

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

Debtor 1 Fresh Acquisitions, LLC

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

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

Case number 21-30721-11

E-Filed on 08/30/2021  
Claim # 382

**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?** ARC CAFEUSA001, 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? \_\_\_\_\_

<p>3. <b>Where should notices and payments to the creditor be sent?</b></p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p>	<p><b>Where should notices to the creditor be sent?</b></p>	<p><b>Where should payments to the creditor be sent? (if different)</b></p>
	<p><u>c/o Kutak Rock LLP</u> Name</p> <p><u>Attn: Lisa M. Peters, Esq. 1650 Farnam</u> Number Street</p> <p><u>Omaha</u> <u>NE</u> <u>68102</u> City State ZIP Code</p> <p>Contact phone <u>(402) 346-6000</u></p> <p>Contact email <u>lisa.peters@kutakrock.com</u></p> <p>Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____</p>	<p><u>c/o VEREIT, Inc.</u> Name</p> <p><u>Attn: Melissa Breeden, Esq. 2325 East Camelback Road, 9th Floor</u> Number Street</p> <p><u>Phoenix</u> <u>NE</u> <u>85016</u> City State ZIP Code</p> <p>Contact phone <u>(602) 778-6000</u></p> <p>Contact email <u>MBreeden@vereit.com</u></p>

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: \_\_\_\_\_

7. How much is the claim? \$ 1,079,868.92. 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 unexpired non-residential real property lease and abandonment of personal property (see Exhibit A)

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. \$ 567,419.24

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 08/30/2021  
MM / DD / YYYY

Lisa M. Peters

Signature

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

Name Lisa M. Peters  
First name Middle name Last name

Title Counsel to Claimant

Company Kutak Rock LLP  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 1650 Farnam Street  
Number Street

Omaha NE 68102  
City State ZIP Code

Contact phone (402) 346-6000 Email lisa.peters@kutakrock.com

Attachment 1 - VER - Fresh Acquisitions Proof of Claim Exhibit.pdf

Description -

## **EXHIBIT A**

The Claim set forth herein is for lease amounts under that certain Lease Agreement dated as of December 28, 2007 between GE Capital Franchise Finance Corporation (“GECFFC”), as predecessor-in-interest to ARC CAFEUSA001, LLC (“Landlord” or “Claimant”), as lessor, and Buffet Partners, L.P. (“Buffet Partners”), as predecessor-in-interest by assignment to Fresh Acquisitions, LLC (“Debtor”), as lessee, as amended pursuant to (a) that certain First Amendment to Lease Agreement and Rent Addendum dated as of July 2, 2014 and effective as of April 1, 2014 between Landlord, as landlord, and Buffet Partners, as tenant, and (b) Second Amendment to Lease Agreement and Rent Addendum dated as of October 22, 2014 between Landlord, as landlord, and Debtor, as tenant (as assigned and amended and collectively with all other amendments, addenda, attachments and exhibits thereto, the “Lease”). GECFFC assigned to Landlord all of GECFFC’s right, title, and interest in and to, *inter alia*, the Lease pursuant to that certain Assignment and Assumption of Lease Documents dated as of June 27, 2013 by and between GECFFC, as assignor, and Landlord, as assignee. Buffet Partners assigned to Debtor all of Buffet Partners’ right, title, and interest in and to the Lease pursuant to that certain Assignment of Lease Agreement effective June 20, 2014 by and between Buffet Partners, as assignor, and Debtor, as assignee.

The Lease relates to the real property and improvements located at 15640 Eastgate Drive, Garland, Texas 75041 (the “Property”), as is more particularly described therein. A true and correct copy of the Lease is attached hereto as **Exhibit B** and is incorporated herein by this reference. Upon information and belief, Debtor identifies the premises formerly occupied by the Debtor at the Property as Store No. 2438.

The Lease was rejected effective as of April 30, 2021, pursuant to that certain *Debtors’ Second Motion for Entry of an Order (I) Authorizing Rejection of Certain Leases, (II) Authorizing the Abandonment of Certain Property and (III) Granting Related Relief* filed on April 30, 2021 at Docket No. 97, as approved by that certain *Order (I) Authorizing the Rejection of Certain Leases, (II) Authorizing the Abandonment of Certain Property and (III) Granting Related Relief* entered on May 27, 2021 at Docket No. 202.

The Claim set forth herein is calculated pursuant to, and limited by, 11 U.S.C. § 502(b)(6).

### **Claim Amount Calculation**

I. 502(b)(6)(B) Calculation

A.	Outstanding Base Rent for the Period Ending April 19, 2021	\$ 441,766.88
B.	Outstanding Late Fees for the Period Ending April 19, 2021	\$ 22,088.35
C.	Outstanding Property Taxes for the Period Ending April 19, 2021	\$ 103,564.01 <sup>1</sup>
D.	Estimated Costs to Remove and Dispose of Abandoned Personal Property	<u>\$ 3,000.00</u>
	Total 502(b)(6)(B) Claim	\$ 570,419.24

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<sup>1</sup>  $(\$43,970.50 + \$4,836.76) + (\$22,394.40 + \$2,463.99) + (\$26,936.00 + \$2,962.96) = \$103,564.01$ . This is the total 2020 Garland Independent School District, 2020 Dallas County, and 2020 City of Garland property taxes, including the respective penalties thereon, all of which were delinquent on the April 20, 2021 petition date.

II. 502(b)(6)(A) Calculation

A. Remaining Rent (*See* 11 U.S.C. § 502(b)(6)(A))

Total Base Rent Remaining for April 20, 2021 – December 31, 2027 \$ 2,855,277.12<sup>2</sup>

Total Property Taxes Remaining for April 20, 2021 – December 31, 2027 \$ 625,243.84<sup>3</sup>

Total Remaining Rent \$ 3,480,520.96

B. One Year Rent (*See* 11 U.S.C. § 502(b)(6)(A)) \$ 506,575.52<sup>4</sup>

C. Three Years Rent (*See* 11 U.S.C. § 502(b)(6)(A)) \$ 1,535,288.93<sup>5</sup>

D. 15% of Remaining Rent (*See* 11 U.S.C. § 502(b)(6)(A)) \$ 509,449.68<sup>6</sup>

III. Section 502(b)(6) Claim

A. Total 502(b)(6)(B) Claim \$ 570,419.24

B. Total 502(b)(6)(A) Claim \$ 509,449.68

Total Section 502(b)(6) Claim \$ 1,079,868.92

**Reservation of Rights**

Claimant reserves the right to amend this Proof of Claim at any time and in any manner, including without limitation, to update the actual costs to remove abandoned personal property from the Property, once the same become known.

In the event the Debtor or anyone on the Debtor's behalf asserts a claim against Claimant in these proceedings, this claim may be secured by a right of setoff pursuant to sections 506(a) and 553 of the Bankruptcy Code.

Claimant further reserves (a) the right to assert and seek payment of an administrative expense claim under 11 U.S.C. § 503(b)(1) with priority under 11 U.S.C. § 507(a)(2); and (b) all rights, remedies and claims with respect to the personal property abandoned at the Property, including without limitation, any claims, liens, or encumbrances thereon claimed or asserted by non-Debtor third parties and disputes with respect to the storage or removal of such encumbered personal property at or from the Property, and nothing herein shall prejudice or be deemed to waive such rights, remedies, or claims.

<sup>2</sup> \$413,274.62 + \$418,440.55 + \$423,671.06 + \$428,966.95 + \$434,329.04 + \$439,758.15 + (\$445,255.13 x (8 / 12)) = \$2,855,277.12. This is the remaining base rent for the period April 20, 2021 through December 31, 2027.

<sup>3</sup> ((\$43,970.50 + \$22,394.40 + \$26,936.00) x 6) + ((\$43,970.50 + \$22,394.40 + \$26,936.00) x (256 / 365)) = \$625,243.84. This is the remaining property taxes for the period April 20, 2021 through December 31, 2027, based on the 2020 school district, county, and city property taxes with respect to the Property. True and correct copies of the 2020 property tax documentation is attached hereto as *Exhibit C* and is incorporated herein by this reference.

<sup>4</sup> \$413,274.62 + (\$43,970.50 + \$22,394.40 + \$26,936.00) = \$506,575.52. This is one year of base rent and property taxes (based on the 2020 school district, county, and city property taxes with respect to the Property).

<sup>5</sup> (\$413,274.62 + \$418,440.55 + \$423,671.06) + ((\$43,970.50 + \$22,394.40 + \$26,936.00) x 3) = \$1,535,288.93. This is three years of base rent and property taxes (based on the 2020 school district, county, and city property taxes with respect to the Property).

<sup>6</sup> (\$413,274.62 + (\$418,440.55 x (2.05 / 365))) + ((\$43,970.50 + \$22,394.40 + \$26,936.00) x (367.05 / 365)) = \$509,449.68. This is 15% of remaining base rent and property taxes (based on the 2020 school district, county, and city property taxes with respect to the Property), based on 15% of the remaining term of the Lease. The remaining term of April 20, 2021 through December 31, 2027 is 2,447.00 days and 15% thereof is 367.05 days.

**EXHIBIT B**

**LEASE**

[SEE ATTACHED]

Furr's Fresh Buffet, Asset # 007120/Garland, Dallas County, Texas

## LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into as of December 28, 2007 ("Effective Date"), by and between:

- (i) **GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation, with principal office and place of business at CNL Center at City Commons, 450 S. Orange Ave., Florida 32801 ("Landlord"), and
- (ii) **BUFFET PARTNERS, L.P.**, a Texas limited partnership, with a mailing address of Suite 200, 2701 East Plano Parkway, Plano, Texas 75074-3716 ("Tenant").

### WITNESSETH:

Landlord leases to Tenant, for the purpose of developing, constructing and operating a Furr's Fresh Buffet Restaurant and such other uses as may be permitted by this Lease, and subject to the terms and conditions of the Rent Addendum and Construction Addendum attached hereto, and Tenant rents from Landlord the following described premises, (hereinafter "Premises") located at or about Eastgate Drive and Marketplace Drive, Garland, Dallas County, Texas and being more particularly described in Exhibit "A" attached hereto and made a part hereof, together with all rights and privileges appurtenant thereto as may be necessary or convenient to Tenant's business, inclusive of all easements benefiting the Premises. Premises shall include all improvements and structures whether now existing or hereafter constructed thereon, but shall not include Tenant's Property.

The following additional stipulations are hereby declared to be covenants of this Lease and shall, unless otherwise expressly stated, be applicable at all times throughout the term of this Lease and any extension or renewal thereof:

#### 1. DEFINITIONS

For purposes of this Lease, the following terms shall have the definitions ascribed to them:

"ADA" shall mean the Americans with Disabilities Act (42 U.S.C. § 12101 et. seq.) and the regulations and Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, as the same may be amended from time to time.

"Annual Rent Commencement Date" shall be the first (1<sup>st</sup>) day of the month immediately following the first to occur of the following: (i) two hundred twenty-five (225) days after the Effective Date, or (ii) the date the certificate of occupancy for the Premises is issued.

"Default" shall have the meaning assigned to such term in Paragraph 14(a) of this Lease.



"Early Lease Termination Date" shall have the meaning assigned to such term in Paragraph 20 of this Lease.

"Effective Date" shall mean the date set forth at the beginning of this Lease.

"Escrow Funds" shall have the meaning assigned to such term in Paragraph 14(g)(i) of this Lease.

"Landlord" shall mean **GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation, its successors and assigns.

"Lease" shall include this Lease Agreement and all amendments hereto, if any, entered into from time to time hereafter, together with the Rent Addendum, Construction Addendum and exhibits attached hereto.

"Lease Termination Fee" shall have the meaning assigned to such term in Paragraph 18 of this Lease.

"Lease Year" shall mean a fiscal period beginning on the Annual Rent Commencement Date (and each anniversary thereof) and expiring on the last day of the twelfth (12th) month thereafter. In the event the Annual Rent Commencement Date is not the first (1st) day of a calendar month, then each successive Lease Year shall commence on the first (1st) day of the calendar month following the Annual Rent Commencement Date.

"Material Taking" shall have the meaning assigned to such term in Paragraph 6 of this Lease.

"Noxious or Offensive Use" shall have the meaning assigned to such term in Paragraph 18 of this Lease.

"Other Lease" shall have the meaning assigned to such term in Paragraph 14 of this Lease.

"Permitted Exceptions" shall have the meaning assigned to such term in Paragraph 9 of this Lease.

"Permitted Use" shall have the meaning assigned to such term in Paragraph 18 of this Lease.

"Premises" shall have the meaning assigned to such term in the Recitals to this Lease.

"Rent" shall mean the rent payable under this Lease as set forth in the Rent Addendum attached hereto and incorporated herein, and shall include Interim and Annual Rent (both as defined in the Rent Addendum) and all other items described in this Lease as "additional rent".

"Subleases" shall have the meaning assigned to such term in Paragraph 18 of this Lease.

"Tenant" shall include the named Tenant and any assignee thereof pursuant to an assignment under and to the extent provided in Paragraph 18 of this Lease.

"Tenant's Condemnation Claims" shall have the meaning assigned to such term in Paragraph 6(c) of this Lease.

"Tenant's Property" shall have the meaning assigned to such term in Paragraph 3(a)(i) of this Lease.

"Termination Date" shall have the meaning assigned to such term in Paragraph 2(a) of this Lease.

"Total Cost" shall mean the greater of \$4,850,000.00 or the actual gross purchase price paid by the then current fee owner to purchase the Premises.

## 2. TERM AND RENT

(a) Term. The term of this Lease shall begin on the Effective Date and shall expire on December 31, 2027 (hereinafter the "Termination Date"), unless previously terminated or renewed or extended as provided herein.

(b) Rent. Rent shall be due and payable as provided in the Rent Addendum attached hereto and incorporated herein.

## 3. ALTERATIONS AND IMPROVEMENTS, INVESTMENT TAX CREDIT, MECHANIC'S LIENS, LANDLORD'S DISCLAIMER

### (a) Alterations and Improvements.

(i) Tenant's Property. After Tenant's initial construction of the improvements, Tenant shall be permitted to install, use on and about, and remove from the Premises at any time and from time to time all trade fixtures and other personal property (exclusive of lighting, electrical, and heating and air conditioning improvements) which are not a component of the building located or to be located on the Premises (hereinafter referred to as the "Tenant's Property"), all of which at all times shall remain the property of Tenant with the right of removal (subject to Paragraph 3(d) below) at the expiration of this Lease. Tenant's Property shall include: (1) removable decor items and office equipment; (2) building lettering, signs, sign posts and sign standards; (3) unattached food and customer service equipment; and (4) food and customer service equipment attached to the building by bolts and screws and/or by utility connections, including without limitation, walk-in refrigerators and freezers, remote refrigeration systems, exhaust systems and hoods, and water heaters.

(ii) Subsequent Improvements. In addition to Tenant's rights with respect to Tenant's Property as set forth in Paragraph 3(a)(i) above, Tenant shall also have the right, after Tenant's initial construction of the improvements, to make any additions, alterations, changes and improvements, structural and nonstructural, including but not limited to construction of additional buildings and additions to the then existing

buildings, as Tenant shall desire; provided, however, (A) for all structural changes, or for any changes or improvements costing in excess of One Hundred Thousand Dollars (\$100,000.00), (i) Tenant shall submit plans of all changes to Landlord at least thirty (30) days in advance of the proposed construction date, which plans shall be subject to Landlord's reasonable approval, and (ii) Tenant shall provide Landlord with reasonable evidence of Tenant's financial ability to pay for such changes; (B) all such construction shall be completed in a workmanlike manner and in material compliance with all laws (including without limitation the ADA), building codes and ordinances applicable thereto, at Tenant's sole expense; and (C) such additions, alterations, changes and improvements (whether structural or non-structural) shall not reduce the square footage of the buildings on the Premises.

(iii) Upon Termination, Subletting or Assignment. Subject to the requirements of this Paragraph 3, Tenant shall have the right, at its option and expense, after Tenant's initial construction of the improvements, to redecorate or otherwise remodel the Premises upon any termination hereof or upon any permitted subletting or assignment in such manner as will avoid the appearance of the Furr's Fresh Buffet Restaurant operated under this Lease, or enable the Premises to be used for a Permitted Use; provided, however, that in addition to the other requirements of this Paragraph 3, Tenant shall not impair the structural condition of the Premises, or reduce the square footage of the buildings on the Premises.

(iv) Landlord's Property. All subsequent improvements referred to in Paragraph 3(a)(ii) above, all improvements upon termination, subletting or assignment referred to in Paragraph 3(a)(iii) above except for Tenant's Property, and any and all other additions, alterations, changes and improvements of any type, shall be deemed to be a part of the Premises and the sole property of Landlord.

(b) Investment Tax Credit. Landlord hereby grants Tenant the right and privilege of applying for and receiving all investment tax credits, if any, under the Internal Revenue Code which may be available with respect to the building and other improvements to be constructed. To this end, Landlord agrees to execute all such further documents and supply such additional information as may be required to make such election effective.

(c) Mechanic's and Other Liens. Tenant shall not do or suffer anything to be done whereby the Premises, or any part thereof, may be encumbered by a mechanic's, materialman's, or other lien for work or labor done, services performed, materials, appliances, or power contributed, used, or furnished in or to the Premises or in connection with any operations or any other activity of Tenant. If, whenever and as often as any lien is filed against the Premises, or any part thereof, purporting to be for or on account of any labor done, materials or services furnished in connection with any work in or about the Premises, done by, for or under the authority of Tenant, or anyone claiming by, through or under Tenant, Tenant shall discharge the same of record within thirty (30) days after service upon Tenant of notice of the filing thereof; provided, however, Tenant shall have the right to (i) remove the lien as an encumbrance upon the Premises by bonding same in accordance with applicable law, and (ii) contest any such lien, provided that Tenant shall diligently prosecute any such contest. Tenant shall at all times effectively stay or prevent any official or judicial sale of the Premises under execution or

otherwise, and, if unsuccessful, satisfy any final judgment against Tenant adjudging or enforcing such lien or, if successful, procure record satisfaction or release thereof.

