BR	AUTOCHRG @T2/28/2021	CH	538.00	0.00	0.00	0.00	0.00	538.00
3/1/2021	BR	AUTOCHRG @T3/31/2021	CH	12,246.09	0.00	0.00	0.00	0.00	12,246.09
3/1/2021	PYC	Recovery Reconciliation 12/2/	NC	-7,889.37	0.00	0.00	0.00	0.00	-7,889.37
4/1/2021	BR	AUTOCHRG @T4/30/2021	CH	23,827.33	0.00	0.00	0.00	0.00	23,827.33
4/1/2021	CM	AUTOCHRG @T4/30/2021	CH	3,251.00	0.00	0.00	0.00	0.00	3,251.00
4/1/2021	PT	JAN-JUN 2021	CH	12,229.24	0.00	0.00	0.00	0.00	12,229.24
5/1/2021	BR	AUTOCHRG @T5/31/2021	CH	23,827.33	0.00	0.00	0.00	23,827.33	0.00
5/1/2021	CM	AUTOCHRG @T5/31/2021	CH	3,251.00	0.00	0.00	0.00	3,251.00	0.00
6/1/2021	BR	AUTOCHRG @T6/30/2021	CH	23,827.33	0.00	0.00	23,827.33	0.00	0.00
6/1/2021	CM	AUTOCHRG @T6/30/2021	CH	3,251.00	0.00	0.00	3,251.00	0.00	0.00
7/1/2021	BR	AUTOCHRG @T7/31/2021	CH	23,827.33	0.00	23,827.33	0.00	0.00	0.00
7/1/2021	CM	AUTOCHRG @T7/31/2021	CH	3,251.00	0.00	3,251.00	0.00	0.00	0.00
8/1/2021	BR	AUTOCHRG @T8/31/2021	CH	23,827.33	23,827.33	0.00	0.00	0.00	0.00
8/1/2021	CM	AUTOCHRG @T8/31/2021	CH	3,251.00	3,251.00	0.00	0.00	0.00	0.00
<b>TAHOE JOE'S #823 Total:</b>				391,907.91	27,078.33	27,078.33	27,078.33	27,078.33	283,594.59

100255-HO8203	<b>TAHOE JOE'S #823</b> LISSETTE M VILLAMIL (210) 403-3725 ext. 279	Master Occupant Id: HO002240-2 PADP Inactive SQ FT 6,940	Day Due: 1	Delq Day:	Last Payment: 3/11/2021	12,229.24	Current Security Deposit: 0.00
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7/19/2021	MCOLLI	RES \$11,111.52. BALANCE IS 2019 YE CREDIT AND 2ND INSTALL TAXES. TT FILED BK. LEASING WORKING DEAL W/ TT FOR APPRAISAL AMOUNTS.							
8/1/2019	PYC	REBILL 2018 CAM	NC	-1,086.70	0.00	0.00	0.00	0.00	-1,086.70
4/1/2020	PT	2ND INSTL 2019-2020 PROF	CH	12,198.22	0.00	0.00	0.00	0.00	12,198.22
<b>TAHOE JOE'S #823 Total:</b>				11,111.52	0.00	0.00	0.00	0.00	11,111.52
<b>BLDG 100255 Total:</b>				403,019.43	27,078.33	27,078.33	27,078.33	27,078.33	294,706.11
<b>Grand Total:</b>				403,019.43	27,078.33	27,078.33	27,078.33	27,078.33	294,706.11

**Attachment to Proof of Claim**

**In Re: Tahoe Joe's Inc.**

**Case No. 21-30725 (SGJ)**

<u>Item</u>	<u>Amount</u>
Prepetition Rent Due	\$283,594.59
Prepetition Rent Due - 4% Late Charge (Lease at 2.05)	\$11,343.78
Postpetition Rent Due	\$108,313.32
Legal Fees (22.8 atty hours)	\$8,370.00
<b>TOTAL CLAIM</b>	<b>\$411,621.69</b>

**Rejection Damages**

<u>Item</u>	<u>Amount</u>
Monthly Rent	TBD
Monthly CAM	TBD
Monthly Property Taxes - Secured	TBD
Monthly Property Taxes - Unsecured	TBD
Total Monthly Rent	TBD
Total Rent Due Through Term	TBD
15% of Total Rent Due Through Term	TBD
or	
One Year of Rent	TBD
<b>Greater of the Two</b>	<b>TBD</b>