(d) Landlord's Disclaimer. All of Tenant's Property placed in or upon the Premises by Tenant shall remain the property of Tenant with the right to remove and replace the same at any time during the term of this Lease. Landlord, if requested by Tenant, agrees to execute, acknowledge and deliver a Landlord Consent substantially in the form of Exhibit "B" attached hereto by which Landlord subordinates its lien rights to the lien rights of any secured lender with a security interest in all or substantially all of Tenant's Property and any equipment lender or lessor of Tenant's Property, and to all rights of levy for distraint for rent against same; provided any damage caused by, or resulting from the removal of any of Tenant's Property or other personal property (including the leaving of holes or other openings in the roof or exterior of the building) shall be promptly repaired by Tenant or the party entitled to remove same.

#### **4. DESTRUCTION OF PREMISES; INSURANCE**

(a) If the Premises are damaged or destroyed by fire, flood, tornado or other element, or by any other casualty and such damage or destruction does not occur within the last twenty four (24) months of the original or of any extended or renewed term of this Lease, this Lease shall continue in full force and effect and Tenant shall, as promptly as possible, restore, repair or rebuild the Premises to substantially the same condition as it existed before the damage or destruction, including any improvements or alterations required to be made by any governmental body, county or city agency, due to any changes in code or building regulations. Tenant shall for this purpose use all, or such part as may be necessary, of the insurance proceeds received from insurance policies required to be carried under the provision of Paragraph 4(b) of this Lease. If such insurance proceeds are not sufficient to pay such costs, Tenant shall pay such deficit. Should the Premises be damaged or destroyed by any of the foregoing described casualties within the last twenty-four (24) months of the original term or of any extended or renewed term of this Lease, then to the extent that the Premises are untenable or unsuitable, in Tenant's reasonable opinion, for continued use in the normal conduct of Tenant's business, Tenant shall have the right, exercisable by written notice to Landlord given within ninety (90) days after the date of such damage or destruction, to terminate this Lease effective upon the date of such written notice to Landlord. If Tenant terminates this Lease as thus provided Landlord shall be entitled to all of the insurance proceeds on the Premises, but not to the proceeds of insurance carried by Tenant on Tenant's Property; provided, however, Tenant shall not have the right to terminate this Lease unless (i) the damage or destruction of the Premises was caused by a peril which was insured against as required by the provisions of Paragraph 4(b) of this Lease; and (ii) at the time of such damage and destruction the said insurance policies required to be carried by Tenant were in the amount of the full replacement cost of such improvements and in full force and effect; (iii) the insurer has confirmed coverage and its obligation to pay; and (iv) Tenant pays to Landlord the amount of any deductible under said insurance policies applicable to such damage and destruction. If Tenant defaults in its obligation to carry insurance in the amounts required under Paragraph 4(b) of this Lease, then, prior to Tenant's termination of this Lease and in addition to the requirements set forth in the preceding sentence, Tenant shall be obligated to pay toward said reconstruction or to Landlord the difference between the amount of insurance proceeds actually paid and the insurance proceeds which would have been made available if the

insurance required to be carried under Paragraph 4(b) were in effect as of the date of such casualty.

(b) Tenant, at its expense and as additional rent hereunder, shall throughout the term of this Lease and any extension or renewal thereof, keep the Premises insured with (i) "Special Form Causes of Loss" coverage (as such term is used in the insurance industry), at least as broad as the most commonly available ISO Special Cause of Loss Form, including coverage for glass breakage, vandalism and malicious mischief, and builder's risk (if the Premises are to be constructed pursuant to the terms of this Lease) for one hundred percent (100%) insurable replacement value with no co-insurance penalty, with any deductible in excess of Fifty Thousand Dollars (\$50,000.00) per occurrence to be approved by Landlord and, (ii) "Ordinance and Law Coverage" with limits of (i) not less than the building value for Coverage A (loss to the undamaged portion of the building), (ii) not less than fifteen percent (15%) of the building value for Coverage B (Demolition Cost Coverage), and (iii) not less than fifteen percent (15%) of the building value for Coverage C (Increased Cost of Construction Coverage).

(c) Tenant shall maintain throughout the term of this Lease and any extension thereof, at its own expense and as additional rent, commercial general liability insurance including product liability and liquor liability (if alcohol is served) covering the Premises at least as broad as the most commonly available ISO Commercial General Liability policy form (occurrence basis) covering bodily injury, property damage and personal and advertising injury, for the joint benefit of and insuring Tenant and Landlord, with limits not less than One Million Dollars (\$1,000,000.00) per occurrence, with a general aggregate of not less than Two Million Dollars (\$2,000,000.00) and an umbrella liability policy or excess liability policy to include product liability and liquor liability (if alcohol is served), in an amount of not less than Ten Million Dollars (\$10,000,000.00) per occurrence, with any deductible in excess of Twenty-Five Thousand Dollars (\$25,000.00) to be approved by Landlord.

(d) Tenant shall maintain throughout the term of this Lease and any extension thereof, at its own expense, business interruption insurance covering risk of loss due to the occurrence of any of the hazards insured against under Tenant's "all risk" coverage insurance and providing coverage in an amount sufficient to permit the payment of Rents, taxes, insurance and operating expenses payable hereunder for a period (in such case) of not less than six (6) months.

(e) In the event the Premises are located in an area identified by the National Flood Insurance Program as an area having "special flood hazards" (zones beginning with "A" or "V"), Tenant shall maintain throughout the term of this Lease and any extension thereof, flood insurance for Premises to the maximum limits available from the National Flood Insurance Program, with any deductible in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) to be approved by Landlord.

(f) In the event the Premises are located in a major earthquake damage area and earthquake insurance is available, Tenant shall maintain throughout the term of this Lease, and any extension thereof, earthquake insurance for the full replacement value of the Premises, with any deductible in excess of Fifty Thousand Dollars (\$50,000.00) to be approved by Landlord.

(g) Tenant shall maintain such other insurance on or in connection with the Premises as reasonably required from time to time by Landlord, which is commonly obtained in connection with properties similar to and in the same area as the Premises and which is commercially reasonable to obtain.

(h) All insurance companies providing the coverage required under this Paragraph 4 shall be selected by Tenant and shall be rated A minus:VIII (A-:VIII) or better by Best's Insurance Rating Service (or equivalent rating service if not available), shall be authorized to write insurance policies in the state in which the Premises is located, and shall be acceptable to Landlord in Landlord's reasonable discretion. Tenant shall provide Landlord with copies of all policies or certificates of such coverage for the insurance coverages referenced in this Paragraph 4, and all commercial general liability and umbrella liability or excess liability policies shall name Landlord (and if Landlord is either a general or limited partnership, all general partners) and any mortgagee designated by Landlord as an additional named insured. Any such coverage for additional insureds shall be primary and non-contributory with any insurance carried by Landlord or any other additional insured hereunder. All property insurance policies shall name Landlord (and if Landlord is either a general or limited partnership, all general partners) as an additional named insured and shall provide that all losses shall be payable as herein provided. Any mortgagee designated by Landlord in a written notice to Tenant must be named on the policy as a mortgagee with respect to real property and/or as a lender's loss payee with respect to personal property and shall provide that all losses be payable as herein provided. All such policies of insurance shall provide that the amount thereof shall not be reduced and that none of the provisions, agreements or covenants contained therein shall be modified or canceled by the insuring company or companies without ten (10) days prior written notice being given to Landlord.

(i) In the event of a casualty in which the insurance proceeds are One Hundred Thousand Dollars (\$100,000.00) or less, all insurance proceeds shall be paid directly to Tenant. In the event of a casualty in which the insurance proceeds are greater than One Hundred Thousand Dollars (\$100,000.00), all insurance proceeds relating to property insurance (and not general liability) shall be paid by check jointly payable to Landlord and any mortgagee designated by Landlord, and held in Trust for the benefit of Tenant, and made available to Tenant for repair and restoration of the Premises. Except as provided in this Lease, following a casualty, Tenant shall cause the Premises to be restored and repaired as provided in this Lease, whether or not the insurance proceeds are sufficient to pay for such restoration. In the event the insurance proceeds are not sufficient to pay for the restoration of the Premises according to the terms of this Lease, the Tenant shall pay the difference between the total cost of the restoration and any insurance proceeds before any insurance proceeds shall be applied to the restoration. Such policy or policies of insurance may also cover loss or damage to Tenant's Property, and the insurance proceeds applicable to Tenant's Property shall not be paid to Landlord or any mortgagee but shall accrue and be payable solely to Tenant.

## **5. MAINTENANCE AND REPAIR**

(a) Tenant shall, during the term of this Lease and any renewals thereof, (i) maintain the Premises and all buildings and improvements thereon (interior and exterior, structural and otherwise) in good order and repair; (ii) not commit waste or permit impairment or deterioration

of the Premises (normal wear and tear excepted); (iii) not abandon the Premises (for purposes of this Lease, Tenant's failure to operate a business on the Premises shall not be construed as abandonment provided the Tenant is in compliance with all of the other provisions of this Lease, subject to applicable cure periods); (iv) keep Tenant's Property in good repair and replace trade fixtures, equipment, machinery and appliances on the Premises when necessary to keep such items in good repair; (v) comply in all material respects with all laws, ordinances, regulations and requirements of any governmental body applicable to the Premises; (vi) provide prompt notification to Landlord of any material adverse changes to the Premises of which Tenant has knowledge, such as material changes in any environmental condition, including the presence of biocontaminants, such as, but not limited to mold, and shall promptly undertake reasonable remediation (and preventative) actions in connection therewith; and (vii) subject to the provisions of Paragraph 4(a) with respect to damage within the last twenty-four (24) months of this Lease, and Paragraph 6 herein, return the Premises and all buildings and improvements thereon at the expiration of the term of this Lease or any extension thereof in as reasonably as good condition as when received, ordinary wear and tear excepted.

(b) Tenant agrees that Landlord shall have no obligation under this Lease to make any repairs or replacements (including the replacement of obsolete components) to the Premises or the buildings or improvements thereon, or any alteration, addition, change, substitution or improvement thereof or thereto, whether structural or otherwise. The terms "repair" and "replacement" include, without limitation, the replacement of any portions of the Premises which have outlived their useful life during the term of this Lease (or any extensions thereof). Landlord and Tenant intend that the Rent received by Landlord shall be free and clear of any expense to Landlord for the construction, care, maintenance (including common area maintenance charges and charges accruing under easements or other agreements relating to the Premises), operation, repair, replacement, alteration, addition, change, substitution and improvement of or to the Premises and any building and improvement thereon. Upon the expiration or earlier termination of this Lease, Tenant shall remain responsible for, and shall pay to Landlord, any cost, charge or expense for which Tenant is otherwise responsible for hereunder attributable to any period (prorated on a daily basis) prior to the expiration or earlier termination of this Lease.

(c) Tenant acknowledges and agrees that the Premises are and shall be leased by Landlord to Tenant in its present "AS IS" condition, and that Landlord makes absolutely no representations or warranties whatsoever with respect to the Premises or the condition thereof. Tenant acknowledges that Landlord has not investigated and does not warrant or represent to Tenant that the Premises are fit for the purposes intended by Tenant or for any other purpose or purposes whatsoever, and Tenant acknowledges that the Premises are to be leased to Tenant in their existing condition, i.e., "AS IS", on and as of the Effective Date.

## **6. CONDEMNATION**

(a) In the event of a Material Taking during the term of this Lease or any extension or renewal thereof, Tenant shall have the option of terminating this Lease as of a date no earlier than the date of such Taking, such termination date to be specified in a notice of termination which must be given by Tenant to Landlord not later than the last to occur of (i) fourteen (14) days prior to the date of the Taking or the date on which possession of the Premises, or part thereof, must be surrendered to the condemning authority or its designee, whichever is earlier, or

(ii) thirty (30) days after Landlord advises Tenant in writing as to such condemnation, and describing the extent and terms of the Taking.

As used here in, "Taking" shall mean (a) any taking of all or any part of the Premises for any public or quasi public use under any governmental law, ordinance, regulation or by right of eminent domain, or (b) any sale to the condemning authority under threat of condemnation. "Material Taking" shall mean (i) a Taking of more than 20% of the building on the Premises, or more than 20% of the parking spaces on the Premises, or more than 40% of the land, or (ii) a Taking, following which Tenant can demonstrate to Landlord's reasonable satisfaction that the Premises cannot be profitably operated as the type of restaurant contemplated herein, or (iii) if all reasonable access to the adjacent roadways from the existing or comparable curb cuts shall be taken, or (iv) a Taking that results in the Premises failing to satisfy applicable zoning requirements or any restrictive covenants applicable to the Premises and Tenant, using reasonable efforts, is unable to obtain a waiver or variance thereof.

(b) In the event of any Taking which does not give rise to an option to terminate, or in the event of a Taking which does give rise to an option to terminate and Tenant does not elect to terminate, Landlord shall be entitled to the compensation awarded and shall, to the extent required, make the award available to Tenant and Tenant shall, to the extent of the award from such Taking (which term "award" shall mean the net proceeds awarded by a court or net purchase price under a sale in lieu of condemnation after deducting expenses reasonably incurred by Landlord in the settlement or trial of the eminent domain matter, including, but not limited to, third party costs incurred by Landlord in connection therewith), promptly restore or repair the Premises and all improvements thereon (except those items of Tenant's Property which Tenant is permitted to remove under the terms of this Lease) to the same condition as existed immediately prior to such Taking insofar as is reasonably possible. If the estimated cost of restoration or repair shall exceed the amount of Landlord's award, Tenant shall deposit with Landlord the amount of such excess. The award and any excess shall be held in trust by Landlord and used, to the extent required, for the purpose of such restoration or repair. A just and proportionate part of the Rent payable hereunder shall be abated from the date of such Taking until ten (10) days after Tenant has restored same and thereafter the Rent shall be reduced in proportion to the reduction in the then rental value of the Premises after the Taking in comparison with the rental value prior to the Taking. If the award shall exceed the amount spent or to be spent promptly to effect such restoration, repair or replacement, such excess shall unconditionally belong to Landlord and shall be paid to Landlord.

(c) In the event of any partial Taking where this Lease is not terminated, Tenant shall not be entitled (except for use in reconstruction) to any part of the compensation or award given Landlord for the Taking of the fee of the Premises or any damages resulting therefrom, but Tenant shall have the right to recover from the condemning authority such compensation as is specifically awarded to Tenant (i) to reimburse Tenant for any cost which Tenant may incur in removing Tenant's Property from the Premises or for the loss of Tenant's Property in the Taking, (ii) for loss of Tenant's business, and (iii) for loss of or damages to Tenant's leasehold estate in the Premises (collectively, "Tenant's Condemnation Claims").

(d) If this Lease is terminated by reason of a taking, then Landlord shall be entitled to receive the entire award in any such condemnation or eminent domain proceedings or purchase



in lieu thereof, exclusive of Tenant's Condemnation Claims, and Tenant hereby assigns to Landlord all of its right, title and interest in and to all and any part of such award, exclusive of Tenant's Condemnation Claims. Landlord shall further be entitled to direct and control any settlement negotiations or litigation relating to eminent domain proceedings or purchase in lieu thereof except with respect to Tenant's Condemnation Claims, and Tenant hereby assigns to Landlord all of its right or interest in such negotiations or litigation, except with respect to Tenant's Condemnation Claims. Tenant shall be entitled to receive any award specifically awarded to Tenant for Tenant's Condemnation Claims.

## **7. TAXES AND ASSESSMENTS**

(a) Tenant shall pay prior to delinquency all taxes and assessments which may be levied upon or assessed against the Premises and all taxes and assessments of every kind and nature whatsoever arising in any way from the use, occupancy, possession or transfer of ownership (excluding, however, any documentary stamp or transfer taxes incurred by Landlord (or a successor landlord) in connection with a transfer of ownership) of the Premises or assessed against the improvements situated thereon, together with all taxes levied upon or assessed against Tenant's Property. To that end, Landlord shall not be required to pay any taxes or assessments whatsoever which relate to or may be assessed against this Lease, the Rent and other amounts due hereunder, the Premises, improvements and Tenant's Property; provided, however, that any taxes or assessments which may be levied or assessed against the Premises for a period ending after the termination hereof shall be prorated between Landlord and Tenant as of such date. Landlord shall be solely responsible for payment of any (i) income, profit or similar tax that may be imposed upon or assessed against Landlord with respect to the Rent and income derived from this Lease, under any law now in force or hereafter enacted, or (ii) any inheritance, estate, succession, gift or any form of transfer tax which may be assessed or levied on a transfer of the Premises (excluding any real estate assessments based on value after a transfer to a third party), or (iii) assessments pursuant to restrictive covenants which are not Permitted Exceptions or otherwise approved in writing by Tenant.

(b) Within thirty (30) days after Tenant receives the paid receipted tax bills for the Premises, Tenant shall furnish Landlord with copies thereof. Tenant may, at its option, contest in good faith and by appropriate and timely legal proceedings any such tax and assessment; provided, however, that Tenant shall indemnify and hold harmless Landlord from any loss or damage resulting from any such contest, and all reasonable third party expenses of same (including, without limitation, all reasonable third party attorneys' and paralegal fees, court and other costs) shall be paid solely by Tenant. Notwithstanding the foregoing, in no event shall Tenant be obligated to pay or indemnify Landlord with respect to any loss, damage or expense arising from the gross negligence or willful misconduct of Landlord.

## **8. COMPLIANCE, UTILITIES, SURRENDER**

(a) Tenant, at its expense: shall promptly comply in all material respects with all municipal, county, state, federal and other governmental requirements and regulations (including but not limited to the requirements and regulations of the ADA) applicable to the Premises, whether or not compliance therewith shall require structural or other changes in the Premises, but only to the extent Tenant is permitted under this Lease to make such required changes; will

procure and maintain all permits, licenses and other authorizations required for the use of the Premises or any part thereof then being made and for the lawful and proper installation, operation and maintenance of all equipment and appliances necessary or appropriate for the operation and maintenance of the Premises; and shall comply in all material respects with all easements, restrictions, reservations and other instruments of record applicable to the Premises which constitute Permitted Exceptions or have been otherwise approved in writing by Tenant, including without limitation, any requirement in such instruments on behalf of the owner or occupant of the Premises to procure and maintain insurance. Tenant shall indemnify and save Landlord harmless from all expenses and damages by reason of any notices, orders, violations or penalties filed against or imposed upon the Premises, or against Landlord as owner thereof, because of Tenant's failure to comply with this paragraph, except to the extent arising from Landlord's gross negligence or willful misconduct.

(b) Tenant shall pay all charges for heat, water, gas, sewage, electricity and other utilities used or consumed on the Premises and shall contract for the same in its own name. Landlord shall not be liable for any interruption or failure in the supply of any such utility service to the Premises except to the extent caused by Landlord's willful misconduct, or by the affirmative, voluntary actions of Landlord (unrelated to an emergency situation) which cause termination of any such utility service without Tenant's prior consent.

(c) Tenant shall peacefully surrender possession of the Premises, the buildings and other improvements thereon to Landlord at the expiration, or earlier termination, of the original term or any extended or renewed term of this Lease. No act by Landlord shall be deemed an acceptance of a surrender of the Premises (including, without limitation, a claim or assertion of a surrender by operation of law or similar claim or assertion), and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by Landlord.

## **9. QUIET ENJOYMENT**

Landlord covenants and warrants that Landlord has full power and authority to enter into this Lease, and that Tenant shall have and enjoy full, quiet and peaceful possession of the Premises, its appurtenances and all rights and privileges incidental thereto during the term hereof and any renewals or extensions, subject to the provisions of this Lease and the matters on Exhibit "E" attached hereto (the "Permitted Exceptions") and any other matters specifically approved by Tenant in writing. Landlord agrees to cause the holder of any mortgage now or hereafter relating to the Premises to execute and deliver to Tenant a Subordination and Nondisturbance Agreement substantially in the form contemplated by Paragraph 19 of this Lease and attached to this Lease as Exhibit "C".

## **10. OPTION TO RENEW**

Tenant shall have four (4) successive five (5) year options to extend this Lease for up to an additional twenty (20) years upon the same terms, covenants, conditions and rental as set forth herein provided that Tenant is not in Default hereunder at the commencement of such option period. In the event Tenant elects to exercise each such five (5) year option, Tenant shall give written notice to Landlord thereof not less than six (6) months prior to the Termination Date of

the Lease, as extended. Should Tenant fail to give Landlord such timely written notice during the required period, this Lease shall terminate on the Termination Date.

11. **INTENTIONALLY OMITTED**

12. **TENANT REPRESENTATIONS**

Tenant hereby represents and warrants to Landlord, as of the Effective Date, as follows:

(a) Tenant is duly organized and validly existing under the laws of the state of its formation. Tenant has the power, and its representatives have been duly authorized, to enter into the transactions contemplated by this Lease, and all necessary approvals required to consummate this Lease have been obtained.

(b) There is no threatened or pending litigation relating to Tenant or any affiliate of Tenant which might affect in any material respect either the performance by Tenant of its obligations under this Lease or the operation of Tenant's contemplated business on the Premises, or which might have a material adverse affect upon the financial condition of Tenant.

(c) To Tenant's knowledge, Tenant is not in material violation of any agreement, law, ordinance, regulation, ruling, court order or other governmental enactment regarding the Premises, and performance by Tenant with its obligations under this Lease will not place Tenant in violation of any such matter in any material respect.

(d) This Lease has been duly executed and delivered by Tenant, constitutes the valid and binding obligation of Tenant, and is enforceable against Tenant according to its terms.

13. **INTENTIONALLY DELETED**

14. **DEFAULT**

(a) If any one or more of the following events occur, said event or events shall hereby be referred to as a "Default":

(i) If Tenant fails to pay Rent or any other charges required under this Lease when same shall become due and payable, and such failure continues for ten (10) days or more after written notice from Landlord.

(ii) If Tenant fails to pay Rent or any other charges required under any other lease or agreement with Landlord or an affiliate of Landlord (each an "Other Lease") when same shall become due and payable (and beyond the applicable cure period), and (A) the amount in default under any one Other Lease exceeds One Hundred Thousand Dollars (\$100,000.00), or (B) the aggregate of all amounts in default, or a series of payment defaults, under such Other Leases exceeds the sum of One Hundred Thousand Dollars (\$100,000.00). In the event of any such default, Landlord shall be entitled to exercise its remedies as provided in this Lease and the Other Leases. Notwithstanding the foregoing, this Lease shall remain cross-defaulted with an Other Lease only for so long as GE Capital Franchise Finance Corporation ("GE") or an affiliate of GE is the

Landlord under this Lease and such Other Lease, and such cross-default shall not apply if the Premises is sold by Landlord to an unrelated third party.

(iii) If Tenant shall fail to perform or observe any term, condition, covenant, agreement, or obligation required under this Lease and such failure continues for thirty (30) days after written notice from Landlord (except that such thirty (30) day period shall be automatically extended for such additional period of time as is reasonably necessary to cure such failure, if such failure of performance cannot be cured within such period, provided Tenant is in the process of diligently curing the same).

(iv) INTENTIONALLY DELETED.

(v) If Tenant shall make an assignment for the benefit of creditors or file a petition, in any federal or state court, in bankruptcy or reorganization, or make an application in any such proceedings for the appointment of a trustee or receiver for all or any portion of its property.

(vi) If any petition shall be filed under federal or state law against Tenant in any bankruptcy, reorganization, or insolvency proceedings, and said proceedings shall not be dismissed or vacated within ninety (90) days after such petition is filed.

(vii) If a receiver or trustee shall be appointed under federal or state law for Tenant, or any guarantor of Tenant's obligations hereunder, for all or any portion of the property of either of them, and such receivership or trusteeship shall not be set aside within sixty (60) days after such appointment.

(b) Upon the happening of any one or more of the aforementioned Defaults which are not cured within the cure period applicable thereto, if any, Landlord shall have the right, in addition to any other rights and remedies, to terminate this Lease by giving written notice of same to Tenant. Upon such notice, this Lease shall cease and expire, and Tenant shall surrender the Premises to Landlord. Landlord may also terminate Tenant's right to occupy all or any part of the Premises - with or without terminating this Lease - and with or without re-entering or repossessing the Premises. Further, in the event of Tenant's Default under this Lease, Landlord may, by notice to Tenant, accelerate the monthly installments of Rent due hereunder for the remaining term of this Lease, in which event such amount, together with any sums then in arrears, shall immediately be due and payable to Landlord. If Landlord does accelerate the Rent due hereunder, then the accelerated Rent shall be equal to the Rent which accrued prior to the date of termination, plus the Rent that would have accrued during the balance of the term (not including any renewal term(s) not theretofore exercised by Tenant) of this Lease (as if this Lease had not been terminated), less the fair rental value of the Premises for the corresponding period, plus any and all reasonable expenses which Landlord may have incurred in re-letting the Premises including, but not limited to, direct costs incurred by Landlord in re-letting the Premises (including without limitation property management and site inspection costs), reasonable alterations to the building to protect the integrity of existing improvements or to facilitate re-letting of the existing improvements and the Premises, leasing commissions, construction costs, and reasonable architectural, engineering, legal and accounting fees. The accelerated Rent (but not the Rent accrued prior to the date of termination) and the fair rental

value of the Premises shall each be discounted to present value at an annual interest rate equal to the Prime Rate (as used herein, "Prime Rate" shall be the prime rate established by the Bank of America, N.A., New York office, from time to time, or if such rate is no longer published or available, a comparable interest rate as selected by Landlord in its reasonable discretion). The foregoing liquidated damages shall be in lieu of the payment of loss and damage Landlord may suffer by reason of such termination as provided above but which shall not be in lieu of or reduce in any way any amount (including accrued Rent) or damages due to breach of any covenant (whether or not liquidated) payable by Tenant to Landlord which accrued prior to the termination of this Lease. Tenant hereby expressly agrees that its occupation of the Premises after any such termination constitutes forcible detainer (or equivalent) as is defined by the law in force in the jurisdiction in which the Premises are located. In addition, in the event of a Default under this Lease, and further in the event that a Construction Addendum is attached to the Lease, then, in addition to all other rights and remedies of Landlord under this Lease, Landlord may cease funding of any amounts under such Construction Addendum. Tenant further agrees that in the event of a Default, any monies deposited by Tenant with Landlord, if any, shall be immediately and irrevocably assigned and released to Landlord (without further action by Landlord or Tenant) to be applied by Landlord against any and all of Tenant's obligations under this Lease, in any manner as Landlord may determine.

(c) If this Lease or Tenant's right to possess the Premises shall terminate as provided hereinabove, Landlord may re-enter the Premises and remove Tenant, its agents and subtenants, together with all or any of Tenant's Property, by suitable action at law, or by force. Tenant waives any right to the service of any notice of Landlord's intention to re-enter and Landlord shall not be liable in any way in connection with any action it takes pursuant to this paragraph.

(d) In the event of a Default, Landlord may, at its sole option, enter upon the Premises, if deemed necessary by Landlord in its sole discretion, and/or do whatever may be deemed necessary by Landlord in its sole discretion to cure such failure by Tenant. Tenant shall pay to Landlord within five (5) business days of Landlord's request, all reasonable third party costs incurred by Landlord in connection with Landlord's curing of such failure. In addition to the above costs, in the event Landlord does not receive payment from Tenant within ten (10) days of the due date, then interest at the rate of eighteen percent (18%) per annum or, if less, the highest rate allowable by law, shall be due and payable with respect to such payment from the due date thereof until Landlord receives such payment.

(e) In case of re-entry or repossession, Tenant shall remain liable for Rent, any additional rent and all other charges provided for in this Lease for the otherwise remaining term of this Lease, and any and all third party expenses which Landlord may have incurred in re-entering the Premises including, but not limited to, alterations to the building, leasing, construction, architectural, legal and accounting fees. Landlord shall have the right, but not the obligation (except to the extent required by applicable law), to relet the whole or part of the Premises upon terms which Landlord, in its sole discretion, deems appropriate and Tenant shall be responsible for all third party expenses incurred by Landlord in reletting or attempting to relet and all rent collected for reletting shall be credited against all of Tenant's obligations hereunder.

(f) In the event Landlord engages legal counsel in connection with the enforcement of any of the terms and provisions of this Lease in connection with a Default, then, in addition to

all other sums due from Tenant to Landlord under this Lease, Tenant shall pay to Landlord any and all reasonable third party attorneys' fees, paralegal fees, and legal costs and reasonable third party expenses incurred by Landlord, whether or not judicial proceedings are filed, and including on appeal and in any bankruptcy proceedings, in connection with such Default.

(g) Notwithstanding the foregoing, in the event (i) Tenant fails (beyond any applicable cure periods set forth herein) to (1) maintain and keep in full force and effect any or all of the insurance policies required pursuant to Paragraph 4 of this Lease, or (2) pay when due any and all taxes and assessments levied or assessed against the Premises, or (ii) of a monetary Default under this Lease in an amount exceeding Ten Thousand Dollars (\$10,000), then in the event Landlord does not terminate this Lease, and at Landlord's request and in Landlord's sole discretion, Tenant shall escrow funds for payment of such insurance premiums, taxes and assessments in the following manner:

(i) Tenant shall immediately pay to Landlord all sums expended by Landlord, plus an additional ten percent (10%) thereof (as an escrow surplus), for purposes of: (1) bringing current or reinstating or purchasing the insurance required under Paragraph 4 of this Lease; and/or (2) paying all taxes and assessments which are past due or currently due. Thereafter, Tenant shall pay to Landlord on the first (1st) day of each month along with the monthly payment of Rent a sum (the "Escrow Funds") equal to one-twelfth (1/12th) of: (A) the yearly premium(s) for the insurance required to be maintained pursuant to Paragraph 4 of this Lease; and/or (B) the annual taxes and assessments levied or assessed against the Premises as reasonably estimated by Landlord, based on the prior year's taxes and assessments levied or assessed against the Premises.

(ii) Landlord shall apply the Escrow Funds to pay said insurance and/or taxes and assessments, and Tenant shall be released from its obligation under this Lease to pay such taxes and insurance to the extent of the Escrow Funds. No interest shall be payable by Landlord on the Escrow Funds unless required by applicable law, in which event all such interest shall be first applied by Landlord to pay such insurance and/or taxes and assessments. Landlord shall provide to Tenant an annual accounting of the Escrow Funds in Landlord's standard format showing credits and debits to the Escrow Funds and the purpose for which each debit to the Escrow Funds was made.

(iii) If the amount of the Escrow Funds held by Landlord at the time of the annual accounting thereof shall exceed the amount deemed necessary by Landlord to provide for the payment of insurance and/or taxes and assessments as they become due, such excess shall be credited to Tenant against the next monthly installment of Escrow Funds due, and, provided that Tenant is not then in Default under this Lease, any excess Escrow Funds greater than such next monthly installment shall be paid by Landlord to Tenant. If at any time the amount of the Escrow Funds held by Landlord shall be less than the amount deemed necessary by Landlord to pay the insurance and/or taxes and assessments as they become due, Tenant shall pay to Landlord any amount necessary to make up the deficiency within thirty (30) days after notice from Landlord to Tenant requesting payment thereof.

(iv) The foregoing Escrow Funds arrangement shall terminate if Tenant fully and faithfully complies with the provisions of this Paragraph 14(g) for a period of twelve (12) consecutive months. Upon the termination of this Lease, Landlord shall promptly refund (or credit to Tenant against amounts due to Landlord in the case of termination due to Tenant's Default) any Escrow Funds held by Landlord.

(h) The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy now or hereinafter provided by law, and all such rights and remedies shall be cumulative. No action or inaction by Landlord shall constitute a waiver of any Default, and no waiver of any Default shall be effective unless it is in writing, signed by Landlord.

#### **15. HOLDING OVER**

In the event Tenant remains in possession of the Premises after the expiration of this Lease without executing a new written lease acceptable to Landlord and Tenant, Tenant shall occupy the Premises as a tenant from month to month subject to all the terms hereof (except as modified by this paragraph), but such possession shall not limit Landlord's rights and remedies by reason thereof nor constitute a holding over. In the event of such month to month tenancy, the monthly installment of Annual Rent due for each such month shall increase to be one hundred fifty percent (150%) of the monthly installment thereof which was payable during the last month of the term of this Lease.

#### **16. WAIVER OF SUBROGATION**

Notwithstanding anything in this Lease to the contrary, other than Tenant's obligations to repair, restore or rebuild described in Paragraph 4 of this Lease, neither party shall be liable to the other for any damage or destruction of the Premises resulting from fire or other casualty covered by insurance required of either party hereunder, whether or not such loss, damage or destruction of the Premises are caused by or results from the negligence of such party (which term includes such party's officers, employees, agents and invitees), and each party hereby expressly releases the other from all total liability for or on account of any said insured loss, damage or destruction, whether or not the party suffering the loss is insured against such loss, and if insured whether fully or partially. Each party shall procure all endorsements of insurance policies carried by it necessary to protect the other from any right of subrogation and/or liability in the event of such loss.

#### **17. LANDLORD'S LIEN FOR RENTS**

As security for Tenant's payment of Rent and all other payments required to be made by Tenant hereunder (including, by way of illustration only, taxes, damage to the Premises, court costs, and attorneys' fees), Tenant hereby grants to Landlord a lien upon all of Tenant's Property now or hereafter located upon the Premises. The lien herein provided shall be subordinate to the lien of any chattel mortgage, collateral assignment or security interest given by Tenant to any seller of Tenant's Property. In the event of a Default, Landlord may enter upon the Premises and take possession of Tenant's Property, or any part thereof, and may sell all or any part of Tenant's Property for public or private sale in one or successive sales, with or without notice, to the highest bidder for cash and on behalf of Tenant. Landlord may sell and convey Tenant's Property, or any

part thereof, to such bidder, delivering to such bidder all of Tenant's title and interest in such property sold to such bidder. The proceeds of such sale shall be applied by Landlord first toward the costs of such sale and then toward the payment of all sums due from Tenant to Landlord under this Lease. Notwithstanding anything above to the contrary, in connection with Tenant's financing of Tenant's Property, Landlord agrees to subordinate any lien provided in this paragraph to which it may be entitled, and agrees to execute customary documents requested by an entity providing such financing to evidence such subordination, provided the form and content of any such subordination are reasonably satisfactory to Landlord and its counsel. As part of such subordination, Landlord agrees to permit such entity providing such financing to store equipment, fixtures or furnishings at the Premises for a period not to exceed thirty (30) days after receipt of notice from Landlord of an event of default by the Tenant (or Landlord may remove such equipment, fixtures or furnishings at such financing entity's expense), or to remove such Tenant's Property from the Premises following reasonable notice to Landlord, provided such financing entity repairs all damage caused by such removal.

#### **18. ASSIGNMENT AND SUBLETTING**

(a) Tenant may not assign, mortgage or pledge this Lease, voluntarily or involuntarily, whether by operation of law or otherwise, or sublet any portion of the Premises at any time to any other person, in each case without the prior written consent of Landlord, which consent may be withheld by Landlord for any or no reason, and any such purported assignment or sublease shall be null and void. Notwithstanding the foregoing, Tenant may assign this Lease or sublease the Premises without Landlord's consent so long as, in each case, the use of the Premises remains a Permitted Use. In the event Landlord determines in its reasonable discretion that the assignment or subletting will result in a use of the Premises other than a Permitted Use, Landlord may, at its sole option (1) approve such assignment or subletting; or (2) decline to approve such assignment or subletting in which case such assignment or subletting shall be null and void, or (3) terminate this Lease in the event the Premises has ceased operating for twelve (12) continuous months or longer. In the event this Lease is terminated in accordance with this Paragraph 18(a), Tenant shall pay to Landlord a Lease Termination Fee equal to six (6) months of the Annual Rent (at the then current rental rate), plus any past due rent, past due real estate taxes, and accrued real estate taxes or assessments prorated through the date of such termination ("Lease Termination Fee"). Upon payment of the Lease Termination Fee, Tenant shall have no further obligations under this Lease.

As used herein, "Permitted Use" shall mean any use of the Premises that (i) does not violate any law or legal requirement with respect to the Premises (but taking into account any "grandfathering" permitted under any such law or legal requirement), (ii) does not make void any insurance required by this Lease, but only if Tenant fails to deliver substitute insurance therefore, (iii) does not cause material structural damage to any of the improvements on the Premises, (iv) does not constitute an actionable public or private nuisance or waste, (v) does not violate any recorded restriction on the Premises which is a Permitted Exception or is approved in writing by Tenant after the Effective Date, (vi) cannot reasonably be expected to have a materially greater risk of an material environmental violation other than the present use as a restaurant, or (vii) in Landlord's sole and absolute determination, the proposed use is not a Noxious or Offensive Use. As used herein, the term "Noxious or Offensive Use" shall mean a dance hall, off-track betting business, flea market, billiard or pool hall, bingo parlor, bowling



alley, massage parlor, video game arcade, blood bank, night club, bar (which is defined as any establishment selling alcoholic beverages and/or food which derives 40% or more of its sales revenue from the sales of alcoholic beverages) or adult book or adult video store (which are defined as stores in which any part of the inventory is not available for sale or rental to children under eighteen (18) years old, because such inventory explicitly deals with or depicts human sexuality), or which or relates to the sale or exhibition of sexually explicit material.

(b) Tenant shall remain liable for all obligations under this Lease arising both before and after the date of the assignment or sublease, as the case may be (it being understood, that in all such cases of an assignment, the Tenant shall be jointly and severally liable with the assignees). In order to insure that Landlord has adequate time to determine if such proposed assignment or sublease is a permitted assignment or sublease under this Lease, Tenant shall provide to Landlord written notice of Tenant's intent to assign or sublet the Premises, including the salient business terms of such assignment or subletting, at least fifteen (15) days prior to the effective date of such assignment or sublease. Furthermore, it shall not be unreasonable for Landlord to decline to approve an assignment or subletting if such use is reasonably deemed by Landlord to be a Noxious or Offensive Use.

(c) If Tenant assigns all its rights and interest under this Lease with or without Landlord's consent, the assignee under such assignment shall expressly assume all the obligations of Tenant hereunder arising on or after the date of such assignment. Each sublease of any of the Premises shall be subject and subordinate to the provisions of this Lease. No assignment or sublease shall affect or reduce any of the obligations of Tenant hereunder, and all such obligations shall continue in full force and effect as obligations of a principal and not as obligations of a guarantor, as if no assignment or sublease had been made. No assignment or sublease shall impose any additional obligations on Landlord under this Lease.

(d) Within ten (10) days after execution and delivery of an assignment or sublease, Tenant shall deliver to Landlord (i) a copy of the signed assignment or subletting documents to Landlord, which, in the event of an assignment, shall be in recordable form and include an assumption by the assignee of the Tenant's obligations under this Lease which accrue on or after the effective date of such assignment; (ii) the name, address and telephone number of such assignee or sublet tenant and a designated contact person therefor; and (iii) if applicable, a new insurance policy and binder complying with the terms of this Lease and naming such assignee or sublet tenant as the tenant of the Premises.

(e) Landlord shall have the absolute right at any time during the continuance of a Default under this Lease, upon notice to Tenant and any subtenants, to collect rents and other sums of money payable under any present or future sublease of all or any portion of this Premises ("Subleases"), to the exclusion of Tenant, and to apply the same to installments of Rent then due and payable (with any excess payable to Tenant). Tenant shall not accept any rents under any Sublease more than thirty (30) days in advance of the accrual thereof nor permit anything to be done, the doing of which, nor omit or refrain from doing anything, the omission of which, will or could be a breach of or default in the terms of any of the Subleases.

(f) In the event of the subletting or assignment of this Lease by Tenant, one-half (1/2) of any profits received by Tenant, in excess of Rent and other sums due hereunder and the actual third party costs of such subletting or assignment, shall be paid to Landlord.

(g) Landlord shall have the right without limitation to sell, convey, transfer or assign its interest in the Premises or its interest in this Lease, so long as such transferee assumes all of the Landlord's obligation under this Lease which arise or accrue from and after the date of the transfer, and upon such conveyance being completed all covenants and obligations of Landlord under this Lease accruing thereafter shall cease, but such covenants and obligations shall run with the land and shall be binding upon the subsequent landlord or owners of the Premises or of this Lease. In connection with such a sale and assignment, the transferee may mortgage the Premises and pledge and assign this Lease to such mortgagee so long as the mortgagee executes a Subordination, Non-Disturbance Attornment Agreement in substantially the form of Exhibit "C" to this Lease.

19. **SUBORDINATION, NON DISTURBANCE, ATTORNMENT, ESTOPPEL CERTIFICATE**

(a) Upon written request of the holder of any mortgage (which term "mortgage" shall also include deeds of trust) now or hereafter relating to the Premises, Tenant shall subordinate its rights under this Lease to the lien thereof and to all advances made or hereafter to be made upon the security thereof, and Landlord, Tenant and such mortgagee shall execute, acknowledge and deliver an instrument substantially in the form of Exhibit "C" attached hereto or in other reasonable form customarily used by such encumbrance holder to effect such subordination and which is acceptable to the parties; provided, however, as a condition of all such subordination, the holder of such mortgage shall be required to execute and deliver the Subordination, Non-Disturbance and Attornment Agreement in substantially the form attached hereto as Exhibit "C", which agreement includes, among other things, the mortgagee's agreement that (i) casualty and condemnation proceeds shall be held and applied as required by this Lease, notwithstanding any conflicting provisions in such mortgagee's loan documents, and (ii) notwithstanding a foreclosure, deed in lieu of foreclosure, or other exercise of rights under any such first or other mortgage, Tenant's possession and occupancy of the Premises and the improvements and its leasehold estate shall not be disturbed or interfered with, nor shall Tenant's rights and obligations under this Lease be altered or adversely affected thereby so long as Tenant is not in Default.

(b) Notwithstanding anything in Paragraph 19(a) above to the contrary, in the event the holder of any such mortgage elects to have this Lease be superior to its mortgage, then upon notification to Tenant to that effect by such encumbrance holder, this Lease shall be deemed prior to the lien of said mortgage, whether this Lease is dated prior or subsequent to the date of said mortgage, and Tenant shall execute, acknowledge and deliver an instrument, in the form customarily used by such encumbrance holder and reasonably satisfactory to Tenant to effect such priority.

(c) In the event proceedings are brought for the foreclosure of, or in the event of the exercise of the power of sale under any mortgage made by Landlord encumbering the Premises, or in the event of delivery of a deed in lieu of foreclosure under such a mortgage, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as

"Landlord" under this Lease, and upon the request of the purchaser, Tenant shall execute, acknowledge and deliver an instrument, in form and substance reasonably satisfactory to such purchaser and Tenant, evidencing such attornment.

(d) Each party agrees, within seven (7) days after written request by the other, to execute, acknowledge and deliver to and in favor of any proposed mortgagee or purchaser of the Premises or with respect to Tenant or Tenant's Property, an estoppel certificate, substantially in the form of Exhibit "D" attached hereto, stating, among other things (i) whether this Lease is in full force and effect, (ii) whether this Lease has been modified or amended and, if so, identifying and describing any such modification or amendment, (iii) the date to which Rent and other charges have been paid, (iv) whether the party furnishing such certificate knows of any default on the part of the other party under this Lease, or has any claim against such party and, if so, specifying the nature of such default or claim, and (v) if applicable, Landlord will provide an accounting of any Escrow Funds then held by Landlord.

(e) Upon written demand by the holder of any mortgage encumbering the Premises, Tenant shall forthwith execute, acknowledge and deliver an agreement in favor of and in the form customarily used by such encumbrance holder, by the terms of which Tenant shall agree to give prompt written notice to such encumbrance holder in the event of any casualty damage to the Premises or in the event of any default on the part of Landlord under this Lease, and shall agree to allow such encumbrance holder a reasonable length of time after notice to cure or cause the curing of such default before exercising Tenant's rights under this Lease, or terminating or declaring a default under this Lease.

## **20. USE OF PREMISES**

The use of the Premises shall be limited to the operation of a Furr's Fresh Buffet Restaurant, or other concept of Buffet Partners, L.P. so long as Buffet Partners, L.P. is the Tenant under the Lease, or such other use deemed a Permitted Use. Tenant shall have no obligation to continuously operate the Premises, provided, however, that if the Premises remain continuously unoccupied and no business is conducted at the Premises for a period of twelve (12) consecutive months or longer, Landlord may, at its sole and absolute discretion, give written notice to Tenant that Landlord has elected to terminate this Lease as of a specified date (if the Premises remains unoccupied as of such date and no business is being conducted on the Premises) (the "Early Lease Termination Date"), subject to payment by Tenant to Landlord of an amount equal to the Lease Termination Fee. Upon payment to Landlord of the Lease Termination Fee, Tenant shall have no further obligations under this Lease after the Early Lease Termination Date. Tenant shall at all times maintain the Premises and (to the extent business operations are being conducted thereon) operate its business in compliance with all applicable regulations and requirements of all county, municipal, state, federal and other governmental authorities, and instruments of record affecting the Premises which are now in force or which are enacted during the term of this Lease with Tenant's consent.

## 21. NOTICES

All notices and other communications required or permitted to be given hereunder shall be in writing and shall be delivered by a nationally recognized overnight courier or personally delivered, addressed as follows:

If to Landlord: **GE CAPITAL FRANCHISE FINANCE CORPORATION**  
450 South Orange Avenue  
Orlando, Florida 32801-3336  
Attention: Property Management  
Fax: (407) 422-2933

with copy to: **DALE A. BURKET, ESQUIRE**  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
450 South Orange Avenue, Suite 250  
Orlando, Florida 32801  
Fax: (407) 843-4444

If to Tenant: **BUFFET PARTNERS, L.P.**  
Suite 200  
2701 East Plano Parkway  
Plano, Texas 75074-3716  
Attention: Ray Hemmig  
Fax: (214) 291-2473

with copy to: **CHAIKEN LEGAL GROUP, P.C.**  
13355 Noel Road, Suite 620  
Dallas, Texas 75240  
Attention: Michael J. Chaiken, Esq.  
Fax: (214) 751-3438

Any party may change its address for notices by written notice in like manner as provided in this paragraph and such change of address shall be effective seven (7) days after the date notice of such change of address is given. All notices given in accordance with the terms hereof shall be deemed given when it shall have been received, or upon refusal of delivery.

With respect to any such notice, Tenant shall, and Landlord shall use its best efforts to, simultaneously deliver a copy of such notice by facsimile at the appropriate facsimile number above to the other party; provided however, that overnight courier delivery or personal delivery shall nevertheless be required to effect proper notice hereunder.

## 22. INDEMNIFICATION

Tenant does hereby indemnify and exonerate and agrees to hold harmless Landlord against and from all liabilities, losses, obligations, damages, penalties, claims, costs, charges and third party expenses, including reasonable third party architects' fees, attorneys' fees, paralegal fees, and legal costs and expenses incurred by Landlord during the term of this Lease or any

extension or renewal hereof or while Tenant is occupying the Premises, whether or not judicial proceedings are filed, and including on appeal and in any bankruptcy proceedings, which may be imposed upon or asserted against or incurred by Landlord by reason of any of the following occurring:

(a) any work or thing done in respect of construction of, in or to the Premises or any part of the improvements now or hereafter constructed on the Premises;

(b) any use, possession, occupation, operation, maintenance or management of the Premises or any part hereof;

(c) any failure to, or to properly, use, possess, occupy, operate, maintain or manage the Premises or any part thereof;

(d) the condition, including environmental conditions, of the Premises or any part thereof;

(e) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees;

(f) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof including any sidewalk adjacent thereto;

(g) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with.

(h) Notwithstanding the foregoing, Tenant's obligations under this Paragraph 22 shall not extend to (i) matters arising from the gross negligence or willful misconduct of Landlord or its agents, officers or employees, (ii) Landlord's costs in administering this Lease except in connection with a Tenant Default, or (iii) any costs or expenses incurred in connection with or arising from any financing of the Premises or the Lease or any securitization of the Premises or the Lease.

**THIS LEASE CONTAINS ONE OR MORE INDEMNITIES BY TENANT OF LANDLORD OR ITS SHAREHOLDERS, DIRECTORS, OFFICERS, PARTNERS, MEMBERS, MANAGERS, EMPLOYEES, AFFILIATES OR AGENTS THAT MAY INDEMNIFY THE NEGLIGENCE OF THE INDEMNIFIED PERSON OR PERSONS AND THE INDEMNIFYING PERSON OR PERSONS ACKNOWLEDGE THAT THIS NOTICE SATISFIES THE REQUIREMENTS OF THE EXPRESS NEGLIGENCE RULE IN TEXAS.**

### **23. COOPERATION**

Landlord shall fully cooperate with Tenant throughout the term of this Lease to secure or maintain proper zoning, building and other permits and compliance with all applicable laws. Landlord shall execute any petitions, requests, applications and the like as Tenant shall reasonably request in order to obtain any permit, license, variances and approvals which, in the

reasonable judgment of Tenant, are necessary for the lawful construction and/or operation of Tenant's business on the Premises or the business of any approved subtenant, provided, however, that Tenant shall indemnify and save Landlord harmless from any and all expenses, costs, charges, liabilities, losses, obligations, damages and claims of any type which may be imposed upon, asserted against or incurred by Landlord by reason of same, except to the extent caused by the gross negligence or willful misconduct of Landlord.

**24. EXCULPATION**

Landlord shall not be liable to Tenant, Tenant's employees, agents, invitees, licensees or any other person whomsoever for any injury to person or damage to property on or about the Premises caused by the negligence or misconduct of Tenant, its agents, servants or employees or of any other person entering the building under express or implied invitation by Tenant or due to any other cause whatsoever, unless caused by the negligence or neglect of Landlord, its agents, officers, employees or their respective authorized representatives. Notwithstanding the foregoing or anything set forth herein, Landlord shall have full personal liability for any Escrow Funds held by Landlord hereunder and for Landlord's failure to apply such Escrow Funds as required hereunder.

**25. LANDLORD'S LIABILITIES**

The term "Landlord" as used in this Lease means the owner from time to time of the Premises. Neither Landlord nor any partner, shareholder or beneficiary thereof shall have any personal liability with respect to any of the provisions of this Lease, and if Landlord is in default with respect to its obligations hereunder, Tenant shall look solely to the Premises and the equity of Landlord in the Premises. Notwithstanding anything set forth in this Lease, Landlord shall have full personal liability for any Escrow Funds held by Landlord hereunder and for Landlord's failure to apply such Escrow Funds as required by this Lease.

**26. SUCCESSORS**

The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and assigns.

**27. ENTIRE AGREEMENT/MEMORANDUM OF LEASE**

This Lease contains the entire agreement between the parties hereto and may not be modified in any manner other than in writing signed by the parties hereto or their successors in interest. A memorandum of this Lease in the form of Exhibit "F" attached hereto shall be executed by the parties and shall be recorded in the official records of the county where the Premises are located.

**28. GENDER**

Whenever the context hereof permits or requires, words in the singular may be regarded as in the plural and vice-versa, and personal pronouns may be read as masculine, feminine and neuter.

**29. BROKERAGE FEES**

It is understood and agreed that neither party has incurred any real estate brokerage fees or commissions arising out of this Lease and each party agrees to hold the other harmless from and against all such fees and commissions incurred, and costs related thereto including legal fees, as a result of its own conduct or alleged conduct.

**30. CAPTIONS**

The captions of this Lease are for convenience only, and do not in any way define, limit, disclose, or amplify terms or provisions of this Lease or the scope or intent thereof.

**31. NOT A SECURITY ARRANGEMENT**

The parties hereto agree and acknowledge that this transaction is not intended as a security arrangement or financing secured by real property, but shall be construed for all purposes as a true lease.

**32. NET LEASE**

It is the intention of the parties hereto that this Lease is and shall be treated as a triple net lease. Any present or future law to the contrary notwithstanding, except as expressly set forth in this Lease, this Lease shall not terminate, nor shall Tenant be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense with respect to Rent, nor shall the obligations of Tenant hereunder be affected by reason of: any damage to or destruction of the Premises or any part thereof; any taking of any Premises or any part thereof or interest therein by condemnation or otherwise; any prohibition, limitation, restriction or prevention of Tenant's use, occupancy or enjoyment of the Premises or any part thereof, or any interference with such use, occupancy or enjoyment by any person or for any other reason; any title defect or encumbrance or any matter affecting title to the Premises or any part thereof; any eviction by paramount title or otherwise; any default by Landlord hereunder; any proceeding relating to Landlord; the impossibility or illegality of performance by Landlord, Tenant or both; any action of governmental authority; any breach of warranty or misrepresentation; any defect in the condition, quality or fitness for use of the Premises or any part thereof; or any other cause whether similar or dissimilar to the foregoing and whether or not Tenant shall have notice or knowledge of any of the foregoing. The parties intend that the obligations of Tenant hereunder shall be separate and independent covenants and agreements and shall continue unaffected unless such obligations shall have been modified or terminated in accordance with an express provision of this Lease.

**33. WAIVER**

No waiver by Landlord of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Tenant of the same or any other provision. Landlord's consent to, or approval of, any act as required hereunder shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any such subsequent act by Tenant. The acceptance of Rent hereunder by Landlord shall not be a waiver of any preceding Default by Tenant of any provision hereof, other than the failure of Tenant to pay the

particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent.

**34. TIME OF THE ESSENCE**

Landlord and Tenant agree that time shall be of the essence of all terms and provisions of this Lease.

**35. GOVERNING LAW**

This Lease shall be construed in accordance with the laws of the state in which the Premises are located.

**36. LEASE SECURITIZATION**

Landlord reserves the right to assign, transfer, participate, pledge, hypothecate or encumber, or any combination thereof, all or any part of Landlord's interest in this Lease or any of the collateral and documents described herein or related hereto without Tenant's consent, but subject to the terms and conditions of this Lease. Tenant acknowledges that Landlord has advised Tenant that Landlord intends to offer the Premises and this Lease as part of an investment sale/lease securitization program. Tenant (a) agrees to cooperate in good faith with Landlord's reasonable requests relating to the sale or securitization program process and requirements at the sole cost and expense of Landlord, (b) agrees and acknowledges that all required financial information relating to Tenant may be made available by Landlord to purchasers of the Premises or participants in a lease securitization, and (c) agrees to assist Landlord, at Landlord's sole cost and expense, in completing any documents reasonably necessary to accomplish any such transfer and/or securitization transaction, it being understood and agreed, however, that none of such agreements or cooperation shall expand Tenant's liability under this Lease or vary the terms of this Lease. Tenant hereby authorizes Landlord to provide any required financial information regarding Tenant in any reports required as part of a lease securitization program or by any governmental body regulating Landlord.

**37. SEVERABILITY**

If any provision of this Lease becomes unenforceable for any reason, such unenforceability shall not limit or impair the operation or validity of any other provision of this Lease.

**38. JURISDICTION, VENUE, AND GOVERNING LAW**

If any party to this Lease institutes any lawsuit or other action or proceeding against the other party and pertaining to this Lease, any right or obligation of any party hereunder, breach of this Lease or otherwise pertaining to the Premises, the sole and exclusive venue and jurisdiction for filing and maintaining any such lawsuit or other action or proceeding shall be in the jurisdiction where the Premises is located, and the parties to this Lease waive the right to institute or maintain any such suit, action or proceeding in any other courts or forums whatsoever. Each party by executing this Lease consents and submits itself to the personal



jurisdiction of such court. This Lease shall be construed and governed in accordance with the laws of the state where the Premises is located without regard to conflict of law principles.

### 39. COUNTERPARTS

This Lease may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one agreement.

### 40. SPECIALLY DESIGNATED NATIONALS; BLOCKED PERSONS; EMBARGOED PERSONS

(a) Tenant represents and warrants to Landlord that (1) Tenant and each person or entity directly or indirectly owning an interest in Tenant is (i) not currently identified on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control of the Department of the Treasury (“OFAC”) and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the “List”), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (2) none of the funds or other assets of Tenant constitute property of, or are beneficially owned, directly or indirectly, by, any Embargoed Person, (3) no Embargoed Person has any interest of any nature whatsoever in Tenant (whether directly or indirectly), (4) none of the funds of Tenant have been derived from any unlawful activity with the result that the investment in Tenant is prohibited by law or that this Lease is in violation of law, and (5) Tenant has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term “Embargoed Person” means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §1701 et seq., the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Tenant is prohibited by law or Tenant is in violation of law.

(b) Tenant covenants and agrees (1) to comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, (2) to immediately notify Landlord in writing if any of the representations, warranties or covenants set forth in this paragraph or the preceding paragraph are no longer true or have been breached or if Tenant has a reasonable basis to believe that they may no longer be true or have been breached, (3) not to use funds from any “Prohibited Person” (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Landlord under this Lease and (4) at the request of Landlord, to provide such information as may be requested by Landlord to determine Tenant’s compliance with the terms hereof.

(c) Tenant hereby acknowledges and agrees that Tenant’s inclusion on the List at any time during the term of this Lease shall be an event of Default. Notwithstanding anything herein to the contrary, Tenant shall not knowingly permit the Premises or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent,

temporary or transient basis), and any such use or occupancy of the Premises by any such person or entity shall be a material Default of this Lease.

41. **SURVIVAL**

All obligations, covenants or agreements of a party to this Lease that are not fulfilled, completed, discharged or released by the terms of this Lease at the expiration or termination of this Lease, shall survive the expiration or termination of the Lease as continuing obligations, covenants or agreements of the party.

**[Signatures on Next Page]**

IN WITNESS WHEREOF, the parties hereto have executed and sealed this Lease Agreement to be effective as of the day and date first above written.

**"LANDLORD"**

Signed, Sealed and Delivered  
in the presence of:

**GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation

*P. Okolewicz*  
Name: PJ OKOLEWICZ

By: *Joanne Ball*  
Name: JOANNE BALL  
Title: Authorized Signatory

*Patricia Deneault*  
Name: Patricia Deneault

(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me on this 26<sup>th</sup> day of December, 2007, by JOANNE BALL, as Authorized Signatory of **GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation, on behalf of the corporation. He/She is personally known to me and did not take an oath.

(NOTARY SEAL)

*Caity E. Spellman*  
Notary Signature

Printed Name: \_\_\_\_\_  
Notary Public, State of Florida  
Notary Commission No. \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



"TENANT"

Signed, Sealed and Delivered  
in the presence of:

**BUFFET PARTNERS, L.P.**, a Texas limited  
partnership

By: **BUFFET G.P., INC.**, a Texas  
corporation, the general partner

Yvonne Rivera  
Name: Yvonne Rivera

By: [Signature]  
Name: GREG BUCHANAN  
As Its: CEO

Charlotte Sims  
Name: Charlotte Sims

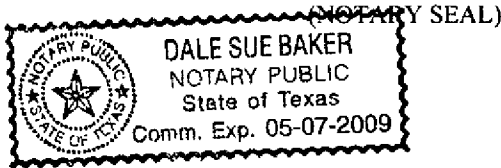
(CORPORATE SEAL)

STATE OF TEXAS  
COUNTY OF Collin

Before me Dale Sue Baker, on this day personally appeared  
Greg Buchanan, known to me (or proved to me on the oath of  
) to be the person whose name is subscribed to the foregoing instrument, and  
known to me to be the CEO of **BUFFET G.P., INC.**, a Texas  
corporation, the general partner of **BUFFET PARTNERS, L.P.**, a Texas limited partnership, and acknowledged to  
me that he/she executed said instrument for the purposes and consideration therein expressed, and as the act of said  
corporation and limited partnership.

Given under my hand and seal of office this 27 day of December, 2007.

Dale Sue Baker  
Notary Public, State of Texas



Printed Name: Dale Sue Baker  
Notary Commission No. \_\_\_\_\_  
My Commission Expires: 5/7/09

EXHIBITS ATTACHED

- Exhibit "A" - Legal Description
- Exhibit "B" - Subordination of Landlord's Lien
- Exhibit "C" - Subordination, Non-Disturbance and Attornment Agreement
- Exhibit "D" - Estoppel Certificate
- Exhibit "E" - Permitted Exceptions
- Exhibit "F" - Memorandum of Lease

ADDENDA ATTACHED

- Rent Addendum
- Construction Addendum

## EXHIBIT "A"

### Legal Description of the Premises

#### TRACT I: (Fee Tract)

Lot 7R, Block 1, CENTERVILLE MARKETPLACE SECOND REPLAT, an addition to the City of Garland, Dallas County, Texas, according to the plat thereof recorded under Clerk's File No. 20070428023, Map Records, Dallas County, Texas.

#### TRACT II: (Easement Estate)

Ingress, Egress, and Access Easements executed by and between Wal-Mart Real Estate Business Trust, a Delaware business trust and Garland Eastgate, LP, an Illinois limited partnership, dated November 1, 2006, filed for record on November 2, 2006, and recorded under Clerk's File No. 200600406593, Real Property Records, Dallas County, Texas, to the extent pertaining to Tract I described above. As amended by the First Amendment to Easements with Covenants and Restrictions Affecting Land recorded in Clerk's File No. 20070445827, Real Property Records, Dallas County, Texas; save and except property that lies within Tract I described above.

#### TRACT III: (Easement Estate)

Easement Estate created by the Declaration of Covenants, Conditions, Easements and Restrictions, dated December 11, 2007, and recorded in the Real Property Records of Dallas County, Texas, to the extent pertaining to Tract I described above.

## EXHIBIT "B"

### SUBORDINATION OF LANDLORD'S LIEN

Lender:

[[Name and Address of Lender]]

Premises:

[[Concept/Site #/Address]], the legal description of which is attached to this Subordination of Landlord's Lien as Exhibit "A"

Landlord:

[[Name and Address of Landlord]]

Tenant:

[[Name and Address of Tenant]]

1. Subordination of Landlord's Lien as to Personal Property: Landlord hereby subordinates to and waives in favor of Lender's security interests in and liens on the assets of Tenant (hereinafter referred to as "Collateral", a description of which is attached as Exhibit "B"), now or to be installed on or deposited at the above described Premises, each and every right that the Landlord now has, or may hereafter have, under any lease or other agreement between Landlord and Tenant pertaining to the Premises (the "Lease"), the laws of the State in which the Premises are situated or otherwise to claim or assert, or to seek to levy, execute or foreclose upon, any right or title to, interest in or lien upon Collateral, including, without limitation, any common law landlord's lien, statutory landlord's lien or contractual landlord's lien, provided that:

(a) The Collateral shall remain personal property and not be deemed a fixture whether or not it becomes attached to any real property.

(b) The Collateral may be recovered or repossessed at any time by Lender and Landlord will not interfere therewith, regardless of the manner or degree of the attachment of the Collateral to the Premises, provided Lender provides Landlord with twenty-four (24) hours prior written notice of its intent to remove the Collateral. Landlord agrees that Lender may, upon at least twenty-four (24) hours written notice, do any or all of the following to the Collateral: assemble, inspect, have appraised, display, operate, sever, remove, maintain, prepare for sale or lease, repair, lease, transfer and/or sell at public or private sale, the Collateral, or any part thereof. Landlord grants Lender the right and license to occupy the Premises for the purposes described above, for a period of up to thirty (30) days (at Lender's discretion) following the earlier of (i) Tenant's placing Lender in possession of the Premises, or (ii) abandonment of the Premises by Tenant, or (iii) delivery to Lender of written notice that the Lease has been

terminated (the "Lender's License Period"). In the event that Lender exercises such right and license to occupy the Premises, Lender shall pay Landlord, periodically, a daily license fee equivalent to one-thirtieth (1/30<sup>th</sup>) of the ordinary monthly rental then applicable as provided in the Lease, without incurring any other obligations of Tenant to Landlord. Any extensions of the Lender's License Period shall be subject to the written consent of Landlord. In the event Landlord consents to any extension of the Lender's License Period, Lender shall pay Landlord a daily license fee at the same rate specified above. Lender hereby covenants and agrees with Landlord to use all reasonable care in connection with Lender's possession of the Premises and the removal of the Collateral, and to reimburse Landlord for any physical damage to the Premises caused by Lender's employees, agents or servants in so removing the Collateral, all of which shall be completed within a reasonable amount of time from such removal, recovery or repossession. Notwithstanding the foregoing, if the Collateral is not removed on or before the expiration of the Lender's License Period (as such may be extended by Landlord), then such Collateral shall be deemed abandoned.

(c) Lender may enter upon the Premises at any reasonable time in order to inspect the Collateral in accordance with any agreements between Lender and Tenant. If the Premises have been vacated, such arrangements shall be coordinated with Landlord.

2. Notice: All notices and other communications required or permitted to be given hereunder shall be in writing and shall be delivered by a nationally recognized overnight courier or by personal delivery, addressed as follows:

If to Landlord: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any party may change its address for notices by written notice in like manner as provided in this paragraph and such change of address shall be effective seven (7) days after the date notice of such change of address is given. All notices given in accordance with the terms hereof shall be deemed given when it shall have been received, or upon refusal of delivery.

With respect to any such notice, the parties shall use their best efforts to simultaneously deliver a copy of such notice by facsimile at the appropriate facsimile number above to the other party or parties; provided however, that overnight courier delivery or personal delivery shall nevertheless be required to effect proper notice hereunder.

3. This Subordination of Landlord's Lien (a) shall govern the rights between Lender and Landlord pertaining to the Collateral, notwithstanding any provisions of any Lease or other agreement between Tenant and Landlord, and (b) shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns and all other owners of the Premises or assignees of Landlord's interest in the Lease or other agreement with Tenant pertaining to the Collateral and shall inure to the benefit of Lender and each of its legal representatives, successors and assigns. Landlord agrees that all waivers and consents herein granted shall continue until such time as the earlier of (i) all liabilities of Tenant to Lender and expenses (including, without limitation, reasonable attorney's fees) now or hereafter owing by Tenant to Lender have been finally and irrevocably paid to or recovered by Lender in full and all covenants and conditions of Tenant to Lender have been fully performed, or (ii) the expiration of the Lender's License Period.

4. This Subordination of Landlord's Lien is made and entered into under, and shall be construed according to, the laws of the State of Texas, and the exclusive jurisdiction for any action arising hereunder shall be the State in which the Premises are located.

5. This Subordination of Landlord's Lien may not be amended except by a written instrument signed by the parties hereto.

6. This Subordination of Landlord's Lien shall not impair, modify or otherwise affect the terms of the Lease, including, without limitation, Tenant's obligations to pay rent and any other sums payable by Tenant pursuant to the terms of the Lease.

**(Signatures on Following Pages)**



**"LANDLORD"**

Signed, Sealed and Delivered  
in the Presence of:

\_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
As Its: \_\_\_\_\_

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

(INSERT APPROPRIATE NOTARY BLOCK)

**“LENDER”**

Signed, Sealed and Delivered  
in the Presence of:

\_\_\_\_\_

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

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

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

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

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

(INSERT APPROPRIATE NOTARY BLOCK)

**“TENANT”**

Signed, Sealed and Delivered  
in the Presence of:

\_\_\_\_\_

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

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

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

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

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

(INSERT APPROPRIATE NOTARY BLOCK)

**EXHIBIT "A" to SUBORDINATION OF LANDLORD'S LIEN**

**Legal Description of the Premises**

(attach copy of legal description)

## **EXHIBIT "B" to SUBORDINATION OF LANDLORD'S LIEN**

### **(Description of Collateral)**

The Collateral means the following owned by Tenant, or in which Tenant has an interest (but only to the extent of such interest): all furniture, trade fixtures, building lettering, signs, sign posts, sign standards, food and customer service equipment (whether unattached or attached to the improvements by bolts and screws and/or by utility connections including, without limitation, walk-in refrigerators and freezers, remote refrigeration systems and exhaust systems and hoods and water heaters), equipment and other items of personal property now owned, acquired, held or used by Tenant in its operation of a Furr's Fresh Buffet Restaurant and all additions to, substitutions for and replacements of the foregoing, but does not mean and specifically excludes (except as specifically set forth above) all lighting, electrical, heating, air cooling and air conditioning apparatus, gas, electric and power equipment, pipes, pumps, tanks, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, and communications apparatus, drapes, attached floor coverings, including carpeting, storm doors and windows, toilets and sinks, ducts and compressors, and related machinery and equipment including but not limited to compressors, regardless of whether any of the foregoing are affixed or attached to the Premises.

EXHIBIT "C"

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

**THIS AGREEMENT**, made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_, whose \_\_\_\_\_ address \_\_\_\_\_ is \_\_\_\_\_ (hereinafter referred to as the "Lender"), \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ (hereinafter referred to as the "Tenant"), and \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ (hereinafter referred to as the "Landlord");

**WITNESSETH:**

**WHEREAS**, Lender is the holder of a mortgage loan (hereinafter referred to as the "Loan") to Landlord, which Loan is secured by, inter alia, a [ ] Commercial Mortgage/Deed of Trust [ ] and Security Agreement executed by Landlord to and in favor of Lender (hereinafter referred to as the "Mortgage"), encumbering Landlord's property located at \_\_\_\_\_, in \_\_\_\_\_ County, \_\_\_\_\_ (hereinafter referred to as the "Mortgaged Premises"); and

**WHEREAS**, Landlord has leased all or some portion of the Mortgaged Premises (hereinafter referred to as the "Premises") to Tenant by Lease dated \_\_\_\_\_, 20\_\_, as amended by \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ (hereinafter collectively referred to as the "Lease"); and

**WHEREAS**, Lender, in connection with the Loan, requires that the Lease and all of the rights of Tenant thereunder be subordinated to the Mortgage and all of the rights of Lender thereunder; and

**WHEREAS**, Tenant desires to receive certain assurances that its possession of the Premises and other rights and interests under the Lease will not be disturbed in such event, and Lender is willing to grant certain assurances upon the terms and conditions hereinafter set forth;

**NOW, THEREFORE**, the parties hereto, in consideration of the mutual covenants herein contained and intending to be legally bound, hereby agree as follows:

1. The Lease and all of the rights of Tenant thereunder shall be and are hereby declared to be and at all times hereafter shall be and remain subject and subordinate in all respects to the Mortgage and all of the rights of Lender thereunder. Notwithstanding such subordination, Lender hereby agrees that the Lease shall not terminate in the event of a foreclosure of the Mortgage. Tenant agrees to attorn to and to recognize Lender (as mortgagee in possession or otherwise), or the purchaser at such foreclosure sale, as Tenant's landlord for the balance of the term of the Lease, in accordance with the terms and provisions thereof, but subject, nevertheless, to the provisions of this Agreement, which Agreement shall be controlling

in the event of any conflict. The parties further acknowledge and confirm that any casualty or condemnation proceeds with respect to the Mortgaged Premises shall be held, paid and applied as provided in the Lease, except that any amounts payable to Landlord for the use and benefit of Landlord under the Lease may be held, paid and applied as set forth in the Mortgage.

2. Lender hereby agrees with Tenant that, so long as no Default (as defined in Paragraph 13 of the Lease) has occurred and is continuing, Tenant's possession of the Premises and Tenant's other rights and interests under the Lease shall not be disturbed or interfered with by Lender.

3. Tenant hereby agrees that Lender, or any purchaser at a foreclosure sale, shall not be (a) liable for any act or omission of Landlord under the Lease which occurred prior to the date of its acquisition of the Mortgaged Property, (b) subject to any offsets or defenses which Tenant may have against Landlord and which arose prior to the date of its acquisition of the Mortgaged Property, (c) bound by any rent which Tenant may have paid to Landlord for more than the current month, and (d) bound by any amendment or modification of the Lease made without Lender's written consent. Notwithstanding the foregoing, any Escrow Funds held by Landlord pursuant to Paragraph 13(g) of the Lease shall be transferred by Landlord to Lender (or a purchaser at a foreclosure sale, if applicable), to be held or applied in accordance with the terms of the Lease, and Tenant shall be given credit for any Escrow Funds held by Landlord at the time of such transfer.

4. Tenant hereby agrees that any entity or person which at any time hereafter becomes the landlord under the Lease, including, without limitation, Lender or the purchaser at a foreclosure sale, shall be liable only for the performance of the obligations of the Landlord under the Lease which arise and accrue during the period of such entity's or person's ownership of the Premises.

5. Tenant hereby agrees that, thirty (30) days before exercising any of its rights and remedies under the Lease in the event of any default by Landlord thereunder, it shall send written notice to Lender at the address set forth above, by certified mail, return receipt requested, of the occurrence of any default by Landlord in the terms and provisions of the Lease and describe with reasonable specificity the events constituting such default. Tenant further agrees that with respect to any default of Landlord which would entitle Tenant to cancel the Lease or offset or abate the rent payable thereunder, any provision of the Lease to the contrary notwithstanding, no such cancellation or offset or abatement of rent shall be effective unless Lender shall have received notice in the form and manner required by the provisions of this paragraph, and shall have failed within thirty (30) days of the date of receipt of such notice to cure or cause to be cured, or if such default cannot be cured within such thirty (30) day period, shall have failed to commence and diligently prosecute the cure of, such default.

6. This Agreement shall supersede, as between the parties hereto, all of the terms and provisions of the Lease which are inconsistent herewith.

7. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the parties hereto, or their respective successors in interest. This

Agreement shall inure to the benefit of and be binding upon the parties hereto, and their successors and assigns.

8. This Agreement shall be construed in accordance with the laws of the State of Texas.

9. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one Agreement.



The parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**LENDER:**

\_\_\_\_\_  
\_\_\_\_\_

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

**TENANT:**

\_\_\_\_\_  
\_\_\_\_\_

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

**LANDLORD:**

\_\_\_\_\_  
\_\_\_\_\_

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

**EXHIBIT "D"**

**ESTOPPEL CERTIFICATE**

The undersigned with respect to the premises at \_\_\_\_\_ as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Premises"), certifies and affirms the following to \_\_\_\_\_ [{"Tenant"}] [{"Landlord"}] and to \_\_\_\_\_ [{"Mortgagee"}] [{"Purchaser"}]:

1. Tenant leases the Premises from Landlord under that certain Lease dated \_\_\_\_\_, attached hereto and made a part hereof by this reference, as amended by \_\_\_\_\_ (as so amended, the "Lease").

2. Rental under this Lease has been paid through \_\_\_\_\_, 20\_\_\_. No rent has been paid more than thirty (30) days in advance, except as described in the preceding sentence. The current monthly base rental amount is \$\_\_\_\_\_.

3. The term of the Lease is \_\_\_\_\_ through \_\_\_\_\_, a period of \_\_\_\_\_ years. Tenant has two (2) options to extend the Lease for ten (10) years each, for a total term including all options through \_\_\_\_\_ as set forth in the Lease.

4. Landlord holds \$-0- as security deposit pursuant to the Lease.

5. Tenant, to the best of the undersigned's knowledge and belief without any independent investigation, is not in default under any term of the Lease.

6. Landlord, to the best of the undersigned's knowledge and belief without any independent investigation, is not in default under any terms of the Lease.

7. The Lease is in full force and effect and there have been no modifications or amendments except as referenced in Paragraph 1, above.

8. [*For any Estoppel Certificate signed by Landlord while Landlord is holding Escrow Funds, insert an accounting of the Escrow Funds held by Landlord*]

This Certificate may be relied upon by [{"Purchaser"}] [{"Mortgagee"}], who intends to [{"purchase the Premises} [and the Lease from Landlord], and by any mortgage lender of such person]] [{"provide secured [lease] [loan] financing to [Landlord] [Tenant]}].

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_

[{"Landlord"}] [{"Tenant"}]: \_\_\_\_\_

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

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

**EXHIBIT "E"**

**PERMITTED EXCEPTIONS**

EXHIBIT "F"

UPON RECORDATION RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**THIS INSTRUMENT WAS PREPARED BY:**  
**DALE A. BURKET, ESQUIRE**  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
450 South Orange Avenue, Suite 250  
Orlando, Florida, 32801  
(407) 843-4600

SPACE ABOVE THIS LINE FOR RECORDER'S USE

RETURN BY: MAIL (X) PICK UP ( )

Furr's Fresh Buffet, Asset # \_\_\_\_\_ / \_\_\_\_\_, \_\_\_\_\_ County,  
Texas

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE** is made as of \_\_\_\_\_, 2007 ("Effective Date"), by and between **GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation, with principal office and place of business at CNL Center at City Commons, 450 S. Orange Ave., Orlando, Florida 32801 ("Landlord"), and **BUFFET PARTNERS, L.P.**, a Texas limited partnership, with a mailing address of 2701 E. Plano Parkway, Suite 200, Plano, Texas 75074 ("Tenant").

In consideration of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration paid by Tenant to Landlord and the mutual covenants contained in that certain Lease Agreement between the parties hereto dated on even date herewith (hereinafter called the "Lease"), Landlord has leased and does hereby lease to Tenant, and Tenant has leased and does hereby lease from Landlord, upon the terms and conditions set forth in said Lease, the real property more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Premises").

The term of the Lease shall commence on the Effective Date and end on \_\_\_\_\_. Said Lease provides for options to renew for four (4) five (5) year terms. Tenant shall not allow any mechanic's lien or similar type of lien to be filed against the Premises.

**[Signatures on Next Page]**

IN WITNESS WHEREOF, Landlord and Tenant have executed and sealed this Memorandum of Lease to be effective as of the date first above written.

**"LANDLORD"**

Signed, Sealed and Delivered  
in the presence of:

**GE CAPITAL FRANCHISE FINANCE  
CORPORATION**, a Delaware corporation

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

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

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

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

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

(CORPORATE SEAL)

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Before me \_\_\_\_\_, on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_) to be the person whose name is subscribed to the foregoing instrument, and known to me to be the \_\_\_\_\_ of **GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation, and acknowledged to me that he/she executed said instrument for the purposes and consideration therein expressed, and as the act of said corporation. Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2007.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

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

Notary Commission No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**"TENANT"**

Signed and Delivered  
in the presence of:

**BUFFET PARTNERS, L.P.**, a Texas limited  
partnership

By: **BUFFET G.P., INC.**, a Texas  
corporation, the general partner

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

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

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

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

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

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Before me \_\_\_\_\_, on this day personally appeared \_\_\_\_\_,  
known to me (or proved to me on the oath of \_\_\_\_\_) to be the person whose name is  
subscribed to the foregoing instrument, and known to me to be the \_\_\_\_\_ of  
**BUFFET G.P., INC.**, a Texas corporation, the general partner of **BUFFET PARTNERS, L.P.**, a Texas limited  
partnership, and acknowledged to me that he/she executed said instrument for the purposes and consideration therein  
expressed, and as the act of said corporation and limited partnership.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_ 2007.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

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

Notary Commission No. \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**EXHIBIT "A" to MEMORANDUM OF LEASE**

**Legal Description**

Furr's Fresh Buffet, Asset # 007120/Garland, Dallas County, Texas

**RENT ADDENDUM**  
to  
**LEASE AGREEMENT**

THIS RENT ADDENDUM dated December 28, 2007, by and between **GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation, as "Landlord", and **BUFFET PARTNERS, L.P.**, a Texas limited partnership, as "Tenant", for Furr's Fresh Buffet, Garland, Dallas County, Texas, is attached to and made a part of that certain Lease Agreement by and between Landlord and Tenant of even date herewith (the "Lease"). Notwithstanding any other provision to the contrary which may be contained in said Lease, it is specifically agreed by and between Landlord and Tenant as follows:

1. **Definitions.** Capitalized terms used in this Rent Addendum shall, unless otherwise defined, have the meaning ascribed to them in the Lease.

2. **Commencement of Rent.** On the date hereof, Landlord has simultaneously entered into the Lease with Tenant pursuant to which Tenant has agreed to lease from Landlord the Premises and all improvements now or hereafter constructed thereon. Payment of Interim Rent shall commence as of the Effective Date as provided herein; payment of Annual Rent shall commence as of the Annual Rent Commencement Date, notwithstanding that some or all of the improvements contemplated to be constructed on the Premises may not be constructed or complete at that time.

3. **Interim Rent.** From and after the Effective Date until the Annual Rent Commencement Date, Tenant covenants and agrees to pay to Landlord Interim Rent, which shall be due and payable in advance monthly installments on the first day of each month. If the Effective Date falls on a day other than the first day of a calendar month, then the Interim Rent for the partial month shall be prorated on a per diem basis on the Effective Date and shall be paid by Tenant to Landlord for such month. For the purposes of this Lease, the term "Interim Rent" shall mean an amount equal to the product of (i) eight and six tenths percent (8.6%) per annum, multiplied by (ii) the sum, without duplication, of (a) that portion of the Total Cost advanced by Landlord in connection with Landlord's acquisition of the Premises (as evidenced by the Tenant Closing Statement executed by the parties in connection with the Lease), and (b) those amounts funded by Landlord under the terms of the Construction Addendum, as may be adjusted from time to time to include additional advances made by Landlord pursuant to the Construction Addendum.

4. **Annual Rent.**

(a) Beginning on the Annual Rent Commencement Date, Tenant covenants and agrees to pay to Landlord annual rent ("Annual Rent") in the annual amount of FOUR HUNDRED SEVENTEEN THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$417,100.00), payable to Landlord in equal monthly installments in the amount of THIRTY-FOUR THOUSAND SEVEN HUNDRED FIFTY-EIGHT AND 33/100 DOLLARS (\$34,758.33) monthly in advance, on the first (1st) day of each month. Notwithstanding the



foregoing, the parties acknowledge and agree that if it is determined following the expiration of the Construction Period that the Total Cost paid by Landlord for the acquisition and construction of the Premises is less than \$4,850,000.00, Landlord and Tenant shall amend the Annual Rent due under this Lease to reflect the actual Total Cost funded by Landlord in connection with the Premises.

(b) Increases in Annual Rent. Commencing on the first (1st) anniversary date of the Annual Rent Commencement Date, and on each one (1) year anniversary of such date thereafter during the term of this Lease (and any extension thereof), Annual Rent shall be increased by an amount equal to one and one quarter percent (1.25%) of the Annual Rent paid during the immediately preceding Lease Year.

(c) Partial Months. If the date on which Annual Rent shall be first due and payable shall fall on a day other than the first day of a calendar month, then Rent for the partial rental month shall be prorated on a per diem basis on the first Annual Rent payment and shall be paid by Tenant to Landlord for such month.

5. **Percentage Rent.**

[INTENTIONALLY DELETED]

6. **Sales/Use Tax.** Tenant shall also pay to Landlord any sales and use tax imposed on any Rent payable hereunder from time to time by state law or any other governmental entity, which sums are due monthly as to monthly Rent payments on the due date of the Rent payment under this Lease.

7. **Reporting.** Tenant shall, during the term of this Lease and any extensions thereto: (i) keep books and records reflecting its financial condition including, but not limited to, the operation of the Premises in accordance with generally accepted accounting principles consistently applied; (ii) furnish to Landlord within forty-five (45) days after the end of each fiscal quarter of Tenant, excluding the 4<sup>th</sup> quarter, an unaudited financial statement of Tenant and a statement of income (including quarterly store level sales, but broken down month-by-month) and expenses of the Premises; (iii) provide to Landlord fiscal year-end audited current signed financial statements of Tenant (including an annual balance sheet, a profit/loss statement, statement of cash flow, debt and lease schedules and footnotes) within one hundred twenty (120) days after Tenant's fiscal year end. Annual financial statements for Tenant will be prepared in accordance with generally accepted accounting principles ("GAAP"), consistently applied. Interim financial statements and other financial information for Tenant will be prepared in accordance with GAAP, but subject to year end adjustments and changes due to consolidation. Property level financial information will be prepared in accordance with good accounting practices consistently applied, and will remain subject to year end adjustments and changes due to consolidation. Landlord shall have the right, from time to time during normal business hours, to examine such books, records and accounts at the offices of Tenant or other entity as is maintaining such books, records and accounts, and to make such copies or extracts thereof as Landlord shall desire. Further, in the event Landlord seeks to securitize or otherwise transfer the Lease, then (upon Landlord's request), Tenant agrees to cooperate with Landlord, at Landlord's sole cost and expense, in providing such information as would be reasonably required for the

transaction, including but not limited to income and expense statements for the Premises. Landlord shall maintain confidentiality and not disclose such information to third parties without Tenant's written consent except (x) as may be required, in Landlord's reasonable judgment, for the exercise of Landlord's rights under this Lease, or as may be required by law; (y) for disclosure in confidence to prospective lenders or purchasers; or (z) for purposes of a net lease securitization.

8. **[INTENTIONALLY DELETED].**

9. **Late Charges.** In the event any installment of Rent is not received by Landlord within ten (10) days after the due date, there shall be an automatic late charge due to Landlord from Tenant in the amount of five percent (5%) of such delinquent installment of Rent. All such late charges due hereunder shall be deemed additional rent, and are not penalties but rather are charges attributable to administrative and collection costs arising out of such delinquency. In addition to such late charge, in the event Landlord does not receive Rent when due hereunder, interest at the rate of the maximum rate allowable by law shall be due and payable with respect to such payment from the date ten (10) days after the due date until Landlord receives such Rent.

10. **Payments of Rents.** All Rent payments shall be made by electronic funds transfer to Landlord by ACH payments initiated by Tenant, to the account designated by Landlord (or such other account designated by Landlord or its successors or assigns, respectively, from time to time after written notice thereof to Tenant). Notwithstanding the foregoing, in the event that the Premises are sold and the Lease is assigned to an unrelated third party that is not an affiliate of GE CAPITAL FRANCHISE FINANCE CORPORATION, Tenant thereafter may make Rent payments by electronic funds transfer or check, at Tenant's option.

11. **No Abatement.** Unless otherwise stated in the Lease, no abatement, offset, diminution or reduction of (a) Rent, charges or other compensation, or (b) Tenant's other obligations under this Lease shall be allowed to Tenant or any person claiming under Tenant, under any circumstances or for any reason whatsoever.

**[Initials on Next Page]**

Initialed for Identification:

\_\_\_\_\_  
By Landlord

*JB*

\_\_\_\_\_  
By Tenant

Initialed for Identification:

\_\_\_\_\_  
By Landlord

\_\_\_\_\_  
By Tenant

Handwritten signature or initials in black ink, consisting of a large, stylized 'P' with a horizontal line through it, and a vertical line extending downwards from the center.

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**ELECTRONICALLY RECORDED 201300210669**

**WHEN RECORDED RETURN TO: 07/03/2013 04:50:05 PM AS 1/3**

Kristin Brown  
First American Title Insurance Company  
2425 E. Camelback Rd., Suite 300  
Phoenix, AZ 85016

NCS 605921TRC4PAH

**MEMORANDUM OF ASSIGNMENT AND ASSUMPTION OF LEASE DOCUMENTS**

THIS MEMORANDUM OF ASSIGNMENT AND ASSUMPTION OF LEASE DOCUMENTS ("*Memorandum*") is effective as of June 27, 2013 (the "*Effective Date*"), between GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation, whose address is 450 South Orange Avenue, Suite 1100, Orlando, Florida 32801-3336 ("*Assignor*"), and ARC CAFEUSA001, LLC, a Delaware limited liability company, whose address is 106 York Road, Jenkintown, PA 19046 ("*Assignee*").

A. Assignor is the landlord under the Lease Agreement dated December 28, 2007 (together with any guaranty(ies) thereof, and any amendments, supplements or assignments thereto, the "*Lease*"), between Assignor, as landlord, and Buffet Partners, LP (the "*Tenant*"), as evidenced by that certain Memorandum of Lease recorded on January 3, 2008, in Instrument No. 2008001896, Real Property Records, Dallas County, Texas (as amended and assigned, the "*Memorandum*"), whereby Assignor leased to Tenant the real property and improvements more particularly described in the Memorandum.

B. Assignor and Assignee have entered into an Assignment and Assumption of Lease Documents ("*Agreement*"), of even date herewith, and hereby incorporate the terms and conditions of the Agreement as if set forth in full herein, and record this Memorandum to serve as constructive notice of the terms and conditions of the Agreement, with the intent that such Agreement be binding on all successors or assigns of Assignor and Assignee.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Memorandum as of the Effective Date.

**ASSIGNOR:**

GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation

By: *Carolyn Craft Martin*  
Printed Name: Carolyn Craft Martin  
Its Vice President

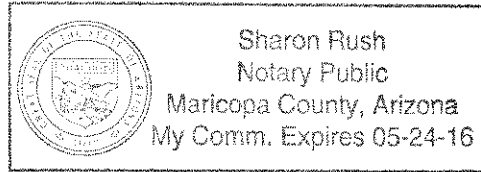
STATE OF ARIZONA                    )  
  ) SS.  
COUNTY OF MARICOPA            )

The foregoing instrument was acknowledged before me on June 19, 2013 by Carolyn Craft Martin, Vice President of GE Capital Franchise Finance Corporation, a Delaware corporation, on behalf of the corporation.

*Sharon Rush*  
Notary Public

My Commission Expires:

5-24-16



**ASSIGNEE:**

ARC CAFEUSA001, LLC, a Delaware limited liability company

By: American Realty Capital Operating Partnership IV, L.P., a Delaware limited partnership  
Its: Sole Member

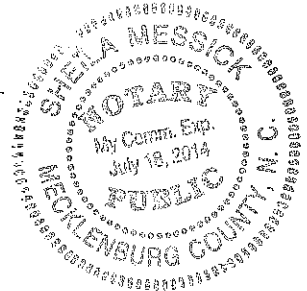
By: [Signature]  
Printed Name: O. Akomea Poku-Kankam  
Its: Authorized Signatory

STATE OF NORTH CAROLINA )  
  ) SS.  
COUNTY OF MECKLENBURG )

The foregoing instrument was acknowledged before me on 6-25, 2013 by O. Akomea Poku-Kankam, the Authorized Signatory of American Realty Capital Partnership IV, L.P., a Delaware limited partnership, the Sole Member of ARC CAFEUSA001, LLC, a Delaware limited liability company, on behalf of the company.

[Signature: Sheila Messick]  
Notary Public

My Commission Expires:  
7-18-14



**Filed and Recorded  
Official Public Records  
John F. Warren, County Clerk  
Dallas County, TEXAS  
07/03/2013 04:50:05 PM  
\$24.00  
201300210669**



## FIRST AMENDMENT TO LEASE AGREEMENT AND RENT ADDENDUM

THIS FIRST AMENDMENT TO THE LEASE AGREEMENT AND RENT ADDENDUM (this "*Amendment*"), is made and entered into as of July 2, 2014 (the "*Execution Date*"), and effective as of April 1, 2014 (the "*Effective Date*"), between ARC CAFEUSA001, LLC, a Delaware limited liability company, whose principal place of business address is 106 York Road, Jenkintown, Pennsylvania 19046 ("*Landlord*"), and BUFFET PARTNERS, LP, a Texas limited partnership, with a mailing address of Suite 200, 2701 East Plano Parkway, Plano, Texas 75074-3716, ("*Tenant*").

WHEREAS, GE Capital Franchise Finance Corporation, as Landlord's predecessor in interest, and Buffet Partners, L.P., as Tenant, entered into that certain Lease Agreement dated December 28, 2007 (the "*Lease*") and that certain Rent Addendum of even date (the "*Rent Addendum*"), whereby Buffet Partners, LP., leased from GE Capital Franchise Finance Corporation, certain property located at 15640 Eastgate Drive, Garland, Texas, as more fully described in Exhibit "A" to the Lease; and

WHEREAS, on February 4, 2014, Tenant commenced a case under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the "*Bankruptcy Code*"), which is now pending in the United States Bankruptcy Court for the Northern District of Texas (the "*Bankruptcy Court*") under Case No. 14-30699-11; and

WHEREAS, Landlord and Tenant desire to amend the Lease to provide for the calculation of rent during the remainder of the Lease term, and to modify certain terms and conditions of the Lease, effective as of the date on which the Bankruptcy Court enters an order approving the assumption of the Lease, as amended by this Amendment.

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

1. **Incorporation of Recitals.** The parties hereby agree that the foregoing recitals are true and correct and are incorporated into this Amendment by this reference.
2. **Capitalized Terms.** Except as otherwise provided herein, all capitalized terms herein shall have the same meanings assigned to them in the Lease.
3. **Cure.** As a condition to Tenant's "assumption" of the Lease in Tenant's bankruptcy proceedings, pursuant to 11 U.S.C. § 365, Tenant shall pay the following amounts (owing as of April 30, 2014) as a "cure" payment.
  - a. To Landlord, the amount of \$36,985.72 for rent owed for February 2014 (Landlord has agreed to forgive \$36,985.72 for January 2014 rent); and
  - b. To any applicable taxing authority, all outstanding taxes owed by Tenant pursuant to the terms of the Lease, including interest, penalties, late fees, or other charges. As of April 30, 2014, the Parties understand that taxes owed totaled \$72,474.69 (consisting of \$34,152.43 for Garland ISD, \$19,200.35 for City of Garland, and \$18,142.96 for Dallas County). Once paid, Tenant must provide proof of payment to Landlord.

Landlord and Tenant agree that the amounts set forth herein do not include any amounts owing under the terms of the Lease for the period beginning on May 1, 2014. It is contemplated that the purchaser of Tenant's assets in bankruptcy will take an assignment of the Lease, and will be



responsible for the payment of all amounts owing as of May 1, 2014. To the extent that is not the case, Tenant shall remain liable for all such amounts.

4. **Definitions.** The definition "Landlord" from "Section 1, Definitions" of the Lease is hereby deleted in its entirety and replace with the following:

a. "Landlord" shall mean "ARC CAFEUSA001, LLC," a Delaware limited liability company.

5. **Notice Addresses.** Section 20 of the Lease is hereby deleted in its entirety and replaced with the following notice addresses:

**If to Landlord:**

ARC CAFEUSA001, LLC  
American Realty Capital Properties, Inc.  
2600 Maitland Center Parkway, Suite 165  
Maitland, FL 32751  
Attn: Asset Management

**If to Tenant:**

Buffet Partners, LP  
2701 East Plan Parkway  
Plano, Texas  
Attn: Lease Administration

**Legal**

ARC CAFEUSA001, LLC  
American Realty Capital Properties, Inc.  
2325 East Camelback Road  
Suite 1100  
Phoenix, Arizona 85016  
Attn: Amy Cornelius, Esq.

**With a Copy to:**

Chaiken Legal Group, P.C.  
5001 LBJ Freeway  
Suite 925  
Dallas, Texas 75244  
Attn: Michael J. Chaiken, Esq.

6. **Rent Addendum.**

a. **Annual Rent.** Section 4(a) of the Rent Addendum is hereby amended to update the base rent payable by Tenant as follows:

- i. Effective as of April 1, 2014 and continuing through March 31, 2015, Tenant covenants and agrees to pay Landlord Annual Rent in the amount of three hundred eighty eight thousand three hundred fifty and 08/100 DOLLARS (\$388,350.08), payable in equal monthly installments of thirty two thousand three hundred sixty-two and 51/100 DOLLARS (\$32,362.51), payable in advance, on the first (1st) day of each month.

b. **Increases in Annual Rent; Option Period Rent.** Section 4(b) of the Rent addendum is hereby deleted in its entirety and replaced with the following:

- i. Commencing on April 1, 2015, and continuing through April 30, 2020, the Annual Rent shall be increased by an amount equal to three quarters of a percent (0.75%). Such amounts of rent due and payable under the Lease shall be as follows:

Term	Annual Rent	Monthly Rent
May 1, 2014 - April 30, 2015	\$388,350.08	\$32,362.51
May 1, 2015 - April 30, 2016	\$391,262.71	\$32,605.23
May 1, 2016 - April 30, 2017	\$394,197.18	\$32,849.76

May 1, 2017 - April 30, 2018	\$397,153.65	\$33,096.14
May 1, 2018 - April 30, 2019	\$400,132.31	\$33,344.36
May 1, 2019 - April 30, 2020	\$403,133.30	\$33,594.44

ii. Commencing on May 1, 2020, and continuing through the end of the Lease Term, the Annual Rent shall be increased by an amount equal to one and one quarter percent (1.25%). Such amounts of rent due and payable under the Lease shall be as follows:

Term	Annual Rent	Monthly Rent
May 1, 2020 - April 30, 2021	\$408,172.47	\$34,014.37
May 1, 2021 - April 30, 2022	\$413,274.62	\$34,439.55
May 1, 2022 - April 30, 2023	\$418,440.55	\$34,870.05
May 1, 2023 - April 30, 2024	\$423,671.06	\$35,305.92
May 1, 2024 - April 30, 2025	\$428,966.95	\$35,747.25
May 1, 2025 - April 30, 2026	\$434,329.04	\$36,194.09
May 1, 2026 - April 30, 2027	\$439,758.15	\$36,646.51
May 1, 2027 - December 31, 2027	\$445,255.13	\$37,104.59

c. **Payments of Rent.** Section 10 of the Rent Addendum is hereby amended to update the mailing addresses for the payment of Rents as follows:

Standard Mail	Overnight Mail	Wire/ACH Transfer
ARC CAFEUSA001, LLC Asset 7120; MRI 082065 Dept. 880044 P.O. Box 29650 Phoenix, AZ 85038-9650	JPMorgan Chase (AZ1-2170) ARC CAFEUSA001, LLC 1820 E. Sky Harbor Circle South Phoenix, AZ 85034 ATTN: ARC Properties Operating Partnership, LP/Dept. #880044/ Asset 7120; MRI 082065	JPMorgan Chase Bank ARC CAFEUSA001, LLC Account No.: 573618837 ABA #: 122100024

7. **Taxes.** Section 7 of the Lease, "Taxes and Assessments," is hereby amended to provide for the monthly escrow of real estate taxes as follows:

7(a)(i) Tax Impound:

Landlord requires Tenant pay to an impound account (which shall not be deemed a trust fund) up to the next one year of taxes and assessments for the Premises. Landlord will estimate the amounts needed for such purposes and will notify Tenant to pay the same to Landlord in equal monthly installments, as nearly as practicable, in addition to all other sums due under the Lease. Should additional funds be required at any time, Tenant shall pay the same to Landlord on demand. Tenant shall advise Landlord of all taxes which are due and shall cooperate fully with Landlord in assuring that the same are paid. Landlord may deposit all impounded funds in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Landlord. Interest or other gains from such funds, if any, shall be the sole property of Landlord. If an Event of Default shall occur subsequent to Landlord requiring the establishment of an impound account pursuant to this Section, Landlord may apply all impounded funds against any sums due from Tenant to Landlord. Landlord shall give to Tenant an annual accounting showing all credits and debits to and from such impounded funds received from Tenant.

shall be deemed executed when an executed counterpart hereof is transmitted by a party to the other party physically or via any electronic means.

13. **Representations.** Landlord represents and warrants that it has all requisite right, power and authority to execute and deliver this Amendment without the consent or joinder of any person or party, including without limitation, any mortgagee. Landlord further represents and warrants, to the best of Landlord's knowledge as of the Execution Date, that Tenant is not in default of any of its obligations under the Lease, nor has any event occurred which, with the giving of notice or the passage of time or both would constitute a default by Tenant under the Lease.


[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date executed by both parties below.

**LANDLORD:**

**ARC CAFEUSA001, LLC,**  
a Delaware limited liability company

By: ARC Properties Operating Partnership, L.P.,  
a Delaware limited partnership

By:   
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: 6/10/14  
**Q. Alanna Poku-Kankam**  
**Authorized Signatory**

**TENANT:**

**BUFFET PARTNERS, LP**  
a Texas limited partnership

By: Buffet G.P., Inc., a Texas corporation, its  
sole general partner

By:   
Name: Kristen Bernheim  
Title: Authorized Officer

Date: July 2, 2014

## ASSIGNMENT OF LEASE AGREEMENT

This Assignment of Lease Agreement (this "Assignment") is made and entered into effective June 20, 2014, by and between Buffet Partners, L.P., a Texas limited partnership ("Assignor"), and Fresh Acquisitions, LLC, a Delaware limited liability company ("Assignee").

### I. Recitals

1. A Lease Agreement was executed on or about December 28, 2007, by and between GE Capital Franchise Corporation ("Original Landlord") and the Assignor as Tenant, for the property located at 15640 Eastgate Drive, Garland, Dallas County, Texas (the "Premises"), as amended by the First Amendment to Lease Agreement and Rent Addendum dated effective April 1, 2014 (collectively, the "Lease").

2. Effective as of June 27, 2013, Original Landlord sold the Premises to ARC CAFEUSA001, LLC ("Landlord").

3. On February 4, 2014, Assignor filed a voluntary petition in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court"), for relief under chapter 11 of the United States Code 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Proceeding").

4. In the course of the Bankruptcy Proceeding and after securing Bankruptcy Court approval, on June 20, 2014, Assignor sold substantially all of its assets to Assignee. As of the date of this Assignment, Assignee warrants and represents that it continues to own substantially all of the assets that were formerly held by Assignor.

5. Assignor sought approval from the Bankruptcy Court to assume the Lease under the Bankruptcy Code and assign the Lease to Assignee.

6. On June 24, 2014, the Bankruptcy Court entered a Stipulation and Agreed Order, whereby (subject to the terms and conditions set forth therein) Assignor was permitted to assume the Lease and assign it to Assignee, and Landlord thereby consented to such assignment.

7. Pursuant to the Stipulation and Agreed Order, Assignor now wishes to assign the Lease to the Assignee, and the Assignee wishes to accept the assignment.

### II. Assignment

In consideration of the amount paid to acquire substantially all of Assignor's assets and payment of the cure amount set forth in the Stipulation and Agreed Order, receipt of which is acknowledged by this Assignment and the agreement of the Assignee set forth below, the Assignor assigns to the Assignee all right, title, and interest in and to the Lease. The Assignee accepts the assignment and agrees to assume and fulfill all the terms and covenants required by the Assignor as the Tenant under the Lease, including all liability that has accrued prior to the

date of this Assignment. Assignee will perform all the terms, covenants, provisions and conditions of the Lease herein assigned, all with the full force and effect as if the Assignee had signed the Lease originally as Tenant named therein.

Nothing contained in this Assignment shall be construed to: (i) modify, waive, impair or affect any of the provisions, covenants, agreements, terms or conditions contained in the Lease, (ii) waive any present or future breach or default, under the Lease or any rights of Landlord against any person, firm, association or corporation liable or responsible for the performance of the Lease, or (iii) enlarge or increase Landlord's obligations or Assignee's rights under the Lease or otherwise; and all provisions, covenants, agreements, terms and conditions of the Lease are hereby declared by Assignor and Assignee to be in full force and effect.

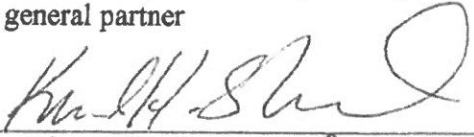
The signators below hereby represent and warrant that they have the full power and authority to execute and bind the respective parties hereto and that upon execution by both parties this Assignment will be fully effective and enforceable.

[SIGNATURES BEGIN ON NEXT PAGE]

ASSIGNOR:

**BUFFET PARTNERS, L.P.**, a Texas limited partnership

By: Buffet G.P., Inc., a Texas corporation, its sole general partner

By: 

Name: Kendal H. Strickland  
Title: Authorized Officer

ASSIGNEE:

**FRESH ACQUISITIONS, LLC**, a Delaware limited liability company

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

ASSIGNOR:


**BUFFET PARTNERS, L.P.**, a Texas limited partnership

By: Buffet G.P., Inc., a Texas corporation, its sole general partner

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

ASSIGNEE:

**FRESH ACQUISITIONS, LLC**, a Delaware limited liability company

By:  \_\_\_\_\_  
Name: Allen T. Jones \_\_\_\_\_  
Title: Manager \_\_\_\_\_



## SECOND AMENDMENT TO LEASE AGREEMENT AND RENT ADDENDUM

THIS SECOND AMENDMENT TO THE LEASE AGREEMENT AND RENT ADDENDUM (this "Amendment"), is made and entered into as of October 22, 2014 between **ARC CAFEUSA001, LLC**, a Delaware limited liability company, whose principal place of business address is 106 York Road, Jenkintown, Pennsylvania 19046 ("Landlord"), and **FRESH ACQUISITIONS, LLC**, a Delaware limited liability company, with a mailing address of 120 Chula Vista, Hollywood Park, Texas 78232 ("Tenant").

WHEREAS, GE Capital Franchise Finance Corporation, as Landlord's predecessor in interest, and Buffet Partners, LP., as Tenant's predecessor in interest, entered into that certain Lease Agreement dated December 28, 2007 (the "Original Lease") and that certain Rent Addendum of even date (the "Rent Addendum"), whereby Buffet Partners, LP., leased from GE Capital Franchise Finance Corporation, certain property located at 15640 Eastgate Drive, Garland, Texas, as more fully described in Exhibit "A" to the Lease, which Original Lease was first amended pursuant to that certain First Amendment to Lease Agreement and Rent Addendum dated as of June 20, 2014 and effective as of April 1, 2014 ("First Amendment") between Landlord and Buffet Partners, LP; and

WHEREAS, on February 4, 2014, Buffet Partners, LP commenced a case under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* as Case No. 14-30699-11 in the United States Bankruptcy Court for the Northern District of Texas ("Bankruptcy Court"); and

WHEREAS, after securing Bankruptcy Court approval, on June 20, 2014, Buffet Partners, LP sold substantially all of its assets to Tenant; and

WHEREAS, on June 24, 2014, the Bankruptcy Court entered a Stipulation and Agreed Order whereby Tenant was permitted to assume the Lease and Buffet Partners, LP was permitted to assign the Lease to Tenant; and

WHEREAS, immediately prior to the execution of this Amendment, Buffet Partners, LP and Tenant executed and delivered that certain Assignment of Lease Agreement whereby Buffet Partners, LP, as Assignor, assigned to Tenant, as Assignee, the Lease; and

WHEREAS, Landlord and Tenant desire to further amend the Lease to provide for the calculation of rent during the remainder of the Lease term, and to modify certain terms and conditions as amended by this Amendment.

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

**1. Incorporation of Recitals.** The parties hereby agree that the foregoing recitals are true and correct and are incorporated into this Amendment by this reference.

2. **Capitalized Terms.** Except as otherwise provided herein, all capitalized terms herein shall have the same meanings assigned to them in the Lease.

3. **Definitions.** The definition "Tenant" from "Section I, Definitions" of the Lease is hereby deleted in its entirety and replaced with the following:

" "Tenant" shall mean "Fresh Acquisitions, LLC," a Delaware limited liability company."

4. **Notice Addresses.** The notice addresses for the Tenant set forth in Section 21 of the Lease are hereby deleted in their entirety and replaced with the following notice addresses:

"If to Tenant:

Fresh Acquisitions, LLC  
Attn: Real Estate Department  
120 Chula Vista  
Hollywood Park, Texas 78232

With a copy to:

J. Patrick Ryan  
Cox Smith Matthews Incorporated  
112 E. Pecan Street, Suite 1800  
San Antonio, Texas 78205-1521"

5. **Rent Addendum.**

a. **Annual Rent.** Section 4(a) of the Rent Addendum, as modified by Paragraph 6 of the First Amendment, is hereby amended to update the base rent payable by Tenant as follows:

i. Effective as of April 1, 2014 and continuing through April 30, 2015, Tenant covenants and agrees to pay Landlord Annual Rent in the amount of three hundred eighty eight thousand three hundred fifty and 08/100 DOLLARS (\$388,350.08), payable in equal monthly installments of thirty two thousand three hundred sixty-two and 51/100 DOLLARS (\$32,362.51), payable in advance, on the first (1st) day of each month.

b. **Increases in Annual Rent; Option Period Rent.** Section 4(b) of the Rent addendum is hereby deleted in its entirety and replaced with the following:

i. Commencing on May 1, 2015, and continuing through April 30, 2020, the Annual Rent shall be increased by an amount equal to three quarters of a percent (0.75%). Such amounts of rent due and payable under the Lease shall be as follows:

<b>Term</b>	<b>Annual Rent</b>	<b>Monthly Rent</b>
April 1, 2014 – April 30, 2015	\$388,350.08	\$32,362.51
May 1, 2015 – April 30, 2016	\$391,262.71	\$32,605.23
May 1, 2016 – April 30, 2017	\$394,197.18	\$32,849.76
May 1, 2017 – April 30, 2018	\$397,153.65	\$33,096.14
May 1, 2018 – April 30, 2019	\$400,132.31	\$33,344.36
May 1, 2019 – April 30, 2020	\$403,133.30	\$33,594.44

- ii. Commencing on May 1, 2020, and continuing through the end of the Lease Term, the Annual Rent shall be increased by an amount equal to one and one quarter percent (1.25%). Such amounts of rent due and payable under the Lease shall be as follows:

<b>Term</b>	<b>Annual Rent</b>	<b>Monthly Rent</b>
May 1, 2020 – April 30, 2021	\$408,172.47	\$34,014.37
May 1, 2021 – April 30, 2022	\$413,274.62	\$34,439.55
May 1, 2022 – April 30, 2023	\$418,440.55	\$34,870.05
May 1, 2023 – April 30, 2024	\$423,671.06	\$35,305.92
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May 1, 2025 – April 30, 2026	\$434,329.04	\$36,194.09
May 1, 2026 – April 30, 2027	\$439,758.15	\$36,646.51
May 1, 2027 – December 31, 2027	\$445,255.13	\$37,104.59

6. **Effect of Amendment.** Except as provided herein, all of the terms, conditions and provisions of this Amendment shall remain in full force and effect and cannot be modified unless said modification is produced in writing and signed by all parties.

7. **Further Assurances.** The parties hereto agree to execute, acknowledge (as appropriate) and deliver to the other party such additional documentation as reasonably required to effectuate the provisions of this Amendment.

8. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Amendment to physically form one document. Signatures on counterparts of this Amendment that are delivered via facsimile or by other electronic means are authorized, and this Amendment shall be deemed executed when an executed counterpart hereof is transmitted by a party to the other party physically or via any electronic means.

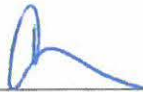
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date executed by both parties below.

**LANDLORD:**


**ARC CAFEUSA001, LLC,  
a Delaware limited liability company**

By: ARC Properties Operating Partnership, L.P.,  
a Delaware limited partnership

By:   
Printed Name: **O. Akomas Poku-Kankam**  
Title: **Authorized Signatory**  
Date: **10/22/14**

**TENANT:**

**FRESH ACQUISITIONS, LLC,  
a Delaware limited liability company**

By:   
Printed Name: **Allen Jones**  
Title: **Manager**  
Date: **9.29.2014**

**EXHIBIT C**

**2020 PROPERTY TAX DOCUMENTATION**

[SEE ATTACHED]

GARLAND I.S.D TAX OFFICE  
901 W. STATE STREET  
GARLAND, TX 75040  
(972) 494-8570

ONLINE DELINQUENT TAX STATEMENT

Date: 04/23/2021



ACCOUNT NO : 0000335340  
PROPERTY ID: 260844500107R0000  
LOCATION : 1540 EASTGATE DR

PROPERTY OWNER

ARC CAFEUSA001 LLC  
%LEGAL/REAL ESTATE DEPT  
120 CHULA VISTA  
HOLLYWOOD PARK, TX 78232-0000

AMOUNT DUE IF PAID IN:  
APRIL 48,807.26  
MAY 49,686.67  
JUNE 50,566.08  
JULY 59,667.97

TO PRINT A RECEIPT, GO TO  
<http://www.texaspayments.com/057909>

00003353402020GARL0004880726

RETURN THIS PORTION WITH YOUR PAYMENT

( cut here )  
RETAIN THIS PORTION FOR YOUR RECORDS. THIS COPY PLUS  
YOUR CANCELLED CHECK IS YOUR RECEIPT.

GARLAND I.S.D TAX OFFICE  
901 W. STATE STREET  
GARLAND, TX 75040  
(972) 494-8570

PROPERTY DESCRIPTION  
CENTERVILLE MARKE  
BLK 1 LT 7R LESS

ACRES: 0.0000 ACCOUNT NO: 0000335340  
PIDN : 260844500107R0000

LOCATION: 1540 EASTGATE DR  
TO PRINT A RECEIPT, GO TO  
<http://www.texaspayments.com/057909>

INT201300210668 D  
STATUS: 6 -

\* \* \* \* \* DELINQUENT TAXES DUE \* \* \* \* \*

YEAR	ENTITY	BASE DUE	IF PAID IN:		
			APRIL	MAY	JUNE
2020	909	43,970.50	48,807.26	49,686.67	50,566.08
TOTALS:		43,970.50	48,807.26	49,686.67	50,566.08

THE TAXES ON THIS PROPERTY ARE DELINQUENT. THE PROPERTY IS SUBJECT TO A LIEN FOR THE DELINQUENT TAXES. IF THE DELINQUENT TAXES ARE NOT PAID, THE LIEN MAY BE FORECLOSED ON.

Pursuant to SEC. 33.07 of the PROPERTY TAX CODE, an additional attorney fee, up to 20%, is added to the base tax, penalty, and interest as of July 1st on all current year taxes remaining due.

IF THE PROPERTY DESCRIBED IN THIS DOCUMENT IS YOUR RESIDENCE HOMESTEAD, YOU SHOULD CONTACT THE GARLAND I.S.D TAX OFFICE REGARDING A RIGHT YOU MAY HAVE TO ENTER INTO AN INSTALLMENT AGREEMENT DIRECTLY WITH THE GARLAND I.S.D TAX OFFICE FOR THE PAYMENT OF THESE TAXES.





# DALLAS COUNTY TAX OFFICE

**JOHN R. AMES, CTA**  
TAX ASSESSOR/COLLECTOR

1201 Elm Street, Suite 2600  
Dallas, Texas 75270  
www.dallascounty.org/tax | 214-653-7811  
email: propertytax@dallascounty.org

## 2020 TAX STATEMENT



**ARC CAFEUSA001 LLC**  
**%LEGAL/REAL ESTATE DEPT**  
**120 CHULA VISTA**  
**HOLLYWOOD PARK, TX 78232-0000**

**Account: 260844500107R0000**

Property Description:

1540 EASTGATE DR, CG

CENTERVILLE MARKETPLACE  
BLK 1 LT 7R LESS ROW ACS 2.6557  
INT201300210668 DD06272013 CO-DC  
0844500107R00 2CG08445001

Statement Date: April 26, 2021

Land Value:	925,460
Improvement Value:	2,574,540
Agriculture Value:	0
Market Value:	3,500,000

Jurisdiction	Taxable Value	Tax Rate	Tax Due
DAL CNTY	3,500,000	.239740	\$8,390.90
HOSP DIST	3,500,000	.266100	\$9,313.50
COLL DIST	3,500,000	.124000	\$4,340.00
SCH EQUAL	3,500,000	.010000	\$350.00

Total taxes for account: \$24,857.79  
Previous payment on account: \$0.00

Pay taxes online at:  
www.dallascounty.org/tax

**Total Due If Paid By April 30, 2021**  
**\$24,857.79**

*Your check may be converted to electronic funds transfer*

**Return This Portion With Your Payment**

**Account: 260844500107R0000**

2 020600080404050000010007290000000012000024857795

<u>IF PAID IN</u>	<u>P&amp;I</u>	<u>TOTAL DUE</u>
May	13%	\$25,305.68
Jun	15%	\$25,753.57

**Total Due If Paid By April 30, 2021**  
**\$24,857.79**  
Amount Paid: \$ \_\_\_\_\_

**Remit To:**  
**John R. Ames, CTA**  
**P O Box 139066**  
**Dallas, Texas 75313-9066**

ARC CAFEUSA001 LLC  
%LEGAL/REAL ESTATE DEPT  
120 CHULA VISTA  
HOLLYWOOD PARK, TX 78232-0000



# IMPORTANT INFORMATION & TAXPAYER RESPONSIBILITIES

The following information is provided to better assist our taxpayers.

Taxes for the current year (2020) are due and payable in full on October 1, and are delinquent if not paid on or before January 31. State law requires that penalty and interest be charged on taxes paid after January 31. Penalty and interest to be added for delinquent payments are as follows, additional 12% interest per annum thereafter.

## Delinquent Penalty and Interest Schedule

February	7%	May	13%	August	19%	November	22%
March	9%	June	15%	September	20%	December	23%
April	11%	July	18%	October	21%	January	24%

IF YOU ARE 65 YEARS OF AGE OR OLDER OR ARE DISABLED, AND YOU OCCUPY THE PROPERTY DESCRIBED IN THIS DOCUMENT AS YOUR RESIDENCE HOMESTEAD, YOU SHOULD CONTACT THE APPRAISAL DISTRICT REGARDING ANY ENTITLEMENT YOU MAY HAVE TO A POSTPONEMENT IN THE PAYMENT OF THESE TAXES.

Taxpayers with an over 65 or disabled exemption qualify for an installment payment plan on their residence homestead. Please contact the Customer Care Center prior to January 31 for details at 214-653-7811.

### Dallas County Tax Office

Customer Care Center  
214-653-7811

Questions regarding:

- Tax amounts
- Tax Rates
- Due dates
- Statements

Make checks payable **John R. Ames, CTA,**  
**Tax Assessor/Collector**  
and remit to: **P O Box 139066**  
**Dallas, TX 75313-9066**

Pay taxes, print statements and payment information at:

[www.dallascounty.org/tax](http://www.dallascounty.org/tax)



Pay by echeck at no additional cost



Chase Bank convenience fees are applicable on Credit/Debit transactions

Pay by Phone 866-863-8323 (English)  
Pay by Phone 866-361-1741 (Spanish)

- The Tax Assessor/Collector **does not** have legal authority to **forgive or waive** any **penalty or interest charges**.
- Delinquent **Real Property** taxes not paid prior to **July 1** are subject to an additional penalty, up to 20%, as provided under section 33.07 of the Texas Property Tax Code.
- Delinquent **Business Personal Property** taxes not paid prior to **April 1** are subject to an additional penalty, up to 20%, as provided under section 33.11 of the Texas Property Tax Code.
- Payments by mail are credited according to the **U.S. Postmark (not meters)**. Those bearing postmarks past deadlines will incur full penalty and interest charges.
- Payment by mail on (or shortly before) January 31 could delay the processing of your payment.
- If you receive a tax statement that should be paid by your mortgage company, contact your Mortgage Company immediately.
- Failure to receive a tax statement does not relieve the property owner of the tax, penalty or interest liability. If you did not receive a statement for each piece of property you own - **NOW** is the time to inquire about your other statements.
- Property taxes in Texas are assessed at 100% Market value by the appraisal district as of January 1 of each year and covers a period of one year from that date (January - December).
- A \$30 fee is added to returned items.
- Partial payments are accepted.

### Appraisal Districts

### Questions regarding:

- Address Corrections
- Exemptions (free of charge)
- Incorrect City or School District
- Ownership (if you don't own)
- Property Descriptions
- Value

Appraisal Districts are separate local agencies and are not part of County Government or the Dallas County Tax Office.

#### Name:

Dallas Central Appraisal District  
Collin Central Appraisal District  
Denton Central Appraisal District  
Ellis Central Appraisal District  
Kaufman County Appraisal District  
Rockwall Central Appraisal District  
Tarrant Appraisal District

#### Online:

[www.dallascad.org](http://www.dallascad.org)  
[www.collincad.org](http://www.collincad.org)  
[www.dentoncad.com](http://www.dentoncad.com)  
[www.elliscad.org](http://www.elliscad.org)  
[www.kaufman-cad.org](http://www.kaufman-cad.org)  
[www.rockwallcad.com](http://www.rockwallcad.com)  
[www.tad.org](http://www.tad.org)

#### Phone:

214-631-0910  
469-742-9200 or 866-467-1110  
940-349-3800 or 972-434-2602  
972-937-3552 or 866-348-3552  
972-932-6081  
972-771-2034  
817-284-0024



CITY OF GARLAND TAX OFFICE  
P.O. BOX 462010  
GARLAND, TX 75046-2010  
(972)205-2410

ONLINE DELINQUENT TAX STATEMENT

Date: 04/22/2021

ACCOUNT NO : 0000252873  
PROPERTY ID: 260844500107R0000  
LOCATION : 1540 EASTGATE DR

PROPERTY OWNER

ARC CAFEUSA001 LLC  
%LEGAL/REAL ESTATE DEPT  
120 CHULA VISTA  
HOLLYWOOD PARK, TX 78232-0000

AMOUNT DUE IF PAID IN:  
APRIL 29,898.96  
MAY 30,437.68  
JUNE 30,976.40  
JULY 38,141.38

TO PAY ONLINE, SIGN UP FOR EMAIL STATEMENTS,  
PRINT A DUPLICATE RECEIPT, OR TO VIEW PAYMENT  
HISTORY, GO TO <http://www.texaspayments.com>

RETURN THIS PORTION WITH YOUR PAYMENT

----- ( cut here ) -----

RETAIN THIS PORTION FOR YOUR RECORDS. THIS COPY PLUS  
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CITY OF GARLAND TAX OFFICE  
P.O. BOX 462010  
GARLAND, TX 75046-2010  
(972)205-2410

PROPERTY DESCRIPTION  
CENTERVILLE MARKE  
BLK 1 LT 7R LESS

ACRES: 0.0000 ACCOUNT NO: 0000252873  
PIDN : 260844500107R0000

LOCATION: 1540 EASTGATE DR

INT201300210668 D  
STATUS: -

TO PAY ONLINE, SIGN UP FOR EMAIL STATEMENTS,  
PRINT A DUPLICATE RECEIPT, OR TO VIEW PAYMENT  
HISTORY, GO TO <http://www.texaspayments.com>

\* \* \* \* \* D E L I N Q U E N T T A X E S D U E \* \* \* \* \*

YEAR	ENTITY	BASE DUE	IF PAID IN:		
			APRIL	MAY	JUNE
2020	120	26,936.00	29,898.96	30,437.68	30,976.40
-----					
TOTALS:		26,936.00	29,898.96	30,437.68	30,976.40

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DIRECTLY WITH THE CITY OF GARLAND TAX OFFICE FOR THE PAYMENT OF THESE TAXES.